



Legal Academia and Legal Aid Clinics: The Two Invisible Pillars for Dispute Resolution

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“Injustice anywhere is a threat to justice everywhere”

- Martin Luther King, Jr.

Abstract

Justice delivery in a society depends on its legal and the institutional framework through which such justice is delivered. Law Schools through which legal education is delivered play a crucial role in the justice delivery system in a country. In India, different formats of legal educational institutions are found, all of which have their own conception of justice and have adopted their own mode of delivering legal education in order to cater to the need of the ‘justice’ delivery system of the country. Two important limbs of legal education are the legal academia and the Legal aid clinics. Restriction on engaging these resources for dispute resolution is not only a waste of intellectual resources but also a burden on society. The current paper focuses on different ways to engage the above limbs as a catalyst to expedite justice delivery.

Keywords: Article 124(1)(c), Bar Council, Dispute Resolution, Legal Aid Report of 1973, Legal Education Rules, 2008

1. Introduction

Ours is the most ancient Nation, which had evolved and developed the oldest legal, judicial and constitutional system

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in the World.¹ The present-day constitutional and legal system in India is the outcome of several evolutions, passing through common law and secular systems of law.²

The origins of law in India can be traced to the Vedic ages, and it is probable that some form of civil legal system existed during the Bronze Age and also the Indus Valley civilisation.³ While the history of law in India is distinguished as an affair concerned with religion and philosophy, its secular format differed by region and ruler. Later, during the colonial period, the British system of common law, that is, a system founded on documented legal instances, was brought to India by the East India Company. Nevertheless, despite the varied influences during its evolution, the legal system in India has developed into a critical constituent of the country and a vital aspect in ensuring that all citizens are assured of their constitutional rights.⁴

In India, thousands of lawyers graduate annually from the country's considerable number of law colleges. The majority of these lawyers act for clients in courts and other legal organisations, and work either independently or in family-owned establishments.⁵ Legal education is a *sine-qua-non* for the development of the rule of law and a sustainable democratic order. Legal education has also to cater to the institutional upbringing of a society based on law.⁶ Its direct

¹ Justice Dr M. Rama Jois, in his Tenth Durga Das Basu Memorial Lecture Saturday, (November 11, 2022, 13:00 PM), <https://nujs.edu/news/10th-basumeorial-lecture.pdf>

² Bar Council of India, 'Brief History of Law in India.' (November 12, 2022, 12:07 PM), <http://www.barcouncilofindia.org>

³ *Supra* note 2

⁴ *Id.*

⁵ Bar Council of India, 'About the Profession.' (29 November 2022, 10:00 PM) <http://www.barcouncilofindia.org/About/About-The-Legal-Profession/>

⁶ K.C. Jena, 'Role of Bar Councils and Universities for Promoting Legal Education in India,' 44(4) Journal Of The Indian Law Institute 555 (2002)

goal is to create a professional lawyer, whose direct interest is an occupation whose basis is the law. However, the lawyer should ultimately consider himself/herself as an element of "the constitutional structure of a nation, for administration of justice, whose equipment embraces the rules as well as the skills of the craft." ⁷ Thus, a lawyer's role in society is multifaceted and boundless. It is therefore necessary to have a well-formulated system to ensure that lawyers are equipped to meet the needs of Indian society.

The role of a lawyer was emphasized by Justice Fortas⁸ as follows:

A lawyer is not merely a craftsman, or even an artist. He has a special role in our society. He is a professional especially ordained to perform at the crisis time of the life of other people, and almost daily, to make moral judgments of great sensitivity. He is an important hand at the wheels of our economy and of course as the custodian of the flaming world of individual and personal liberty, as well as of the public order.

Consequently, in contrast to other professional programmes such as, accountancy, engineering, and medicine, the legal programme is not limited to preparing lawyers for the profession. Indeed, training is only one of the course's different objectives. Attention was drawn to this facet of legal education by the Curriculum Development Committee:⁹

Legal education has a very crucial role to play in development of the law as a hermeneutical profession,

⁷ *Supra* note 6

⁸ *Id.* at 557

⁹ "Report of the Curriculum Development Centre in Law", Vol. I, U.G.C., New Delhi, 1990 at 16

since it is an educational process which equips the future lawyer, judge, administrator, counsellor and legal scientist to fashion and refashion ways of peaceful and ordered attainment of ideals of human governance on the one hand and democratic right on the other.

One of the major reforms that took place in the legal education system in India was the introduction of a five-year integrated B.A., LL.B. programme in the 1980s so as to admit students directly from school instead of, after undergraduate studies.¹⁰ The objective of introducing this programme was to ensure that there was sufficient time to introduce different methodologies of teaching to the students, so that they may acquire the skills and values essential to the legal profession. This endeavour was considered to be one of the major changes in the legal education system and in no time, many law colleges sprouted up, especially in the private sector.

