

© Frank S. Bloch and M. R. K. Prasad
DO NOT quote or cite without authors' express permission

Institutionalizing a Social Justice Mission for Clinical Legal Education:
Cross-national Currents from India and the United States

by

Frank S. Bloch* and M. R. K. Prasad**

Introduction

Clinical legal education is in the midst of an exciting period of growth and development, prompting clinicians around the world to reflect on what clinical education's remarkable successes over the past forty years mean for its future.¹ One important item on this agenda that has been on the minds of law teachers in India and the United States, among other countries, is the future of a social justice mission for clinical legal education.² A common link between social justice and clinical legal education in India and the United States goes back to the late 1960s and early 1970s, when modern clinical legal education was first coming into its own and law schools in both countries introduced the new

* Professor of Law, Vanderbilt University Law School (USA).

** Lecturer in Law, V. M. Salgoacar College of Law (India).

Portions of this paper draw from M. R. K. Prasad's LL.M. thesis, *Legal Education in India: Role of Clinical Legal Education in Developing, Institutionalizing and Implementing a Social Justice Mission in Law Schools*, written during academic year 2004-05 while he was a Vanderbilt-Fulbright Fellow in Clinical Legal Education at Vanderbilt Law School. The authors would like to thank Susan Brooks and Ajay Pandey for their thoughtful comments on an earlier draft of this paper.

¹ Thus, the 6th International Clinical Conference co-sponsored by UCLA and the University of London in 2005 carried the theme "Enriching Clinical Education" and included among its purposes reflection on "the remarkable growth of the clinical movement worldwide." See conference brochure, available at http://www.law.ucla.edu/sixth_international_clinical_conference/. See also Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for the Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 57-60 (2000) (discussing the global aspects of clinical legal education's future).

² Preserving and supporting a social justice focus for clinical legal education is the key mission of the Global Alliance for Justice Education (GAJE). The GAJE website is at <http://www.gaje.org>. See also Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn. St. Int'l L. Rev. 421 (2004); EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY (Louise G. Trubek & Jeremy Cooper eds., 1999).

clinical teaching methodology through the establishment of legal aid clinics. Clinical education had a broader goal—to teach law students about what lawyers do and to understand lawyers' professional role in the legal system—but it did so almost exclusively in the context of having students provide various forms of legal aid services.³ Over time, the legal aid dimension of clinical education has been replaced to some extent by a more professional skills-oriented focus as the clinical movement has made important and necessary gains in the legal academy—especially in the United States.⁴ Although social justice remains at the heart of many clinical programs, the effort to obtain broad acceptance of clinical legal education by the legal academy and the bar—realized already to a substantial degree in a number of countries around the world—seems often to undercut its traditional social justice mission.

This paper examines a unique opportunity in India today to merge these sometimes conflicting goals by institutionalizing social justice-based clinical legal education at all Indian law schools. Although this opportunity arises out of circumstances particular to India, including its long and strong history of linking legal aid with legal education reform and a highly centralized system of oversight of the law

³ See generally, Frank S. Bloch & Iqbal Ishaq, *Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United States*, 12 MICH. J. INT'L L. 96 (1990). See also CLINICAL LEGAL EDUCATION: CONCEPT AND CONCERNS, A HANDBOOK ON CLINICAL LEGAL EDUCATION 17 (1998) (N.R. Madhav Menon, ed.) [hereinafter HANDBOOK ON CLINICAL LEGAL EDUCATION]. This linkage existed also in earlier efforts to introduce clinical legal education in the United States, but it found special strength at this time. See *infra* text accompanying notes 8-13.

⁴ See Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 332 (2001) (“clinical legal education has tended to emphasize skills training and professional development over social objectives”). But see Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice* (describing clinical education's “twin goals” of teaching lawyering skills and professional values and providing legal services to low-income clients as “inextricably intertwined”).

school curriculum, it also draws significantly from the clinical movement in the United States. Thus, Part I presents a brief comparative overview of the social justice mission of clinical legal education in India and the United States. Part II then focuses specifically, and in some detail, on India's efforts to link legal aid and legal education reform, including recent calls for introducing mandatory clinical courses in the form of four "Practical Papers"—based in part on an American Bar Association task force report on fundamental lawyering skills and values (the MacCrate Report).⁵ Part III examines the relevance of the MacCrate Report's Statement of Skills and Values to Indian legal education and India's legal profession, and cautions against an uncritical adoption of the report; instead, it suggests some tentative revisions of the report's Statement of Skills and Values for Indian lawyers and calls for study by an Indian counterpart to the MacCrate task force. Part IV offers a proposed blueprint for realizing India's longstanding efforts to reform legal education through law school legal aid work by institutionalizing a social justice-based clinical curriculum. It also describes a number of creative approaches to clinical legal education used in India today that demonstrate the ability of the clinical methodology to adapt to local circumstances and, at the same time, the existence of broadly shared aspirations and goals for clinical programs that fuel the global clinical movement.

I

⁵ SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM 133-41 (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, 1992). [hereinafter MACCRATE REPORT].

Clinical Legal Education's Social Justice Mission in India and the United States

In its most basic form in both India and the United States, clinical legal education promotes professional skills training and law school involvement in social justice. Typically, clinic students are engaged in experiential learning through active involvement in some type of social justice activity, such as a legal aid clinic. Until clinical programs entered the scene, skills training and social justice work were, for all intents and purposes, off the legal education agenda in both countries. Legal doctrine dominated law school syllabi, with virtually all instruction offered through classroom courses dominated by “Socratic” dialogue and appellate-court-oriented casebooks in the United States and traditional lectures in India.⁶ This concentration on “the law” pushed consideration of law practice to the background, to the point that any practical training seemed out of place in law school—except when preparing for a moot court appellate argument. Legal education was “law” school, not “lawyer” school.⁷ The idea was that law graduates would learn about being lawyers once they entered practice. At various points, this policy has been implemented through required apprenticeships in many countries; however, the idea took hold even in those countries where apprenticeships never were

⁶ Apart from clinical education, recent legal education “reform” in India has consisted mainly of efforts to replace one-way lectures with US-style Socratic teaching methods. *See infra*, note 54 and accompanying text.

⁷ For an early critique of this phenomenon in the United States, see Jerome Frank, *Why Not a Clinical-Lawyer School?*, 81 U. PA. L. REV. 907 (1933). *See also* Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947).

required (like many states in the United States) and in those where an apprenticeship requirement was abandoned (like India).

