

Revamping curriculum to integrate Clinical education

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Abstract

Clinical methods and experiential learning have been in vogue for several years now. Although it remains undisputed that this method of teaching and learning by doing is a far superior method of pedagogy as compared to lectures, in the Indian context at least, the lecture remains the predominant method of teaching. Methodology to be used and the variety of objectives and difficulties in planning for this form of teaching has meant that in countries like India Clinical teaching is not very well developed. The solution, I would suggest, lies in the revamping of the curriculum for law schools and to integrate a large portion of credits for Clinical experience. Other courses such as medicine or social work allocate a substantial amount of time and resources for hands on experience for students to observe and practice their skills. The paper will discuss proposals to curriculum reform which are needed to integrate Clinical Legal Education better in law schools.

Introduction

Clinical Legal Education as a movement towards experiential learning is a result of several decades of law education reform. The principles involved in terms of participatory learning, learning and teaching law as a method of activism, making learning socially relevant are all ideas that have been in vogue in India for a long time. Several committees, commissions have spent their energies on developing a model curriculum that would reflect the spirit of the Indian constitution in providing for socio-economic and political justice. Those who are involved in clinical legal education in India continue to share the perspective that there is a need to develop clinical legal education as a part of strengthening constitutionalism, access to justice and a social justice orientation.

The clinic programme however has certain difficulties in evolving a methodology that is suitable to the Indian context. Among them are the exclusive focuses on legal aid as the end of the clinical programme, the lack of integration of the internship programme into the curriculum, the lack of standardized evaluation systems for clinical programmes and the dearth of indigenous materials on clinical legal education are some of them.

Clinical Legal Education and Legal Aid:

The values of Clinical Legal education can be achieved by several forms such as internship programmes, legal literacy, outreach and consultancy in addition to litigation and counseling, and legal aid is an important part of it. In India Clinical Legal Education in the form of legal aid clinics has been functional in several law colleges across India since the 1960's¹. In India, often enough, the clinic programme has not moved beyond the legal aid programme. The focus of these clinic programmes is to help litigant's access justice. This could be done with or without a lawyer who is authorized to represent

¹ Delhi University ran a successful legal aid center for several years, other colleges like the Salgaoncar law colleges, ILS and now the National law Universities have also run successful clinics or legal aid centers.

clients. The legal aid center tries to do the job of a lawyer without charging the client. This center may or may not be run, at the discretion of the concerned faculty or students.

The Legal aid movement needs to be distinguished from Clinical Legal Education. The lack of a clear understanding of legal aid greatly hampers the functioning of the legal aid clinics because expectations from these clinics far outstrip the resources and capacities of the persons involved. Legal aid can be defined in a comprehensive manner as done by the National Expert Committee on Legal Aid in the 1970's as reformation of law and procedures, courts and prisons, the bar and the bench, police and public servants, in order to make them more responsive and the creation of disputes institutions and the involvement of law students was to make them more socially committed and not chained to law books or the pursuit of wealth. This wide understanding although very theoretically sound, was critiqued as being unduly evangelistic² and not furthering the cause of legal aid for no clear objectives on how the programme would be pursued in light of limited resources.

In light of the above difficulties in definition and lack of direction a comprehensive legal aid scheme throughout India the programme is only marginally successful. On what ails the legal aid scene in India, as far as legal education is concerned, Oliver Koppell, who visited India to evaluate the legal aid programme, had the following to say

“Furthermore, Indian law schools, while modeled after the Western system, have not included as an element in the curriculum or as a recognized extracurricular activity, social service work on the part of students. Respondents were skeptical about the use of law students as assistants in legal aid cases. This skepticism may be a reflection of the professional isolation of the academic lawyer in India. Legal education would not seem to stimulate social innovation.”³

Even till this point no difference was made between legal aid as an obligation on the law university and a 'social service work'. However, the need for reform of legal education led to the establishment of National Law Universities throughout the country which made legal aid an important component of the clinic programme as a viable alternative to doing Clinical Legal Education. This replacement of Clinical Legal Education with legal aid may have led to the dilution of the Clinical Education programme. A focus on social justice, integrating theory and practice must be a mandatory part of the Clinical programme but it is not the whole of it.

Methodology of Clinical Legal Education:

The variety of objectives within Clinical Legal Education also raises difficulties in its successful running. There is anxiety of being dragged into political battles which may harm the image of the University. But a focus on social justice and a careful delineation of the pedagogical values of the Clinical programme would address these issues⁴.

² Upendra Baxi “Legal Assistance to the Poor: A critique of the expert committee report” Economic and Political Weekly, Vol.10, No. 27,(July 5, 1975), pp.1005-1013.

³ Oliver Koppell, “The Indian Lawyer as Social Innovator: Legal Aid in India” Law and Society Review, Vol.3, No2/3, (Nov., 1968-Feb., 1969)

⁴ Reference may be made to the first legal clinic in Ponicherry which ran during the darkest period of Indian democracy, the imposition of emergency. For details refer to Jayanth Krishnan's article.

The history of legal education reform in India has also been influential in making a categorization of academic programmes and vocational training. The Law Commission report in 1956 made recommendations that students must be trained in rigorous scientific, theoretical and doctrinal training and that practical courses not be included in the syllabus. It discouraged the use of moot courts and other such mechanisms as reducing the academic programme to vocational training. It discouraged the use of lawyers as teachers who were not prepared to teach and rushed to the court from the class.⁵ It is quite ironic that we must now recognize the significance of a practical approach to teaching and encourage students to work closely with lawyers to be better equipped for their profession. At the same time Clinical education needs to be distinguished from vocational training. Clinical education as an integration of theory with practice and sound education will be able to meet the critique of a non doctrinal approach to legal education. This cannot be done only by way of external placements but under the careful supervision of trained academics.