Legal Education has a direct role to play in the justice delivery system and is responsible for training competent and efficient professionals. The duty is cast upon the institutions to ensure that they are practice ready. This was the direct responsibility of Legal Education institutions. Two key areas in engaging legal education institution for justice delivery is through the engagement of the legal aid clinics and legal academia. Both the arms of legal education have been ignored, costing great intellectual loss. Properly utilizing these resources can greatly contribute to the justice delivery mechanism.

2. Legal Academia in dispute resolution

Legal education functions with the support of its stakeholders, and it is inevitable to consider that the role of academia is crucial to upgrade the standards of legal education. Legal academia carries a large pool of academic and intellectual

¹⁰ NALSAR, 'A Study to Create Evidence-Based Proposals for Reform Of Legal Education in India - Suggestions for Reforms at The National Law Universities Set-Up Through State Legislations,' 2018

resources. Legal academia or academic lawyers refer to the pool of lawyers who have chosen academics as their means of contributing to the legal fraternity. They are associated with colleges or universities through teaching, research and other administrative roles. Their activities are no longer restricted to the lectures within the four walls of the college, but to write research papers, work on research projects, develop innovative practices to positively engage students, support student learning experiences and most importantly to ensure that students are prepared to be lawyers who are responsible and committed to the society. This requires the students to be professionally competent, and efficient with the basic skills and values that a lawyer must carry. To inculcate such skills and values, academia is bound to train students. Of late the journey has been against the odds, as the hands of the academia are tied by different regulatory restrictions.

2.1 Legal impediment to engaging academia in dispute settlement

Resources, no matter how valuable it be, is wasted if it is not put to use. This goes for the case of intellectual resources as well. It's hard to deny the fact that the academia-industry divide has been created by the Bar Council itself, starting with the demand that law faculty must suspend their bar license while joining academia. As the rationale may exist, it is also necessary to consider the repercussion it draws. It is essential to realise that, a large pool of intellectual resources is underutilised due to the unstated monopoly and ego prevalent in the profession.

Litigation is still considered the mainstream profession by lawyers. It is undisputed that law and lawyering possess a direct attribute to litigation and carry the responsibility of putting justice into motion. But the interest in justice does not start with the courtroom, but rather ends with the courtroom. It is often forgotten that justice is an everyday action, and at

different stages, a lawyer and his/her role becomes important, lawyer as an advocate, researcher, jurist, a lawyer and as a teacher. A lawyer's role comes in at the stage of drafting the law, understanding the law's essentiality, assessing the law's impact and redressing the dispute arising out of litigation. Lawyers take different roles and responsibilities according to the type of law they interact with. They take the role of a corporate lawyer, family lawyer etc., and one such category is the academic lawyer.

The distinction between legal academia and industry developed from the distinction created by the Bar Council of India. Rule 49 of Chapter II of Part VI of the Bar Council of India rules which reads as:

An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation, or concern, so long as he continues to practice and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

The rule barring academic lawyers from practicing the law has directly created a class distinction. The rationale of the rule is that Advocates are expected to stay committed to their clients, and they are required to be independent and not be affected by any kind of bias. As pointed out by the court in the case of *Brihanmumbai Mahanagarpalika v. The Secretary, Bar Council of Maharashtra and Goa*¹¹, where court clarified the rationale of the provision. The possible conflict that can arise from a salaried employee, who is obliged to safeguard the interest of the employer and the advocate, who is obliged to safeguard the interest of the client. It is to avoid the said conflict, that there is a restriction on being involved.

¹¹ *Brihanmumbai Mahanagarpalika v. The Secretary, Bar Council of Maharashtra and Goa*, 2013(2) ABR 1038

The reason to avoid possible conflict of interest and not to compromise the quality in either case has been the striking reason to avoid the faculty from practice. Further, the regulation has made a distinction with clinical papers such as Alternative Dispute Resolution, and Professional Ethics to be taught by “Practicing Lawyers”, as provided under Rule 22 and Rule 23 of Bar Council of India (Legal Education) Rules, 2019. The purpose of the provision was to bring clinical legal education to be integrated into the course, and students are exposed to the practicality of law. But this is at the cost of the legal faculty being categorised as not fit to handle the paper.

On the contrary, rules under the Advocates Act, 1961 under different provisions has permitted practicing lawyers to engage classes for law students. As provided under Rule 3 of The Advocate (Right to Take Up Law Teaching), 1979 permits a practicing lawyer to take up teaching up to 3 hours a day. The reason is to integrate the academia and industry, but interestingly it is a one-sided track. The limitation cast up on academia to engage in other practices increases the challenge.