Not coincidentally, the clinical movement began to gain momentum in the United States after the civil rights movement and President Lyndon Johnson's War on Poverty (and later, his continuing war in Viet-Nam) had raised the national social conscience in the mid 1960s.⁸ With clinical legal education coming onto the scene not only on the heels of the civil rights movement and the War on Poverty but also at a time of increasing national funding for legal services for the poor, virtually all of the early clinical programs in the United States operated out of legal aid offices. The times had their effect also on education in general; students demanded greater "relevance" in their studies and a more active role by universities in public affairs. This prompted some changes in the traditional law school curriculum, as new classroom courses on law and poverty were offered at a number of schools in the late 1960s and early 1970s. Interest in these courses began to wane, however, a few years later.⁹ The poverty law and social justice focus of clinical legal education has had a far more lasting influence. Although the legal aid

⁸ There were a few law school-based legal aid projects in the United States already in the 1920s, but they were prominent exceptions to the rule. Among the few schools with clinical programs in place before World War II were the University of Denver, the University of Southern California, and Duke. See John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929); John S. Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469 (1934); Alan Merson, *Denver Law Students in Court: The First Sixty-Five Years*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 138 (Univ. of Chicago Law Sch. Conference Series No. 20, Edmund W. Kitch ed., 1970).

⁹ Examples of published teaching materials from that time—none of which have survived—include G. COOPER, C. BERGER, P. DODYK, M. PAULSEN, P. SCHRAG, AND M. SOVERN, *CASES AND MATERIALS ON LAW AND POVERTY* (2d ed. 1973) and A. LAFRANCE, M. SCHROEDER, R. BENNETT & W. BOYD, *LAW OF THE POOR* (1973). A new poverty law text was published in 1997, but has not been updated in six years. See J. NICE & L. TRUBEK, *CASES AND MATERIALS ON POVERTY LAW* (1997 & Supp. 1999).

dimension of clinical legal education has receded somewhat as the mission of clinical legal education has broadened, social justice and professional responsibility remain at the heart of clinical education in the United States.¹⁰

Legal aid and social justice gained prominence in Indian legal education at about the same time as they did in the United States. Through exchanges funded by the Ford Foundation in the late 1960s and early 1970s, American and Indian law teachers shared recent developments in the law-and-poverty curriculum, including the emerging clinical methodology.¹¹ Also in the early 1970s, an expert committee appointed by the Ministry of Law proposed a model for legal aid programs that anticipated significant involvement by law teachers and law students.¹² To be sure, the idea of linking legal aid and law schools had a practical element; given the extent of the need and the limited resources available, this made perfect sense. But there were distinct curricular and professional responsibility aspects as well. As stated by a successor Ministry of Law committee in 1977, involving law students in legal services projects would give the students a “deep appreciation of the importance of [legal aid] activities and also a sense of personal responsibility to see that such activities gather strength.”¹³

¹⁰ See generally, Frank S. Bloch & Iqbal S. Ishaq, *supra* note 3.

¹¹ The Ford Foundation was a major early funder of clinical legal education in both the United States and India. Ford has also funded clinical programs in Africa and Latin America and, more recently, in China. See Richard J. Wilson, *supra* note 2, at 425.

¹² See GOVT. OF INDIA, MINISTRY OF LAW, JUSTICE, AND COMPANY AFFAIRS, PROCESSUAL JUSTICE TO THE PEOPLE: REPORT OF THE EXPERT COMMITTEE ON LEGAL AID, 1973 (hereinafter EXPERT COMMITTEE REPORT).

¹³ GOVT. OF INDIA, MINISTRY OF LAW AND JUSTICE, REPORT OF COMMITTEE ON NATIONAL JURIDICARE: EQUAL JUSTICE, SOCIAL JUSTICE (1977) (hereinafter JURIDICARE COMMITTEE REPORT).

Thus, the early years of clinical education were shaped in both countries by similar sets of developments: in India, it was a call for law school involvement in a national legal aid effort coupled with efforts at legal education reform that stimulated the legal academy to include legal aid and social justice practice in the curriculum; in the United States, it was the combination of calls by students for greater social relevance in the law school curriculum and the emergence of a federally funded legal services program aimed at addressing national social concerns. There were also parallel general demands in both countries for improved training in skills and ethics in law school. This was prompted in part in the United States by a post-Watergate reassessment of the legal profession's role in that scandal, led by then Chief Justice Warren Burger. Teaching ethical practice was an integral part of the mission of the main private source of funding for early clinical programs, the Council on Legal Education for Professional Responsibility (CLEPR).¹⁴ In India, concerns arose about maintaining the quality of law practice when apprenticeship requirements were eliminated in the early 1960s.¹⁵

¹⁴ According to William Pincus, the president of CLEPR, clinical programs and law students who participate in those programs help "society provide more and better legal services to those who need them." William Pincus, *A Small Proposal for a Big Change in Legal Education*, 1970 U. TOL. L. REV. 913, 916 (1970).

¹⁵ The Bar Council of India reintroduced a one-year training requirement after graduation from law school in 1994, based on recommendations of the Ahmadi Committee. *See infra*, note 50 and text accompanying notes 54-55. Every law graduate would have had to undergo one year of training under a senior lawyer; they would work for three months in a trial civil court, three months in a Magistrate's Court, and at least six months in a District Court. *See* Bar Council of India Training rules, 1995, Rules 2-15. However, the BCI received a setback when this rule was struck down in the Supreme Court as *ultra vires* to the Advocates Act. The Court shared the BCI's concern for developing suitable methods to improve the standards of legal education and the legal profession, but noted that the Bar Council was not competent to pass such a rule and that it could be introduced only by the legislature. *See V. Sudheer v. Bar Council of India* 1999 (3) SCC 176. In 2002, the Law Commission suggested the necessary amendments to the Advocates Act; however, no effort has been made by the government of India to implement those recommendations.

Clinical legal education's primary focus on legal aid, social justice, and professional responsibility began to lose some ground in the United States in the 1980s, with a fading of student interest in public interest work.¹⁶ Clinical programs could appeal to a broader constituency by emphasizing general skills training rather than the opportunity for students to be involved in solving legal problems for the poor. Many students hoping to gain a foundation in lawyering skills came into legal clinics looking for practical experience relevant to the "real world" of law practice and demanded a skills-based clinical curriculum. To a significant extent, these goals could be achieved more directly and less expensively by avoiding "live client" work and moving to classroom courses using simulation-based problems—while still profiting from the experiential learning methodology championed by clinical education. Students motivated by social justice continued to be drawn to clinical education as a vehicle for social action, but they were less invested in the educational program as such; as their numbers diminished, pressures to increase the level and scope of services provided through clinical programs were reduced.

