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Special Issue on
**LEGAL EDUCATION, CONTINUING LEGAL EDUCATION
AND CLINICAL LEGAL EDUCATION**

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CLINICAL LEGAL EDUCATION FOR THE COMPETENT AND COMPASSIONATE LAW PROFESSIONALS AND THE ROLE OF INSTITUTIONS IMPARTING LEGAL EDUCATION TODAY: AN OVERVIEW

Dr. Pooja Prashant Narwadkar*

ABSTRACT

In the present era the law is held to be the important tool to promote the welfare of the people and it is the mandate under the Constitution of India. Legal system is the backbone of the nation and lawyers are the integral part of it. The quality of lawyers depends on the quality of legal education imparted in the institutions.

The reforms in legal education since independence have gone through various phases. Traditionally the legal education was concentrating for the students to be law professional who would practice in only the court of law, hence the approach was confined to the interpretations of law provisions developing acumen to present a case in court. With the changing time the roles and expectation of profession also changed in positive dimensions. It focused the recipients of the legal education such as policy makers, business adviser, negotiators in big concerns, mediator, arbitrator, lobbyist, law reformers, law researchers, legislators, etc. With this there was expected shift in the legal education which could cater the changing demands

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of society. The legal education to shift towards the clinical approach has focused through various deliberations and discussion in conferences, consultations which have concluded with need for clinical approach and clinical methodology as the need of hour. Since second half of the century it is observed that this approach has its own inbuilt and system oriented challenges. But still to overcome those challenges with strong will is the only answer for better survival of law professionals.

Key Words. Clinical Legal Education, Clinical Methodology, Social Engineers.

"The most important and urgent reform needed in education is to transform it, to endeavour to relate it to the life, needs and aspirations of the people and thereby make it the powerful instrument of social, economic and cultural transformation necessary for the realization of the national goals. For this purpose, education should be developed so as to increase productivity, achieve social and national integration, accelerate the process of modernization and cultivate social, moral and spiritual values."

— Dr. Sarvepalli Radhakrishnan

INTRODUCTION

SARVAPALLI Radhakrishnan, in his education commission report, bemoaned once the fact that while India has produced great judges and lawyers, it has not produced great jurists—hence fundamental transformation of teaching in law schools is the need of hour. The role of lawyer in social, welfare, liberal democratic state obligates him a sense of social responsibility and expects from him to work relentlessly towards achieving the goal of societal development and to dispense justice in a real sense. It expects the reform in the overall system which must aim at a socially sensitive lawyer of conscience- for whom justice delayed is not just inefficiency or a commercial opportunity, but a blemish on one's professional persona, a failure of a system of which he is an integral part.¹

SIGNIFICANCE OF LEGAL EDUCATION

In the present era law is held to be the important tool to promote the welfare of the people and is essential to fulfil the objectives of social justice

1. Law Minister Virappa Moily on National Consultation for 'Second Generation Reforms in Legal Education' at Vigyan Bhavan, New Delhi on 2 May, 2010.

in the preamble of the Constitution of India. The importance of legal education can be stated as imparting the quality legal education is an investment through which the nation gets a class of cultured law abiding citizens for better tomorrow. Moreover the present system expects even a layman to know the law as a pivotal duty. Ignorance of which is not innocence but a sin which cannot be excused. With the legal education a class of cultured law abiding citizens is created, who are able to render services as professionals and not with the business mind. Law is held as social and noble profession, the expectation of the system from lawyer is to serve the humanity, render services, to give justice with the tool of law. Hence the importance of the quality of legal education cannot be overlooked. It would not be an exaggeration to say that 'The foundation of the Indian legal system, or for that matter any legal system, rests upon the law schools where legal education in a country is imparted. It is the education of law which trains the students to take up various roles in the society, it prepares them to become lawyers, judges, corporate executives, public servants, social activists as well as take up a career in politics'.² The legal education in the present technological development and globalised era is expected to meet the global challenges.