The 2020 circular of the Bar Council of India, provided a mandatory mediation/conciliation paper to the undergraduate students of Law. The requirement for faculty qualification is to be notified by the Bar Council, but it has been given that there must be ten years of litigation experience with theoretical knowledge. This is a welcoming move, but it comes with certain challenges. The bar on law faculty to engage outside of the academic sphere restricts their probability of training the students of law. The restriction is based on Rule 49 of The Advocates Act, 1961, which restricts an Advocate to be full - time salaried employee. The court attempted to clarify the rationale of the provision in the case of *Brihanmumbai Mahanagrika v. The Secretary, Bar Council for Maharashtra & Goa*,¹² where the question was regarding the exception given to

¹² Supra note 11

the Law Office of Central Government within the category of full-time salaried employee. The court held that, in order to avoid conflict of interest and distraction from litigation, Rule 49 bars an advocate from engaging in fully salaried employment. In *Bar Council of India v. A.K. Balaji & Ors*¹³, the court recognised the role of Law firms and Foreign Law professionals in India and the role of legal professionals in litigation and non-litigation. This is quite contrary in application with reference to legal academia, which is not recognised for the non-litigation contribution.

2.2. Legal Status of Academicians of Law

Academic lawyers are seldom appropriately utilised in India. Law faculty have taken reference under different laws in India, which has gone unnoticed. Article 124 of The Indian Constitution, lays down the qualification to be the judge of the Supreme Court, where Art.124(3)(c) provides "...is in the opinion of the President, a distinguished jurist". Jurisprudentially and theoretically, there has been a wide round of discussion on defining "Distinguished jurist". Though the provision is yet to be invoked in India, it has drawn the attention of many.

The State Judicial Examination provides an opportunity for the Assistant Professor of Law, in Government Law College to be considered for the post of munsiff/ magistrate. To take an example, the Kerala Judicial examination notification under Rule 6 (vii) refers to the transfer of personnel in certain posts to the post of munsiff/ magistrate recruitment. Sub-clause (vii) permits a full-time assistant professor of Government Law College to apply for transfer. This implies that the post is equivalent to that of a munsiff/ magistrate.¹⁴ Yet, there exists

¹³ *Bar Council of India v. A.K. Balaji & Ors* (2018) 3 MLJ 470

¹⁴ The High Court of Kerala, Kerala Judicial Service examination -2022, REC4-80988/2021, 31.01.2022

a disparity in recognising the contribution of academic lawyers in the legal field.

The United Nations Educational, Scientific, and Cultural Organization's (UNESCO) recommendation concerning the status of higher-education teaching personnel suggested that faculty members of higher education should engage in professional activities aligned with their discipline to enhance their teaching capacity. This will ensure effective teaching and learning along with improved experience for the students.

3. International Practices

Unlike India, many countries permit legal academicians to practice in court. Academic lawyers and clinical professors are those engaged in courtroom practice. The United States of America has a practice of making established Professors of Law part of high-profile cases. In the case of *Bowers v. Hardwick*¹⁵, where Professor Laurence Tribe represented the defendant in the case for gay rights which was criminalised in the United States. Further, in the case of *State of California v. O.J. Simpson*¹⁶, where Professor Alan M. Dershowitz, Harvard Law School and Prof. Gerald Helman, Dean, School of Law at Santa Clara University, were part of the trial team in the twin murder case. The representation is restricted to thirteen days per quarter. But it is not a complete ban. One of the classic examples cited for the academia - bar interaction is the appointment of Judge Felix Frankfurter, as Associate Judge of the Supreme Court of the United States of America by then President, Sir. Franklin D. Roosevelt.¹⁷ American Bar Association encourages faculty engagement for pro bono

¹⁵ 478 US 186 [1986]

¹⁶ Crim No. 5547 in Bank Oct 56, 1954 (November 13, 2022, 12:45), <https://law.justia.com/cases/california/supreme-court/2d/43/553.html>

¹⁷ *Id*

activities along with the students to associate them with the implementation of Law.¹⁸

In Canada, clinical professors have the right to engage in out-of-court settlements and the clinics of law school are permitted to support out of court settlement. Further, the Professor of Law has the right to represent clients in dispute. In the United Kingdom, it is fairly common for the Law Professor's to provide their consultancy services to Law firms and be involved in dispute resolution. Professor of Law is appointed as Queen's counsel for exemplary work in the identified area. Queen's Counsel *Honoris causa* is an honorary award given specifically to the legal profession for exemplary work.¹⁹ The award is based on innovative contributions to the development of the Laws of England and Wales. It can be in the form of influences on legislation, academic work, along with other forms of contribution. The award is considered on nominations, and it can be from solicitors, legal academics, non-practicing lawyers etc.