Such a shift was less apparent in India, where links between legal education reform and on-going efforts at implementing legal aid projects were more direct. However, as discussed in more detail in Part II below, a similar trend can be seen in current efforts to mandate practical training in the curriculum through clinical courses

¹⁶ One commentator has noted "a shift in emphasis" in clinical legal education in the United States from client and community service to a focus on teaching skills. Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1466-67 (1998). *But see* Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *supra* note 1, at 16-17 (2000) (pointing out that "law school clinics continue to play an important role in making access to justice a reality for many low-income people").

that may, but need not, have a substantial social justice component.¹⁷ Thus, Bar Council of India rules that allow (and, more recently, require) credit for clinical work seem to contemplate some measure of specific skills training.¹⁸ As in the United States, many practical training courses are being taught through the use of simulations.

Although real, these differences in emphasis—between skills training and social justice—should not obscure what amounts to a strong unifying justification for clinical legal education's key role in reforming the legal profession: improving the quality of practical training in law school is central to legal education's social justice mission. In most countries there are plenty of lawyers. At the same time, there is a real shortage of good lawyers—especially in lower-income communities. Lawyer incompetence is its own form of injustice; therefore, the practical training aspects of clinical legal education serve the public by improving lawyer competence through the use of socially and professionally relevant experiential teaching and learning methods. Moreover, improving the quality of the bar involves more than raising levels of technical competence. Professional legal education must address the public role of law and lawyers in society and must seek to motivate young lawyers to work for the public good. This is where access to the richness of legal aid-based “live client” or other forms of social justice-based clinical education is critical. Of course, students cannot be expected to provide legal services to the community without proper training in both skills and substance (and without careful supervision of their work). A complete clinical program both provides

¹⁷ See *infra*, text accompanying notes 112-14.

¹⁸ See HANDBOOK ON CLINICAL LEGAL EDUCATION, *supra* note 3, at v.

students with the skills training needed to improve lawyer competence generally and obligates them to engage as students in supervised high-quality public service.¹⁹

The stage is set in India to move beyond these theoretical ideals. As explained in the next two parts of this paper, India's legal education establishment has mandated a set of practical papers for all law schools that could not only require the implementation of a social justice-based clinical curriculum, but could also give formal and official sanction to more than thirty years of effort at linking legal aid and legal education reform. Structuring and carrying out such clinical courses and projects throughout India could be highly problematic, however, as there are few models or guidelines in India for doing so. Another concern is that key conceptual support for the initiative came from an American Bar Association task force report—the MacCrate Report—that, although certainly relevant to the Indian experience given the substantial parallels in the clinical movements in the two countries, cannot itself be the basis for developing the model for implementing mandatory clinical education in India today.

II

Legal Education Reform and Law School-based Legal Aid Clinics in India: Laying the Groundwork for Social Justice-Based Clinical Legal Education

¹⁹ For an example of one such curriculum in India, see N.R. Madhava Menon & V. Nagaraj, *Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training*, in HANDBOOK ON CLINICAL LEGAL EDUCATION, *supra* note 3, at 238.

During British rule, legal education in India followed the general colonial model of producing clerks, not managers. Its primary goal was to support the existing financial interests of England, certainly not to reform the local legal profession.²⁰ After independence, legal education was expected to bring the legal system in tune with the social, economic, and political desires of the country.²¹ With 500 law schools and 40,000 law students graduating every year,²² law schools could play a pivotal role in promoting and providing justice, particularly through the field of legal aid.

As noted earlier, the contemporary legal aid movement began in independent India in the early 1960s, at about the same time as legal services programs expanded considerably in the United States. Unlike in the United States, however, the focus of the legal aid movement in India has not been on individual client representation but rather on providing legal aid to indigent people at large.²³ Moreover, a consensus developed among the legal fraternity in India that law schools should play an active role in the legal aid movement.

The first major report on legal aid came in 1973, from the Expert Committee on Legal Aid of the Ministry of Law and Justice. The Expert Committee was appointed in the Silver Jubilee year of Independence to make recommendations for the creation and implementation of a comprehensive program of legal aid to the weaker sections of Indian

²⁰ INTERIM REPORT OF AUXILIARY COMMITTEE OF THE INDIAN STATUTORY COMMISSION ON REVIEW OF THE GROWTH OF EDUCATION IN BRITISH INDIA, 11 (Government of India, Calcutta 1930).

²¹ A. S. Anand, *H.L. Sarin Memorial Lecture: Legal Education in India – Past, Present and Future*, (1998) 3 SCC (JOUR) 1.

²² N. L. Mitra, *Legal education in India*, Conference of International Legal Educators, Florence, Italy (2000) available at <http://www.aals.org/2000international/english/India.htm>.

²³ Frank S. Bloch & Iqbal S. Ishar, *supra* note 2, at 96.

society, including persons of limited means and socially and educationally backward classes. The Committee was chaired by Justice V. R. Krishna Iyer.²⁴ In stressing the need for a statutory basis for legal aid, the Committee said that “legal aid is an integral part of the legal system—not a matter of charity or confined to the four walls of the court building.”²⁵ The Committee’s report advocated creating networks of legal aid groups in various places such as court houses, bar associations, law schools, community organizations, private and public agencies, and organs of local government.²⁶ Recommendations ranged from establishing an autonomous national legal aid authority, to compulsory public service as a part of law school curricula, to giving priority to candidates’ social sympathies in filling judicial and police posts.²⁷ The Committee’s report also stressed the need to modify the law school curriculum in order to focus on the needs of citizens and to provide actual legal aid service.²⁸ The Committee recommended introducing clinical legal education in law schools with a focus on socio-economic poverty. It opined that student exposure to real legal problems has a mutual benefit to students, to the legal aid scheme, and to the legal system as a whole. It also observed that students’ encounters with the problems of poverty and exploitation would change their

²⁴ Justice Krishna Iyer, known as a pioneer in protecting prisoners’ constitutional rights, held various legislative and ministerial posts, was a judge of the High Court of Kerala, and served on Law Commission of India before being elevated to Judge of Supreme Court of India in 1973.

²⁵ EXPERT COMMITTEE REPORT, *supra* note 12, at 6.

²⁶ *Id* at 15.

²⁷ *Id* at 21-22, 34, 35, 44, 79, 90-91, 163, 234.

²⁸ *Id* at 15.

outlook when they become lawyers, and as a result they would no longer treat clients simply as facts but as living neighbors.²⁹

On the benefits of involving law schools in legal aid programs, the Committee pointed out that law students would become an inexpensive and enthusiastic resource for providing meaningful legal aid to India's vast population.³⁰ The Committee recommended using law students to provide legal aid in two stages: first in case preparation at the preliminary stages, including interviewing clients and drafting documents, and then by appearing in court in petty cases, including examining witnesses and presenting arguments.³¹ Thus, the central idea of involving the law schools was not only to provide practical skills but also to secure adequate legal aid for the needy.