Ours is a democratic form of government which is devoted to welfare of general public and law has assumed considerable significance, hence it requires utmost care to be taken regarding the quality and content of legal education. In the words of J. Fortas "A lawyer is not merely a craftsman—or even an artist. He has a special role in our society. He is a professional, socially ordained to perform at the crisis time of life of other people and almost daily to make moral judgments of great sensitivity... and of course he is a custodian of the flaming sword of individual and personal liberty as well as of the public order"

PRESENT STATUS OF LEGAL EDUCATION AND NEED FOR REFORM

The reforms in legal education since independence have gone through various phases. Traditionally the legal education was concentrating for the students to be law professional who would practice in only the court of law, hence the approach was confined to the interpretations of law provisions developing an acumen to present a case in court. Another focus was on those who want to join other sectors as legal advisors and lastly those who could contribute academia. When the focus is on such target group,

2. Former Chief Justice of India Dipak Misra at the Conference of Vice-Chancellors of National Law Universities on *Legal Education Reforms* New Delhi 2018.

naturally the outcome also, is restricted to learning skills of issue spotting, applying provisions to case, in this context what is expected from them is to do the elementary case analysis, learn the argumentation skill which basically required for practice in courts. This traditional practice oriented teaching was thinking about resolving the dispute when it reaches the court, but gradually the changing world was believing on the pre-litigation dispute resolution, and also developed a sense of futility of the regular court system being lengthy and expensive, it gave momentum to alternate dispute resolution. This also caused expectation in role of advocates and eventually a shift in legal education system. Hence the initiative was taken by the Apex regulating body of legal education and profession the 'Bar Council of India' which prescribed four practical papers. It believed that the legal education in the existing scenario has to be both intellectually stimulating and socially relevant. The major challenge which lay ahead in this situation was to enhance a sense of practicality. The institutions imparting legal education were expected to emphasis on the changing roles, in positive dimensions of the recipient of the legal education as such policy makers, business adviser, negotiators in big concerns, mediator, arbitrator, lobbyist, law reformers, law researchers, legislators, etc. The legal education had a task to train the recipients of legal education to face the challenges of globalization process due to economic liberalization. For this purpose the shift in legal education, methods of teaching and approaches towards system need to undergo a scrutiny of existing situation and to set out clear vision of justice delivery and also address the emerging realities of society and the demand of various sectors. The change in legal education system placed it focus on a full proof system that would promote interdisciplinary approach with other social sciences, encourage proficiency in languages, develop personal skills of argumentation, presentation etc, promote acquaintance with new technological means for professional and research purposes other than that of regular books, reports and develop critical analytical, research oriented outlook. The change in existing situation inevitably called for the clinical methodology of teaching to transform the system and to develop him as competent legal professional.

CLINICAL LEGAL EDUCATION

Clinical legal education is multi-disciplined and multi-purposed which can develop the skilful professionals and thereby strengthen the existing legal system and the recipient of such education system can constructively contribute in the national development. The system of clinical legal education focuses towards teaching of how law actually works in action.

Clinical legal education has been the significant part of legal education since 1960 at global level, in UK at 1970. 14th Report of Law Commission of India recognised the importance of reforms in legal education and profession, it was operationalised by the Bombay Legal Education Committee, who proposed the inclusion of practical papers and it should be compulsory for balance of both academic and professional purposes. It also promoted a linkage between legal aid and legal education.³ The next important phase in this respect was the Conference of Chief Justice of India in 1993 which recommended for the need of appropriate steps for the provision of practical training to acquire sufficient experience at the college level only by revising the existing syllabus and inclusion of practical papers in it. In 1997 the circular regarding this was issued by BCI to all universities and colleges to include the said papers.⁴ Gradually the Report of Law Commission of India 2002 made it mandatory papers. Since then the legal aid clinics, legal aid and advice camps, court visits, jail visits, police station visits, local self government visits and mandatory internship⁵ moot courts, mock trials, simulation exercises, has started as a part of curriculum.

CLINICAL METHODOLOGY AND BENEFITS OF CLINICAL APPROACH

The methodology of teaching in education process is very significant aspect which motivates the learner towards achieving the skills and knowledge. Clinical approach is nothing but "learning by doing" Andrew Peter, in a thoughtful analysis of the learning process in relation to law school curriculum, identifies two distinct educational objectives namely a subject matter objectives (the subject areas which he/she should be familiar with) and the learning objectives (the manner in which the teacher wishes a student to be able to deal with the subject matter, naturally dictated by the goals of legal education).⁶ At present the higher education institutions are imparting education with in majority colleges with lecture method for time constraint or such other reasons and found it most suitable where teaching becomes monotonous and students here do the job to mug

3. Legal Education Reform report by Expert Committee on Legal Aid if Ministry of Law and Justice in 1970.
4. On the basis of Bar Council of India Report 1996.
5. Bar Council of India Rules 2008 rule 25.
6. Andrew Peter: 'A Closet Within the House' Learning objectives of law school curriculum in legal education, Neil gold (ed) Butterworth ref by Clinical Legal Education by N.R. Madhava Menon, A handbook on legal education. Eastern Law Book Company 2006.

it and reproduce the same in examination. Law colleges are not an exception; they also are not proactive to bring change. Here there is need for improvement. To replace the old methods the clinical legal education depends on practical activities. With the clinical approach and teaching methodology the learning objectives, like skills, real life experience and exposure is possible and it can help to develop the interest of student.