One of the recent appointments was that of Professor Duncan Fairgrieve, who was appointed as honorary Queen's Counsel.²⁰ It can be seen that Professor Dan Sarooshi of Oxford Law School was appointed as Queen's counsel in the case of Brexit,²¹ to name a few among so many of the appointments. Professor Rachel Mulheron and Professor Alan Dignam of Queen Mary Law School were awarded Queen's Counsel in

¹⁸ *Id*

¹⁹ The Gazette, Nomination open for Queen's Counsel *honoris causa*, (December 1, 2022, 13:45) <https://www.thegazette.co.uk/all-notices/content/104055>

²⁰ Professor Duncan Fairgrieve appointed as QC, British Institute of International and comparative law (December 10, 2022, 7:00 PM), <https://www.biicl.org/newsitems/16458/professor-duncan-fairgrieve-appointed-honorary-qc>

²¹ Faculty appointments to the Queen's Counsel 2017-18, University of Oxford, (November 21, 2022, 7.00 PM), <https://www.law.ox.ac.uk/news/2018-01-08-faculty-appointments-queens-counsel-2017-18>;

2020 for supporting over 3000 clients through the law school in different disputes.²²

It is worth noting that the engagement of Professors of Law in dispute settlement is practiced in other jurisdictions. This has been recognised under the international law as well. Time and again, the relevance of having academic expertise and a jurisprudential foundation has begun to be recognised.

Ultimately, it is not about a faculty engaging in litigation, but having their contribution to the society recognised and brought to the mainstream. There must be elevated efforts to integrate academia and industry for the benefit of the students as well as for the community. Therefore, we must consider different ways of integrating the practices.

4. Modes of Integrating

Legal academia has struggled and strained to gain visibility not only among the general public, but also within the fraternity. Though it has shown progress over the years, the situation hasn't drastically changed. It is unlikely to change unless authorities and regulatory bodies initiate action to integrate academia with the industry. The study has gathered the following findings from the existing works of literature and practices.

4.1. Independent experts and other official capacities

Recently, Prof. Dr Arun Sacria was appointed as an independent expert in the case of *Phonographic Performance Limited v Look Part Exhibitions and Events Pvt. Ltd*²³ under Rule 31 of the Delhi Intellectual Property Division Rules 2021. The

²² Queen Mary Law Professors appointed as New Queen Counsel, (November 23, 2022, 07:45PM) <https://www.qmul.ac.uk/media/news/2020/hss/queen-mary-law-professors-appointed-as-new-queens-counsel.html>

²³ Phonographic performance limited v Look-part exhibition and events private limited, CS (Comm) 188/2022 and IA 4772/2022

responsibility of the expert was to provide the background and interpretation of the Section 51(1) (za) of the Copyright Act, 1957. The case referred to the use of music in functions such as marriages and whether should it be covered under the exemption provided under the statute. Similarly, late. Prof. Dr. Shamnad Basheer's intervention in the case of *Novartis v. Union of India*,²⁴ was on similar lines but interestingly, there are only a handful of cases where academicians are engaged directly. Prof. Dr. Sudhir Krishnaswamy, Vice-Chancellor of the National Law School of India University was appointed as a member of the Oversight Board of Facebook and Instagram to moderate the contents.²⁵

Professor Upendra Baxi, played a key role in the case of Bhopal gas tragedy case through his advocacy and writing, to support the victims.²⁶ Professor N.R. Madhava Menon, Prof. Aparna Chandra and Prof. Mrinal Satish were appointed as amicus curiae in the case of *Mithlesh Kumar Kushwala v. State*²⁷, before the Delhi High Court, where they assisted the court in the dispute of sentence and role of probationary officer in preparing for pre-sentence. Prof. Mool Chand Sharma, the renowned professor, also acted in the capacity of the expert member of the Law Commission, Joint Registrar (research) Supreme Court of India. Some of the other notable professors who were appointed under different capacities to assist the court in dispute resolution were Prof. Anup Surendranath, and Prof. Daniel Mathew to name a few. It can also be seen that in landmark cases such as *K.S. Puttuswamy (Retd) v. Union of*

²⁴Novartis v. Union of India, AIR 2013 SC 1311

²⁵ Deccan Herald, Bengaluru's Sudhir Krishnaswamy appointed on Facebook's oversight board, (December 14, 2022), <https://www.deccanherald.com/business/businessnews/bengalurus-sudhir-krishnaswamy-appointed-to-facebooks-oversight-board-834956.html>

²⁶ Union Carbide Corporation v. Union of India, AIR 1988 SC 1531

²⁷ Mithlesh Kumar Kushwala v. State, 2015 S.C.C. Online Del 12325

*India*²⁸, *Joseph Shine v. Union of India*²⁹, *Navtej Singh Johar & Ors v. Union of India & Ors*³⁰, where academic scholars were cited for gathering conceptual backgrounds and clarity.