In 1977, the Committee on National Juridicare submitted its report.³² The Juridicare Committee was intended to revise, update, reevaluate, and supplement the report of Expert Committee, and its report concentrated more on the viability and working conditions of legal aid programs.³³ The Juridicare Committee recognized the value of lawyers' services in seeking remedies or asserting rights, and placed comprehensive legal aid projects as a high priority in the State's responsibility. The main thrust of the report was the recognition that a legal services program that reflected

²⁹ *Id* at 26.

³⁰ *Id* at 56.

³¹ *Id* at 26. At the time—and still today—there was no student practice rule in India. *See infra*, note 41 and accompanying text.

³² JURIDICARE COMMITTEE REPORT, *supra* note 13.

³³ Members of the Committee met with members of government, Bar associations, and the Judiciary, met the actual beneficiaries of legal aid schemes, and examined various experiments in legal aid at the village and municipal levels in order to devise a comprehensive free legal service program.

western attitudes and ideals cannot work successfully in India because only a few of the problems of the poor are true legal problems. The Committee believed that a legal aid program should aim at radical transformation of the socio-economic structure, and concluded that the legal profession must recognize law as a potential instrument to eradicate poverty by securing equal distribution of material resources of the country.³⁴

The Juridicare Committee expected law schools to play a pivotal role in providing legal aid and urged them to establish legal aid clinics. It observed that student participation in legal aid would not only be helpful in acquiring the skills necessary in the legal market place but also in providing an opportunity for the students to develop a humanistic perspective and a social orientation. Students would realize the social role of the law, and their participation in clinical projects would reduce the burden of legal services institutions.³⁵ For the first time, this report expressed the need to develop clinical law teachers, to introduce subjects such as law and poverty and law and society, and to give academic support to law school clinics.

In 1981, the government of India appointed the Committee for Implementing Legal Aid Schemes. The Committee was headed by Justice P.N. Bhagwati, then Chief Justice of the Supreme Court of India. Like the earlier Juridicare Committee, the Committee for Implementing Legal Aid Schemes insisted that court- or litigation-oriented legal aid programs cannot provide social justice in India. The Committee concentrated more on the promotion of legal literacy, the organization of legal aid camps

³⁴ JURIDICARE COMMITTEE REPORT, *supra* note 13, at 25.

³⁵ *Id.* at 66.

to carry legal services to the doorsteps of people, training of paralegals to support legal aid programs, establishing legal aid clinics in law schools and universities, and bringing class actions by way of public interest litigation. Further, Justice Bhagwati acknowledged the significance of the educational process in its task: "Education efforts must become a significant factor contributing to the social development of the poor."³⁶

In spite of these high expectations, only limited efforts were made to transform legal education to meet the challenges of the profession. The momentum gathered by the legal aid movement in India was confined at most law schools to student extracurricular activity, with a few exceptions. Delhi University, for example, established a legal aid clinic in the late 1960s. Faculty participation was purely voluntary and no attempts were made to integrate clinics into the curriculum.³⁷ Nonetheless, and in spite of the fact that the students were offered no credit, the legal aid clinic attracted many students.³⁸

Banaras Hindu University was the first law school in India to introduce a clinical course, in the early 1970s. It was an optional course with academic credit, offered to a limited group of 30 students in the final LL.B. year. Although the course included court visits, participation in a legal aid clinic at the school, and an internship in chambers of lawyers, it was clear that the legal aid clinic, which was supervised by a retired judge on a token honorarium, was at the center of its conception of clinical legal education.³⁹ Aligarh Muslim University organized a few legal aid camps in the mid 1980s and also introduced

³⁶ From the Chairman, Legal Aid News letter 2 (February 1983) cited in Jagat Narain, *Legal Aid—Litigational or Educational: an Indian Experiment*, 28 J.I.L.I. 76 (1986).

³⁷ HANDBOOK ON CLINICAL LEGAL EDUCATION, *supra* note 3, at 18-19.

³⁸ *Id.* at 19.

³⁹ *Id.* at 19-20.

a course on advocacy that exposed students to such topics as factual investigation, legal research and writing, and litigation strategies. But again, no steps were taken to incorporate clinical legal education into the curriculum and participation in the legal aid camps was voluntary.⁴⁰

Although these efforts were encouraging at the time, no serious efforts were made by academics or members of the legal community—or by the Bar Council of India, the primary body regulating legal education—to institutionalize legal aid clinics. The main reason for this failure was that law schools were neither physically nor professionally ready to undertake such a huge responsibility. In order to implement law school-based legal aid programs at the national level, the first task should have been to prepare law schools to shoulder the responsibility. Several factors that have marred law school education in India over the past several decades also help explain why law schools have failed in their mission of providing legal aid.

First and foremost, most law teachers have no practical knowledge in conducting legal aid because the Advocates Act prohibits full-time teachers from practicing law. There is also no provision for licensing law students to practice.⁴¹ Moreover, no efforts have been made to provide financial assistance to law schools in order to meet the expenses of providing legal aid and there are no incentives—such as reducing teaching hours—for teachers to engage in legal aid activities.

⁴⁰ *Id.* at 20.

⁴¹ *See* Advocates Act, 1961 §§ 29, 33 (providing that only enrolled advocates are entitled to practice law).

Another fundamental problem comes from the fact that for some time there has been a general feeling that legal education in India is not “meaningful” or “relevant.”⁴² In its 1958 report, the Law Commission of India painted the following bleak picture of the standards of legal education: “The portals of our law teaching institutions manned by part-time teachers open even wider and are accessible to any graduate of mediocre ability and indifferent merits...there is hardly a pretence at teaching... this character is followed by law examinations... which the students manage to pass by cramming short summaries published by enterprising publishers... the result, a plethora of LL.B., half-baked lawyers, who do not know even the elements of law and who are let loose upon society as drones and parasites in different part of the country.”⁴³ The curriculum was neither helpful in shaping aspiring lawyers in their traditional role of problem solver nor in their expanded roles of arbitrator, counselor, negotiator or administrator. The dominant teaching approach was lecture, with little or no attention paid to underlying principles or social intricacies that resulted in shaping the particular rule. Students had no exposure to the policy underlying the law, the function of the law, or the needs of the nation and the expectations of the people.⁴⁴ No effort was made to understand the law in a social context. In the words of Prof. Mohammad Ghouse, law students “were not alive to the dynamic role of law in the development of the country.”⁴⁵

⁴² I.P.Massey, *Quest For ‘Relevance’ in Legal Education*, 2 SCC (JOUR) 17 (1971).