The establishment of National law schools was done to revamp legal education and make it a rigorous training in the law by incorporating the values of Clinical Legal Education. The first law school University established in India had a strong focus on building skills in students through a variety of methods including internships with lawyers. The institutionalization of the internship programme led to students gaining a firsthand exposure to the bar, the bench, and later to corporate offices and law firms. No teacher would use the simple lecture form, but use a combination of participation, analysis, writing and researching.

In spite of these innovations, Clinical methods have still to take off even in these top notch institutions. These institutions have the best of students and teachers, resources and space. What is needed is a commitment to Clinical methods. Since the traditional methods are yielding such good results as far as the students recruitment is concerned there is little motivation to do more. The corporatization of recruitment has also meant that there are few students who would go into litigation after their graduation and hence to focus on lawyering skills is often considered unnecessary.

Integrating Clinical courses:

The clinic courses offered currently in National law schools as also other law colleges across the countries are four courses including Alternative Dispute Resolution, Trial and Appellate Advocacy and in legal aid and professional ethics. These courses are often done in the last three years of the 5 year course. The courses are like other regular courses with a lot of lecture classes and a few skills oriented and practical exposure classes with courts visits, simulation trials, and other drafting activities.

The sum of these courses however does not impact on the way in which other courses are taught. Out of the 50 odd courses taught at law school four courses on clinics has not had the desired effect. There is a need to integrate the values of Clinical education into law school as a whole. The experience of law school needs to change. Case studies, discussion oriented classes, analytical training are not a replacement for a hands on experience of the complexity of the law. There is a need to revisit the purpose of these law universities in terms of making law not an elitist concept but an indigenous product of India committed to making legal education more meaningful

⁵ Jayanth K. Krishnan, "Professor Kingsfield goes to Delhi; American academics, the Ford Foundation and the development of Legal Education in India", The American Journal of Legal History, Vol.46, No.4 (Oct 2004), pp.447-499

The National Law Universities in India are an indication that Indians are capable of building world class institutions by their own innovation⁶. In order for the Clinical programme in India to be more successful there needs to be a development of Indian materials on the subject. The National Law Universities produce excellent students who are professionally competent and are exposed to the practical aspects of law through the internship programme. This needs to be continued and strengthened further in order to make legal education more meaningful. In the place of rote learning, courses with a Clinical component need to be introduced. A revamp of the curriculum which will help integrate the internship programme into the courses that are taught by designing suitable models of evaluation on internship programmes.

Evaluation and Assessment:

Evaluation of the clinic programmes remains a difficult task. Unless the Clinical experience is counted as a real life skill and the aims of providing access to justice is the core of the role of law schools an evaluation scheme will be seen as a subjective exercise. If there are different forms of lawyering such as working for advocacy groups rather than traditional litigant based lawyering or corporate lawyering each clinic that is designed must have a methodology that is part of Clinical Legal Education. An identification of the different objectives of the Clinical legal programme needs to be done following which a suitable assessment model can be easily designed.

Revamping curriculum:

The direction for Clinical courses will be to integrate Clinical methods into more courses by revamping curriculum. If a comparison is being drawn to medical and engineering courses then there need to be more practical exposure courses to students who otherwise think of law as found in text books only. Instead of the old practice of dividing up courses into theoretical and practical courses, there is a need to allow for greater exposure to students not only in procedural law but other courses as well. In all the traditional law subjects from family law to labour law and particularly criminal law there is a scope for a practical exposure to be given to students. To take a leaf out of the Chinese experience⁷, a legislative drafting clinic would be a good starting point in courses which do not have a direct practical application.

A suggestion that came up at a National Workshop on the directions for Clinical Legal education in India⁸ proposes that following courses like the Master of Social Work where a component of field work is mandatory and students have to go to the field simply in order to complete the course, there must be a compulsory portion of every law course that students must visit the field for a certain number of classes before they are deemed to have comprehended anything in a course. The tasks that they must do while on field work could range from interviewing practitioners in the area, visiting courts, looking up counseling centers, collecting cases that practitioners are dealing with and writing up briefs, to taking up a law reform initiative, compiling materials on an area that would be useful to adjudicators. This cannot be a voluntary activity but must be an integral into the curriculum which cannot be deviated from.

⁶ See Jayanth Krishnan above.

⁷ Adopting and Adapting: Clinical Legal education and Access to Justice in China, Harvard Law Review, Vol.120, No.8 (Jun., 2007), pp 2134- 2155

⁸ Scott Paltrowitz and Vaidya Gullapalli, "Transforming Clinical Legal Education: A concept note", based on discussions at the two day National workshop on Challenges to Clinical Legal Education in Contemporary India: Hyderabad, 2010.

There is a great scope for synergy between legal education and civil society groups. There is a lot of legal work that needs to be done. In a biting critique of the legal aid expert committee report Professor Baxi comments on the lack of adequate legal representation for a majority of the Indian population. Legal education can have no meaning if it is far removed from providing access to the legal system if not justice. In this context Clinical Legal Education is not only an evangelistic goal but a glaring need to deliver on the promise of providing better access to justice by the law universities. This can happen only by a commitment to providing that service by mandating it within the curriculum. There is a need to develop Clinical Legal Education as a part of strengthening constitutionalism, access to justice and a social justice orientation delivery of civil economic, political rights. In the Indian context it is absolutely essential that a social justice component be integral to clinics. By integrating Clinical methods into the curriculum Clinical Legal Education will cease to be a do good endeavour and will be simply seen as an essential component of legal education.