Academicians and Centres for Research of institutions have been involved in different levels such as submitting draft bills, conducting impact assessments etc. but that again are a handful. And to the surprise of many, legal academia is yet to gain visibility and be considered as a mainstream profession for a lawyer. This is not only in the case of general community but within the legal fraternity itself. Academic lawyers, including those involved, are concerned about the petition submitted by Dr Shamnad Basheer to the Bar Council of India in 2014,³¹ which has remained unaddressed. The petition, supported by many of the legal luminaries, cried for the recognition and permission for the faculty to be permitted to engage with the bar.

It is in the interest of the society and students of law that, law institutions and the intellectual resources of such institutions are better utilised. Recognising and engaging law faculty as part of the dispute settlement, will have a great impact on society. With the dormant Art.124(1) (c), and academic lawyers struggling to gain their visibility, it is necessary to amend the law to recognise their contribution.

4.2. Establishing Centre's for out-of-court settlements

University Grants Commission (UGC), National Assessment and Accreditation Council (NAAC), and different ranking agencies permit faculty of law to extend consultancy. Bar Council of India, has pointed out that mediation and

²⁸ K.S. Puttuswamy (Retd) v. Union of India, (2017)10 SCC 1

²⁹ Joseph Shine v. Union of India, AIR 2018 SCC 4898

³⁰ Navtej Singh Johar & Ors v. Union of India & Ors, (2018) 10 SCC 1

³¹ Shamnad Basheer, Petition to permit legal academics to practice Law, (December 15, 2022, 10:54AM), http://images.assettype.com/barandbench/import/2019/02/Shamnad_Basheer.pdf

conciliation training must be extended to law students to support in out of court settlements. In this regard, regulatory bodies must make efforts to establish mediation centres and cells with education institution with faculty being the mediators for out-of-court settlements. Their consultancy and dispute resolution must be given legal status. This will help in reducing the burden upon the court and help the students learn from these experiences. This can be coupled with the earlier States suggestion of the Legal Aid Clinic being engaged for Lok Adalat.

4.3. Mainstreaming legislative drafting

Institutions, particularly stand-alone universities, have centres dedicated to particular areas of law. The centres, headed by Professors of Law, contribute to the research pool through their research and learning. Highlighting some of the instances, the Commons cell of NLSIU had taken part in drafting the protocol, agreement and policy on behalf of the Indian Government, for its submission at the Paris Convention on climate change. Similarly, the Centre for Environment Law, Education, Research and Advocacy (CEERA) has worked with United Nations Development Programme (UNDP) on biodiversity.

The child rights centre of the National Law School of India University – Centre for Child and The Law (CCL) submitted a proposal for the amendment of the Juvenile Justice Act, which was considered by the court.

The health law policy recommended by the Centre for Health Law and Ethics saw approval, similar, to the consumer protection bill represented by the team of students and faculty. The practice of law extends beyond courtroom litigation; it encompasses various aspects beyond litigation alone. This has been recognised by the Honourable Supreme Court in the

matter of *Bar Council of India v. A.K. Balaji*³². Yet, the struggle of the Law faculty is real. It is a matter of fact that, an immediate change must be introduced to ensure such struggles are mitigated.

4.4. Extending statutory recognition to the faculty

Lawyers taking academia as a choice of career is seldom recognised. There exists a lack of recognition under the existing statute, which has contributed to the divide. It is recommended that Academic Lawyers must be statutorily recognized by the Bar Council of India. The Advocates Act, 1961 only refers to those who do not qualify as an advocate and fails to define who a lawyer is. This has created difficulty in ensuring that non-litigating lawyers receive the deserved recognition. The statute must be adequately amended to include academic lawyers and their contributions as well.

5. Legal Aid Clinics in India

Another pillar of Legal education that has been ignored over time is the legal aid clinics. In the 1980s, with social justice as an objective in mind, institutions were recommended to initiate their own Legal Aid Clinics. The clinics were established with the intention of reaching out to the society and addressing their concerns. Initially, legal aid programmes were associated with Law Schools due to the limited legal resources. Also, significant involvement of law teachers and students was anticipated.³³ The chief notion was that ‘involving law students in legal services projects would give the students a “deep appreciation of the importance of [legal

³² Supra note 13

³³ “Processual Justice to the People”: Report of the Expert Committee on Legal Aid, Ministry of Law, Justice, And Company Affairs, Govt. Of India, 1973.

aid] activities and also a sense of personal responsibility to see that such activities gather strength.”³⁴

The primary significant ‘Expert Committee on Legal Aid’ chaired by J.V.R. Krishna Iyer, in 1973, proposed the establishment and performance of a broad programme of legal aid for the disadvantaged in Indian society, which comprised individuals of limited incomes and classes which were backward, socially and educationally.³⁵