⁴³ See THE LAW COMMISSION OF INDIA, REPORT ON REFORM OF JUDICIAL ADMINISTRATION (1958). These remarks were made by the Commission when there were only 43 law institutes training 20,159 students.

⁴⁴ Mohammad Ghouse, *Legal Education in India: Problems and Perspective*, 19 J.I.L.I. 337, 337-48 (1977) (book review).

⁴⁵ *Id.* at 337.

Perhaps in response to this phenomenon, there followed a prolonged neglect of legal education during which a large number of substandard institutions and “teaching shops” grew up around the country with large numbers of students. As a result, admission to law school became disorganized and the quality of students admitted had deteriorated.⁴⁶ Although there were exceptions, most law schools failed to attract highly qualified students to the legal profession.⁴⁷ The situation was exacerbated by meager salaries paid to law teachers; because of low salaries, the teaching profession did not attract many brilliant persons to law teaching. Further, the teaching faculty was overburdened by heavy teaching loads.⁴⁸ Many colleges had large numbers of part-time teachers which resulted in overloading the full-time teachers with additional administrative and committee duties.⁴⁹

This bleak experience perhaps finally taught the Indian legal community that involving law schools in providing legal aid or other assistance to society needs careful planning and, most importantly, that legal education needs a facelift to cope with society's expectation. Thus, several important initiatives have been undertaken in India recently to refocus attention on improving legal education—most notably those taken by

⁴⁶ *See id.*

⁴⁷ Taylor Von Mehren, *Law and Legal Education in India: Some Observations*, 78 HARV. L. REV. 1180, 1186 (1965).

⁴⁸ A full time teacher is required to take 18 lectures a week.

⁴⁹ Taylor Von Mehren, *supra* note 47, at 1186.

the University Grants Commission (UGC), the Bar Council of India (BCI), and the Law Commission of India.⁵⁰

The UGC is the prime body in India for regulating and maintaining the standards of higher education. In 1988, the UGC appointed a Curriculum Development Committee (CDC) with Professor Upendra Baxi as chairman. The Baxi Committee tried to improve law school syllabi to make them socially relevant: “Human resource development in law is perceived by the CDC not just in terms of production of efficient professionals. While this is important, it is so only if the underlying model of professionalism is linked with struggles for social justice, the maintenance of the rule of law and of democratic development...”⁵¹ According to a second Curriculum Development Committee, appointed in 2000, the first committee’s recommendations were ambitious in nature, substantive in content (some new subjects were introduced with an interdisciplinary approach, including Law and Poverty and Law and Rural Development), and had a rich vision for the future.⁵² The UGC also established a standing panel—that continues to exist—to guide and standardize legal education in India, presided over by the retired Chief Justice of the Supreme Court of India. In spite of these efforts, no significant improvement in the standards of law schools was achieved; lack of faculty expertise in

⁵⁰See LAW COMMISSION OF INDIA, 14TH REPORT (1958); EXPERT COMMITTEE REPORT, *supra* note 12; JURIDICARE COMMITTEE REPORT, *supra* note 13; COMMITTEE FOR IMPLEMENTING LEGAL AID SCHEMES (1981); REPORT OF CURRICULUM DEVELOPMENT CENTRE (1988-90) (known popularly as the Baxi Committee); REPORT OF JUSTICE AHMADI COMMITTEE (1994) (hereinafter AHMADI COMMITTEE REPORT); LAW COMMISSION OF INDIA, 184TH REPORT (2002).

⁵¹ REPORT OF THE CURRICULUM DEVELOPMENT CENTRE, *supra* note 50, at 9-10.

⁵² See REPORT OF THE CURRICULUM DEVELOPMENT COMMITTEE 1 (2000). The new CDC prepared a fresh “UGC Model Curriculum” in 2001. See LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 50, at 8.

the new subjects, unavailability of textbooks, and lack of flexibility in teaching and assessing in subjects like poverty and rural development made these socially relevant courses ineffective.⁵³

In 1994, a Committee chaired by Justice Ahmadi dealt elaborately with law school teaching methods. The Ahmadi Committee Report recommended inclusion of the problem method, moot courts, and mock trials in law school curricula. It also suggested supplementing the lecture method with the case method, tutorials, and other modern techniques for imparting legal education.⁵⁴ Further, it recommended that all these new methods be made mandatory.⁵⁵ The Committee also suggested the establishment of premier law schools to improve legal education along the lines of the National Law School of India University in Bangalore. As a result, several additional national law schools were established all over India.⁵⁶ Although these national law schools tend to improve legal education, they could not affect a significant improvement as a far larger number of students graduate from other law schools.⁵⁷

⁵³ N.L.Mitra, *supra* note 22.

⁵⁴ It referred to the “case method” introduced by Prof. Langdell and to the “problem method” pioneered by Prof. Carl Llewellyn and Judge Jerome Frank. AHMADI COMMITTEE REPORT, *supra* note 50. This report was cited in LAW COMMISSION OF INDIA 184TH REPORT *supra* note 50, at 103.

⁵⁵ AHMADI COMMITTEE REPORT, *supra* note 50 (cited in LAW COMMISSION OF INDIA 184TH REPORT *supra* note 50, at 54).

⁵⁶ The new schools created around that time were West Bengal National University of Juridical Science, Calcutta; NALSAR University of Law, Hyderabad; National Law Institute University, Bhopal; National Law University, Jodhpur; Hidayatulla National Law University, Raipur. Since then, two additional national law schools have been established: Gujarat National Law University in Gandhi Nagar, Gujarat, and the National Institute for Advanced Legal Studies in Kochi, Kerala.

⁵⁷ The Law Commission of India also stressed the need to improve legal education in other colleges which form 99% of the law colleges in India: “It is the desire of the Law Commission that the Bar Council of India and the academic community must co-ordinate and take steps which can result in upgrading the standards of legal education in these colleges which are spread over length and breadth of the country. A few bright-star colleges with limited number of student-intake based on all-India selection is not the end

In 1997, following the Ahmadi Committee's recommendations about practical training and the filing of cases in several high courts challenging its new rule reviving a one-year training requirement under senior advocates,⁵⁸ the BCI issued a circular directing all universities and law schools to revise their curriculums and directed them to incorporate four "Practical Papers."⁵⁹ Until these papers were introduced in the curriculum, very little effort had been made by law schools to train students in advocacy skills. Law schools felt that training law students to work in the legal profession was not the job of the schools but of the Bar. The Bar Council's action was viewed as a big step toward introducing clinical legal education formally into the curriculum and law schools have been required to introduce the four papers since academic year 1998-99.