This clinical approaches have few advantages such as —

- It develops the interest of student, enhance his practical skill and develops his attitude.
- It gives him a first-hand experience of live situations, real problems, ground realities of the parties, and encourages them to apply the legal provisions to them under able guidance in legal aid clinics.
- It boost their confidence level and it is very helpful when they enter in court as junior advocates.
- It offers the student to learn more substantive subject matter content than lecture method.
- It gives a deeper and more meaningful understanding of legal profession, lawyering process and role of law in social development.

For this the methodology and set ups for teaching has been changed within the law institutions. The establishment of legal aid clinic were started, which can help the community, through awareness programs, legal aid and advice and reduce its isolation from society. The students here can understand the problems of people and it was thought, through this way it makes the students mature and socially responsible.

The clinical methodology has been introduced in legal education with the experience of medical field, where the students get an opportunity to apply the theory in practice, in hospitals while treating the patients. The moot courts and mock trials are also been introduced with the same understanding to enhance their participation, and bridge the gaps between theory and practice. After the passing of Legal Service Authority Act, 1987 the role of law and a lawyer has been extended as social engineers, and the legal aid and access to justice become the duty on the part of state. Here the educational institutions have an opportunity to make the student attend the activities of *lok adalat*, mediation centres and acquire skill of alternate dispute resolution. Teachers also had an access to be a panel member which helps them to learn these skills. All this has paved way to clinical methodology in legal education.

THE CHALLENGES IN IMPROVING THE STANDARDS OF TEACHING IN INSTITUTIONS IMPARTING LEGAL EDUCATION

- Implementing the clinical approach-Implementation of the clinical approach itself is a challenge in institutions due to paucity of law teachers, adequacy of trained staff, the semester pattern which expects the faculty to complete a bulk of syllabus in a short span.
- The orientation of students who are conditioned to the one-way communication system until they reach the law colleges. This in reality compels the faculty to the use of lecture method of teaching and discourage the students participation.
- The clinical education approach demands a huge dedication/commitment on the part of teachers and students in terms of availability of funding, preparation time, evaluation system etc.
- Careful selection process of activities with clinical approach in legal education is very crucial issue of consideration. Attending the legal aid clinics plays major role, which avails the student an opportunity for observing real life situations. The counsellors available in clinic if not properly trained, may affect the students learning process.
- Other activities like visits to police stations, *tanta mukti* process, women's cell at police stations, jail visits, provide an opportunity for practical observation, but to apply for a visit and get permissions, strength of students and coordinator ratio is again a challenge.
- While selecting the activity its suitability, work adequacy and conducive environment is also a challenge
- The activity of Moot Court and Mock- trials are time consuming when the number of students and faculty ratio does not match each other.
- The activity of *lok adalat*, mediation centres' process observance activity is also a best clinical activity for the experiential learning. Attendance of each session and parties permission to observe may also hinder the learning process. Supervision of the trainee students if planned can give better results.
- If Legal aid clinics are expected to be run enthusiastically by the faculty it is required to internalised the practice and make it a part of workload. Because the faculty has to give their quality time in order to make it a centre for supporting social justice. There is no workload reduction given to faculty who are designated to supervise legal aid service; this hampers the quality of work.

CONCLUSION

In the present era law is held to be the important tool to promote the welfare of the people and it is the mandate under the Constitution of India. Legal system is the backbone of the nation and lawyers are the integral part of it. The quality of lawyers depends on the quality of legal education imparted in the institutions.

The time has come, when there is a dire need to bring the present system under change by bringing several new initiatives like new innovative teaching methods including discussion on case studies, giving questions that allows the student to go for search with creative solutions, problem solving, brainstorming on ideas or issue of concern, moot courts and debates on regular basis. The students must be engaged in debates, elocution, group discussion etc. The use of collaborative teaching, learning through technology and exposing law students to real-life situations would lead to a more practical approach of the legal education.

The faculty should also be continuously trained to maintain quality. The senior advocates, judicial officers should be invited to give them an opportunity of practical learning experiences. This way the challenge of bridging the gap between social order and legal order with the help of institutions like legal aid clinic and clinical approach in teaching can bring expected success.

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