A further report from the Juridicare Committee investigated programmes for legal aid from the perspective of their practicability and conditions for operation.³⁶ The endeavour of this Report was to correct, revise, reconsider, and enhance the Expert Committee on Legal Aid Report, 1973. The importance of the services of lawyers in finding solutions or claiming rights were recognised by this Report, and hence it noted that the responsibility of legal-aid projects was with the State. Moreover, it was noted in this Report that the participation of students in legal aid would be beneficial not only in acquiring the competencies necessitated in the legal arena but also in offering the opportunity to students to develop humanitarian stances and societal orientation. This Report expressed, for the first time, the need to develop teachers of clinical law, launch topics such as law and society and law and poverty, and provide academic support for law school clinics.³⁷

Nonetheless, despite suggestions and opportunities, there were limited efforts to transform legal education to act in response to the profession’s challenges. For instance, in the late

³⁴ M.R.K. Prasad and Frank S. Bloch, “Institutionalizing A Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States”, 169 (December 10, 2022) http://Clarkcunningham.Org/Legaled/Bloch_Prasadarticle.pdf

³⁵ *Id* at 173

³⁶ Report of Committee on National Juridicare: Equal Justice, Social Justice, Ministry of Law and Justice, Govt. Of India (1977).

³⁷ *Supra* note at 175

1960s, faculty participation in Delhi University's legal aid clinic was purely voluntary and no attempt was made to integrate clinics into the syllabus. Nevertheless, the clinic appealed to several students. In the first years of the 1970s, the Banaras Hindu University was the first law school to commence a clinical course. A few other universities made perfunctory attempts towards the same. However, no actions were taken to integrate Clinical Legal Education into the syllabus and taking part in the legal aid camps was discretionary.³⁸

The Conference of Chief Justices of India, chaired by Justice Ahmadi, in 1993, scrutinised teaching approaches in law schools in a detailed manner. Their Report proposed that involvement in moot courts, mock trials, and debates, be made compulsory. Additionally, it proposed that practical training be developed for the last year of study in drafting pleadings and contracts, along with making student visits at different levels to the courts mandatory.³⁹ The Committee also proposed the setting up of premier law schools to enhance legal education. These were to be on the lines of the National Law School in Bangalore. This proposal led to the setting up of many national law schools across India. Although, legal education was found to be enhanced to some extent by these law schools, considerable improvement could not be affected since their focus was not on social justice. Instead, they served to launch the corporate careers of students. Further, a considerably larger number of students were graduating from other law schools.⁴⁰

In addition, unanimous agreement was indicated by the All-India Consultative Meeting of Bar Councils, Universities,

³⁸ *Id* at 176

³⁹ Report of Committee on Reforms in Legal Education and Regarding Entry into Legal Profession, In *Legal Education in India in 21st Century: Problems and Perspectives*, P. VI. (Koul A.K. Ed., All India Law Teachers Congress, Delhi University, Delhi, 1999)

⁴⁰ *Supra* note 34 at 179

UGC, and State Governments in the Report of Professional Legal Education Reform Committee, 1996 during the meeting concerning the requirement for a uniform law syllabus across the country for law courses. Also, the members believed that Clinical Legal Education should be introduced.⁴¹ Afterwards, the 184th Report of the Law Commission highlighted that “the Commission considers that Clinical Legal Education may be made a mandatory subject”.⁴² Furthermore, this Report noted the Rules of the Bar Council of India (BCI) that instruct Law Schools to integrate practical training, along with four mandatory practical papers.

Therefore, it is evident that efforts have occurred in waves at the national-level to reform legal education by developing a skill-based curriculum.⁴³ In 1997, a directive was issued by the BCI that necessitates the inclusion of classes placing emphasis on practical training in law schools.⁴⁴ This scheme was not very successful, however, due to the large number of students in the classes, which made it almost impossible for faculty to supervise students who took up legal work. More recently, ‘legal aid cells’ exist in several Indian law schools where legal

⁴¹ Singh, G. (1999). Revamping Professional Legal Education: Some Observations on Revised LL.B. Curriculum of Bar Council of India. *Journal of the Indian Law Institute*, 41(2), 237-255, 234 Retrieved From www.jstor.org/stable/43951716

⁴² Law Commission of India 184th Report on The Legal Education & Professional Training And Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956, P. 65. (November 27, 2022, 07:09PM) <http://lawcommissionofindia.nic.in/reports/184threport-Parti.pdf>

⁴³ Supra note 34, at 180

⁴⁴ Bar Council of India, Circular No. 4/1997; See United Nations Development Programme India, A Study of Law School Based Legal Service Clinics 2 (2011), Available at http://www.in.undp.org/content/dam/india/docs/A_Study_Of_Law_School_Based_Legal_Services_Clinics.Pdf (Covering Seven Major States: Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Rajasthan, And Uttar Pradesh).

services are offered directly to individuals by students, for the most part without faculty guidance or direction.⁴⁵

The Legal Education Rules, 2008, under Rule 11, schedule III, where it was made a mandatory requirement for all the institutions to have Legal Aid clinics which are supervised by senior faculty members, but run by the final year students. This has a double role to play.