Unfortunately, the papers focus mainly on practical training. Although one paper includes legal aid work, most stress professional skills such as drafting, court observation, advocacy, client counseling, and negotiation techniques. On their face, they provide only limited support for including instruction in social justice lawyering in the new curriculum or for providing social justice to indigent clients.

Further, the Bar Council did not assume any responsibility for implementing its new directive. The responsibility for training law students in practical matters was simply passed on to the law schools. Because Bar Council directives are mandatory, law

and may not result in an overall change in the level of legal education." LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 50, at 103.

⁵⁸ Cases challenging the training rules were filed at the High Court of Maharashtra and Goa, and the High Court of Punjab and Haryana. Ultimately, the rule was struck down by the Supreme Court. *See supra* note 15.

⁵⁹ Bar Council of India, Circular No. 4/1997. The term "papers" in this context amounts to a course in the curriculum. The papers are reproduced at Appendix 1.

schools made half-hearted attempts to fulfill their obligations—despite having neither expertise in skills training nor the infrastructure and financial resources needed to implement these papers. Even to the extent that some meager resources were made available, law schools failed to execute these directives because they were viewed as an additional burden on the faculty. Simply put, law faculty neither had a vision for, nor properly understood, the value of these practical papers.

Finally, in 2002—and after considering the Ahmadi Committee Report—the Law Commission of India took up legal education reform in its 184th Report. Noting that legal education is fundamental to the judicial system, the Commission suggested that clinical legal education should be made compulsory and opined that clinical legal education will be an excellent supplement to the legal aid system.⁶⁰

In view of the socioeconomic and political situation in India, the ideal social justice mission goal for legal education should be to establish a fair, effective, competent, and accessible legal system. Any attempt to transform the legal profession must wrestle with several problems, such as delays in the justice delivery system, corruption and lack of professional responsibility, failure to adopt modern methods of grievance settlement, failure to provide legal services at affordable cost, and limited opportunities for law graduates. Merely focusing on lawyering skills does not advance a legal profession that is on the verge of breaking down because there is no capacity to meet the day-to-day needs of society. Moreover, many students enter law schools not by choice but by

⁶⁰ See LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 50, at 95.

chance; as a result, very few law graduates actually enter into the profession.⁶¹ There is little social benefit in continuing to spend time and energy on students who will not contribute to the profession. A combined action on the part of “the Bar, the Bench and the law teachers is called for to improve the deteriorating standards of legal education.”⁶²

Keeping these issues in mind, legal education in India needs a new curriculum that creates competent, dedicated, and highly motivated faculty; outstanding, socially sensitive students; and skillful and socially responsible lawyers—who can lead the profession toward a fair, effective, competent, and accessible legal system. The legal academy and the profession should look to clinical legal education to lead this effort, since clinical education is in a unique position in India to realize these goals.

III

Current Efforts in India to Reform Legal Education and the Indian Legal Profession: Adapting the American Bar Association’s MacCrate Report to Meet India’s Needs

As noted above, a number of committees, commissions, and seminars have called for reforming both the legal profession and legal education since India gained independence

⁶¹ Thus, a study in the 1970s showed that only about 8% of the students who appear for the first year LL.B. examination register as advocates. See M. B. Mehre, *Reconstruction of Legal Education*, 20 J.I.L.I. 281 (1978) (86% of students that register and appear for the first year LL.B. examination are not interested in taking the degree in law and leave the law colleges without completing their legal education; 42% of students that complete legal education are not interested in a professional career at the Bar, preferring outside employment). According to more recent data, only about one-third of law school graduates in India enter the profession. See Jamshed B. Pardiwala, *Legal Education: Objectives, Problems, and Perspectives*, 25(2) INDIAN BAR REV. 87 (1998).

⁶² A. S. Anand, *supra* note 21.

from the British.⁶³ The legal system introduced by the British was created essentially to serve British commercial interests; very little concern was shown for social justice, such as protecting the rights of children, women, workers, and other disadvantaged members of society. In the words of Justice Krishna Iyer: “British legal culture fertilized the Indian legal elite and sterilized the spirit of the people.”⁶⁴ By contrast, the Indian Constitution aims to secure social, economic and political justice—but the Indian legal profession, the legislative process, and the administration of justice remain restrained by feudalistic and pro-British colonial laws.⁶⁵ Therefore, many legal luminaries in India felt the need to move away from this model and reform the legal profession. A common theme was that reforms in legal education should aim at providing competent and socially sensitive lawyers.

The Bar Council of India’s directive on practical papers in 1997 and the 2002 report of the Law Commission of India (together with the Ahmadi Report that preceded it), discussed earlier in Part II of this paper,⁶⁶ are particularly important because they addressed specifically various changes needed to update teaching methods and to reform the law school curriculum—all with a view to improving the legal profession. Although the Law Commission mentioned several studies about improving legal education in its

⁶³ See *supra*, text accompanying notes 25-36, 50-60. See also All India Seminar on Legal Education at Poona (1972); All India Law Teachers Conference at Delhi (1972); National seminar on legal Aid and Advice (1975); All India seminar at Bombay attended by Universities and State Bar Councils (1977) (the deliberations in this seminar resulted in establishing an integrated 5-year curriculum).

⁶⁴ Justice V. R. Krishna Iyer, Inaugural Address at the Second State Lawyers’ Conference, Andhra Pradesh at Rajahmundry, 2 SCC 1 (JOUR) (1976).

⁶⁵ *Ibid.*

⁶⁶ See *supra*, text accompanying notes 54-60.

2002 report, one report was given special prominence: *Legal Education and Professional Development – An Educational Continuum*, a 1992 American Bar Association task force report on professional skills and values popularly known as the MacCrate Report.⁶⁷ The Law Commission felt that the members of the Legal Education Committee of the Bar Council of India and the University Grants Commission needed to study the MacCrate report closely. This nod to the MacCrate Report was doubly significant, since the four practical papers mandated by the Bar Council in 1997 (also mentioned by the Law Commission in its report) focus on skills similar to those identified as fundamental in the MacCrate Report.⁶⁸ Further, the National Law School of India University in Bangalore, established by the Bar Council in 1987 as a model for legal education reform, prepared a new curriculum in 2001 that included skills training based in part on the MacCrate report, with modifications suited for Indian conditions.⁶⁹

Although prominent, the references to the MacCrate Report in the Law Commission's report lacked any sort of critical analysis that would support its relevance in the Indian context. Perhaps this is because many reforms in Indian legal education over the past decades have been influenced by developments in the United States, as India has undergone a shift since the late 1960s and early 1970s from the British model of

⁶⁷ See LAW COMMISSION OF INDIA, 184th REPORT, *supra* note 50, at 53, 54. In addition to the MacCrate Report, *supra* note 5, the Law Commission cited the following, among others: Resolution of the ABA House of Delegates (1994), REPORT ON LEARNING PROFESSIONALISM (1996), Law Society of England and Wales on 'PREPARATORY SKILLS: REVIEW OF THE INSTITUTE OF PROFESSIONAL STUDIES (1990), CRAMPTON REPORT ON LAWYER COMPETENCY (1979), CARRINGTON REPORT ON TRAINING FOR PUBLIC PROFESSIONS OF THE LAW (1971).

⁶⁸ See *infra*, text accompanying notes 112-14; Appendix I.

⁶⁹ The National Law School's new curriculum also includes the practical papers mandated by the Bar Council.

legal education to the US model.⁷⁰ This United States focus has been the case particularly with respect to clinical legal education, since—as noted earlier in Part I of this article—many of the goals for (and the challenges faced by) clinical education in India and the United States are, to a large extent, similar.⁷¹ It may indeed be helpful for Indian legal education reformers to present a set of fundamental professional skills and values along the lines of those set out in the MacCrate Report as part of the effort to implement both the Bar Council's mandated practical papers and the Law Commission's renewed push for clinical legal education. However, in that case a more critical look at the MacCrate Report and its relevance to Indian legal education is needed.

The MacCrate task force was formed by the ABA in 1989, following the publication of a number of studies stressing the need to improve lawyer competence.⁷² With those goals in mind, the MacCrate Report put forward certain guidelines for satisfying the demand for producing skilled and competent lawyers—and called for law schools and the legal profession to play a greater role in improving the competence of

⁷⁰ This shift is due in part to substantial funding by the Ford Foundation and frequent exchanges of legal educators through the Fulbright programs and Council for the International Exchange of Scholars.

⁷¹ See *supra*, text accompanying notes 8-18.

⁷² See, e.g., AM. BAR ASS'N, CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, LEGAL SERVICES FOR THE AVERAGE CITIZEN (1977); AM. BAR ASS'N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS ON THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979) (known popularly as the Cramton Report); AM. BAR ASS'N, SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION, REPORT AND RECOMMENDATIONS (1980) (known popularly as the Foulis Report); AM BAR ASS'N, SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, PROCEEDINGS: NATIONAL CONFERENCE ON LEGAL EDUCATION FOR A CHANGING PROFESSION (1988); AM BAR ASS'N, FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCE (1983); AM. BAR ASS'N, COMMITTEE ON APPELLATE SKILLS TRAINING, APPELLATE LITIGATION SKILLS TRAINING: THE ROLE OF THE LAW SCHOOLS (1985), *reprinted at* 54 U. CIN. L. REV. 129 (1985); CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION, THE REPORT ON THE ARDEN HOUSE III CONFERENCE, NOVEMBER 13-16, 1987 (ALI-ABA Committee on Continuing Professional Education, 1988). See also Maureen E. Laflin, *Towards the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV 55 (1998).

incoming lawyers and the overall professional fitness of the practicing bar. The Report thus redefined the scope of the modern debate on what and how law schools should teach, including which skills and values legal education should emphasize.⁷³ The skills and values identified in the Report constitute a noble vision of professionalism toward which all lawyers should aspire.⁷⁴ Perhaps most fundamentally, the Report declared that acquiring lawyering skills and professional values aimed at providing competent lawyers is essential to preparing lawyers to represent clients.⁷⁵

Specifically, the MacCrate Report set forth a Statement of Fundamental Lawyering Skills and Professional Values that recognizes a “compendium of skills and values” fundamental to the practice of law. The Statement first identifies ten skills that are required of competent lawyers. These skills are categorized into 5 groups: problem solving and legal analysis, which are the basic abstract skills for legal practice; legal research, factual investigation, communication, counseling and negotiation, which are specific skills required to carry out a legal practice; knowledge about trial and appellate litigation and about alternative dispute resolution, in order to be able to provide ADR or to advise clients about the various options available to resolve disputes under ADR; the ability to organize and manage legal work effectively; and the ability to identify and resolve ethical dilemmas. The Report then identified four fundamental values of the

⁷³ Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education into the Twenty-First Century*, 30 WAKE FOREST L.REV. 293 (1995).

⁷⁴ Maureen E. Laflin, *supra* note 72, at 57.

⁷⁵ MACCRATE REPORT, *supra* note 5, at 135.

profession: provision of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development.

The task force viewed the Statement of Skills and Values as “a work in progress”⁷⁶ and recognized that several of the suggestions put forward would require designing new modes of teaching and the development of new teaching materials.⁷⁷ The Report was thus intended to serve as a stimulus—a starting point—for profession-oriented legal education reform. The task force hoped that these skills and values would be revised from time to time to fulfill its intended purpose of preparing new lawyers for practice.⁷⁸ Finally, the Report emphasized that “the statement is not, and should not be taken to be, a standard for a law school curriculum. The Statement of Skills and Values is concerned with the limited goal of ensuring practice at a minimum level of competency.”⁷⁹ Therefore, the skills and values mentioned in the Report are not comprehensive, but rather express the specific goal of narrowing the professional gap between law schools and the practice of law.

The MacCrate Report also made an effort to draft a new agreement between law schools and the legal profession. The foundation of this new agreement is that “legal educators and practicing lawyers should stop viewing themselves as separated by a 'gap' and recognize that they are engaged in a common enterprise—the education and

⁷⁶ *Id.*, at 131.

⁷⁷ *Id.*, at 130.

⁷⁸ *Id.*, at 131.

⁷⁹ *Id.*, at 132.

professional development of the members of a great profession.”⁸⁰ The Report also introduced the concept of an “educational continuum” and called for an unending exchange within the profession about the skills and values that a legal practitioner should acquire and about the kind of education and training that prospective lawyers should receive at different stages of their careers.⁸¹ The Report thus points out rightly that the Bar, law school teaching faculty, and the judiciary ought to share the responsibility for providing skills- and value-oriented legal education to new lawyers entering into the profession.

Although the Report was well received generally in the United States, its Statement of Skills and Values was not free from criticism. The more substantial criticisms include missing the humane element of lawyering, overemphasizing the traditional lawyer role of problem solver, overemphasizing skills with relatively little attention paid to social justice, failing to recognize the importance of subject matter to the study of law, a lack of attention to community based advocacy, and ignoring the importance of the alternative role of lawyers and changes in the relationship between lawyer and client due to the economics of law practice.⁸²

⁸⁰ *Id.*, at 3. See also Peter A. Joy, *Clinical scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385, 391 (1996).