- a. Expose students to real-life situations
- b. To ensure institutions are extended arms of the justice delivery system.

But it is most often seen that legal aid activities are focused on legal awareness, rather than assisting the poor to the court. Though some of the institutes have taken the initiative, they are only a handful. It is worthwhile to look into some of the initiatives of Legal Aid clinics in expediting justice through judicial interventions.

5.1. Role of Legal aid clinics in dispute settlement

Over the years, consistent efforts were seen to be made to engage legal aid clinics in dispute settlement, though it is not very popular. Through the review of various works of literature and case laws, the following findings were gathered.

Basavanagouda Patil & Ors. v. State of Karnataka,⁴⁶ was a Public Interest litigation filed by the legal services clinic of the National Law School of India University, where a writ of mandamus was filed by the Petitioner to ensure effective implementation of the Consumer Protection Act, 1986 with timely recruitment to the District forum and other commissions. In the matter of *Ashraya & Ors. v. State of*

⁴⁵ For Some Examples of Law School Based Legal Services Clinics In India, See UNDP Study (November 10, 2022, 08:08 PM) <https://www.undp.org/content/dam/rbec/docs/Legal%20Aid%20Workshop.pdf>.

⁴⁶ *Basavanagouda Patil & Ors. v. State of Karnataka* 2013 (4) KARLJ 183

*Karnataka & Ors*⁴⁷, wherein the petition raising the concern of poor implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 and inadequacy of infrastructural efficiency of various juvenile homes, NLSIU was made part of the high committee to conduct a study on the same. V.M. Salgokar College of Law, Goa, is known for the exemplary work they carry out in their Legal Aid clinic. With over 32 cells actively functioning at the moment, apart from the regular legal awareness camps and preliminary work carried out along with the District Legal Services Authority, the institution has 18 public interest litigations to their credit. Their initiation has supported the local community to a large extent.

The report⁴⁸ submitted by the University School of Law and Legal Studies, of Guru Gobind Singh Indraprastha University, New Delhi, to the Department of Justice, Ministry of Law and Justice on “Analysis of Functioning of Legal aid cell in various Law Schools/ University Department and Private university Department, is also worth mentioning here as they, made an attempt to understand how various universities and law schools responded to the needs of the community and assisted in access to justice through their legal aid clinic. Their key findings were restricted to the increase in legal awareness of various legal aid initiatives and how they must reach the stakeholders. The Legal Aid Cell of Dr. Ram Manohar Lohia National Law University (RMNLU) has also made efforts to advance access to justice by assisting underprivileged victims

⁴⁷ Ashraya & Ors. v. State of Karnataka & Ors W.P.No.4840/2012 C/w W.P.No.11271/2012

⁴⁸ University School of Law and Legal Studies, Guru Gobind Singh Indraprastha University, “Analysis of Functioning of Legal Aid Cell in Various Law school’s/ University Departments and Private University Departments” To Department of Justice, Ministry of Law and Justice, (December 12, 2022, 07:34PM) <https://doj.gov.in/sites/default/files/final%20report.pdf>

with filing F.I.R. in cheating cases, family matters, speedy redressal of property disputes etc.

As stated in Art. 39A of the Indian Constitution and laid down in various judgements⁴⁹ Supreme Court, fair trial, speedy redressal, and representation through legal aid are all integral to a democratic system. It is time to look at alternative ways to utilise the country's intellectual infrastructure to its best.

5.2. Legal impediments in engaging Legal aid clinics in dispute settlement

India has one of the largest numbers of Law Schools and the largest number of distressed claimants. The legal aid clinics of these institutions can provide a platform for access to justice. Currently, the justice delivery system has been restricted to court room practice alone. Sec 89 of the Code of Civil Procedure, 1872 refers to amicable settlement of dispute beyond court room. The provision along with the specific statutes aim at an amicable, peaceful settlement. The corresponding legislations provide qualification for those who can engage in arbitration and mediation. Though there does not exist a direct restriction on involving legal aid clinics of legal education centres, the requirement to provide approval of the agency puts an indirect restriction.⁵⁰ The regulations have caused impediments to engaging Legal aid clinics as a platform for dispute resolution.

6. A Step Forward through Legal Aid Clinics

Legal Aid clinics are now established in law Schools, University departments and other centres of legal education. They have made attempts to reach out to the local community in different ways. They have engaged with the National Legal

⁴⁹ Hussainara Khatoun v. State of Bihar, 1979 AIR 1360, which formed the basis for speedy trial; Kartar Singh v. State of Punjab, 1994 SCC (3) 569 where the court held that speedy trial is an essential part of Art. 21.

⁵⁰ The Mediation and Conciliation Rules, 2004, Rule 2, Rule 3 and Rule 4

Services Authorities, State Legal Services Authorities, and District Legal Services Authorities to cater to the needs of the community. But in a country such as India, where the litigation is on the rise, it is not sufficient that the legal aid clinics are restricted. It is time to advance the scope of the Legal Aid Clinics from mere awareness and preliminary activities. It is time to effectively utilise the resources judiciously to ensure effective, speedy access to justice. Effective and speedy redressal has been acknowledged as an integral part of access to justice. The paper proposes to lay down the following findings and suggestions to engage legal aid clinics to ensure access to justice.

India has close to 1500 institutions across, and their clinics, be it general legal aid clinics or subject-specific clinics. It is proposed that Legal Aid Clinics must be recognised as an official body for dispute resolution mechanisms. Some of the suggestions to better engage the legal aid clinics are given below. Though some may require legislative amendments, the allied activities can be conducted by the Law schools with the support of their faculty members and students.

6.1 Legal Aid Clinics as Forum for Lok Adalat

Section.4 (k) of the Legal Services Authorities Act, 1987 mandates that the National Legal Service Authority, with the Bar Council of India, promote guidance and supervision to legal aid clinics in different legal education institutions in India. The State Legal Services Authority and District Legal Services Authority, are also required to utilise legal aid clinics for awareness programmes. It is recommended that; the clinics be extended to conducting Lok Adalats. This will ensure community accessibility, especially when institutions are identified to hold Lok Adalats. If institutions can be identified geographically or based on the subject matter, and specific days allocated, the backlog of cases can be reduced, given their reach and coverage. It will also ensure that multiple sessions

are conducted. Eventually, faculty with adequate experience and training can be engaged in the process.

6.2. Platform for Alternate Dispute Resolution

Mediation Cells are increasing in number, and it is mandated by the Bar Council of India in August 2020⁵¹ that faculty engaged in offering mediation courses must be trained, and the academic committee of BCI is to ensure that the quality is adhered to. It is proposed in this regard that, the Institution of National Importance, be trained and utilised effectively for Alternative dispute settlement, such as mediation, conciliation, and negotiation. Industrial Experts can utilise the academic and physical infrastructure of the Institution for their benefit.

6.3 Platform for Redressal of Petty Cases

The clinics or specialised centres can be utilised for settling petty civil and criminal matters. For instance, the institution can be given pecuniary jurisdiction of Rs. 2000 to Rs.10000. This can ensure that the backlog of cases is reduced and the courts are able to invest time in hefty cases that require detailed attention.

6.4 Initiate Statute Impact Assessment through Clinics and Centres of Institutions

Every Statute is enacted for a reason. While formulating amendments, the reports are sought from independent centres. Instead, the same can be conducted through institutions.

6.5. Utilise Faculty Expertise in Court Proceedings as Amicus Curiae and Alternative Dispute Resolutions

The academia-industry relationship is crucial to have an effective justice delivery mechanism. It ensures that students

⁵¹ Bar Council of India, BCI: D:1897:2020 (323/2020), (December 12, 2022, 4:15 PM) https://www.scconline.com/blog/wp-content/uploads/2020/08/Mediation_Mandatory_Bar_Council_Course.pdf

are trained adequately for the profession if institutions are able to understand the demands of society. On the other side, a backlog of cases causing disruption in the system can be redressed by engaging faculty expertise in court proceedings as amicus curiae. They can also be engaged in dispute resolution.

7. CONCLUSION

“Law is not law if it violates principles of eternal justice.”

- Lydia Maria Child

The character of law schools determines the character of the Bar and Bench.⁵² Hence initiation to work towards ensuring “access to justice” to all must begin at law colleges and through their curriculum. Further, during legal practice this can be ensured through continuing legal education. The early motivation and preliminary approach for continuing legal education are derived from the medical school, the term ‘clinic’ itself is borrowed from the medical curriculum. It is compulsory for medical students to experience real-world training on authentic medical cases in addition to their compulsory theoretical papers. This also added as advantageous to the society, where medical colleges were also associated with hospitals. But this wasn’t the case with legal education institutions. Legal academia and legal aid clinics are yet to be utilised to their best of their potential. As stated in the earlier part of the paper, the suggestions can be summarised as, engaging Legal academia as an independent expert for dispute settlement, engaging professors of Law for consultation, legal academia along with the legal aid clinics for

⁵² Dr Abhishek Manu Singhvi, A new vision for legal education in India January 18, 2021, (December14, 2022 04:07PM) <https://timesofindia.india.com/blogs/straight-candid/a-new-vision-for-legal-education-in-india/>

out of court settlements, engaging legal aid clinics along with professors of law for impact assessment to mention a few. Ultimately, engaging these pillars require the support and cooperation of the Bar Council of India along with other regulatory institutions. If we can address the under use of the intellectual resources, there will be considerable improvement in the justice delivery system.