⁸¹ MACCRATE REPORT, *supra* note 5, at 3. See also Maureen E. Laflin, *supra* note 72, at 5

⁸² See, Frank J. Macchiarola, *Teaching in Law school: What are We doing and What More Has to be Done?*, 71 U. DET. MERCY L. REV. 531 (1994); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What 's Missing From the MacCrate Report – Of Skills, legal Science and Being A Human Being*, 69 WASH. L. REV. 593 (1994); Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385 (1996); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying the Gap We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Russell G. Pearce, *MacCrate's Missed Opportunity: the MacCrate report's Failure to Advance Professional Values*, 23 PACE

Carrie Menkel-Meadow has observed, for example, that the MacCrate Report's declaration on lawyering skills visualizes the lawyer largely as a litigator, a "means-ends" thinker who can accomplish a client's goals. She notes that in the 21st century, lawyers will have to solve problems synthetically as well as analytically and argues that the legal profession also needs a basic understanding of socio-economic concepts and statistics to analyze the empirical effects of lawmaking and enforcing the law.⁸³ This observation applies equally to India today; mere analytical skills of problem solving will not be sufficient to solve broader socio-legal problems.⁸⁴ Members of the legal profession need to play the role of educator, planner, and counselor.⁸⁵ Therefore, lawyers must be trained in skills that provide for a broader understanding of various facets of legal problems. Fundamental lawyering skills are important to provide social justice; however, any set of skills confined only to traditional methods of problem solving would be manifestly insufficient.

Typically, both law students and new practitioners are rewarded almost exclusively on the basis of skills. Although extremely negative values may be grounds for disqualification, an individual's values—excellent or mediocre—play virtually no role in academic or professional incentives.⁸⁶ Despite the MacCrate Report's stated aim to

L. REV. 575 (2003); Robert MacCrate, *Yesterday, Today and Tomorrow: Building the continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805 (2004).

⁸³ Carrie Menkel-Meadow, *supra* note 82, at 616.

⁸⁴ There are several situations in which a social problem may become a legal problem. Examples in India include sati, dowry, and bonded labor.

⁸⁵ Dinesh Kshosla, *Making Law Effective: Pre-paid Group Legal Services as a Strategy*, 18 J.I.L.I. 587, 604 (1976).

⁸⁶ Russel G. Pearce, *supra* note 82, at 587

improve both skills and values, it focuses mainly on skills. Moreover, it indicates indirectly that professional values are subordinate to skills by listing the four fundamental values after the ten fundamental skills.⁸⁷ To achieve the Report's aim, goals should be identified first and then the skills needed to achieve those goals. If "the values are the goals"⁸⁸ and the values are not identified, it is pointless to talk first about skills.

Professional values and skills should be promoted as the two wheels of social justice. If they are to complement each other, then skills must be developed according to identified values.

Therefore, before reforming legal education in India there is an urgent need to identify the values sought to be supported by such reforms and the skills needed to achieve them. The skills and values enunciated in the MacCrate Report should be analyzed carefully as part of this process; however, they should be followed only to the extent that they are in keeping with the local needs in India. Members of the Indian legal profession have an obligation to assess the strengths and weaknesses of the Report before using it as a guide to reform. At the same time, the report's Statement of Skills and Values may be useful in identifying the goals of legal education in India and in other countries as well. The important thing is to create appropriate goals for the local legal profession; only then can one decide which values and skills should be taught—and how they should be taught—in order to improve the profession.

⁸⁷ See *id.* at 585, 586 (Report makes values less important than skills.).

⁸⁸ *Id.*, at 586.

India's status as a developing country makes the main aim of the law to promote social welfare. The constitutional goals of equality and justice will be accomplished only by enacting a number of “socially oriented legislations.”⁸⁹ As noted earlier, this challenge cannot be met by focusing legal education on lawyering skills confined to traditional problem solving. India needs not only technically skilled lawyers, but also lawyers who are socially sensitive and have socially relevant lawyering skills.⁹⁰ Legal education must, therefore, focus not only on what lawyers actually do but on what lawyers ought to do. In this regard, the first task is to identify the values that legal education must foment. Indian society needs socially sensitive and community-oriented lawyers and a legal education system with a social justice agenda. Justice, fairness, and morality can be taught in the classroom;⁹¹ however, this requires a curriculum that exposes students not only to law and legal process, but also to the many factors that influence clients and their lawyers.⁹²

One option would be to appoint an Indian counterpart to the MacCrate task force that would identify the professional values and skills required for the legal profession in India. Properly constructed, a set of values and skills along the MacCrate model—but adapted for modern India's needs—can serve to support the current movement toward

⁸⁹ Dinesh Kshosla, *supra* note 85, at 588.

⁹⁰ See N.L.Mitra, *supra* note 22.

⁹¹ Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality”*, 4 CLINICAL L. REV. 4, 9 (1997).

⁹² For example, victims of crimes in India tend to settle with the accused for monetary benefits even though this practice is illegal. In order to understand why their clients may be more interested in settlement than in pressing for punishment to the accused, students must be exposed to the combined elements of poverty and a legal system that provides private compensation for only few crimes such as defamation, public nuisance, and rash and negligent driving.

legal education reform. They can also provide an underlying substantive basis for institutionalizing a social justice-based clinical curriculum that is missing from the Bar Council's practical papers mandate and the Law Commission's general call for meaningful and effective educational reform. And they can help set India's long-standing quest for socially relevant legal education finally on the right track. It may be helpful in the meantime to suggest a set of fundamental professional values and skills to guide legal education reform in India, along the following lines:

Value 1: Provision of fair and effective resolution of disputes. Article 14 of the Indian Constitution is a positive affirmation of equal access to the justice system in India.⁹³ Thus, providing free legal aid to an indigent person is not only a statutory obligation,⁹⁴ but a constitutional obligation on the part of the State. "State obligation" does not mean that only the State has an obligation to provide free legal aid; this professional and legal obligation extends to every member of the legal profession.⁹⁵

⁹³ See Constitution of India, Article 14 ("The state shall not deny to any person equality before the law or equal protection of laws within the territory of India").

⁹⁴ Various Acts make it mandatory to provide legal aid to indigent persons. See, e.g., Civil Procedure Code, 1908 Order XXXIII; Criminal Procedure Code, 1973 § 304; Legal Services Authority Act, 1987 § 12.

⁹⁵ Bar Council of India Training Rules, 1995, Section VI Rule 46 imposes a duty on every lawyer to render legal aid:

Every advocate shall in the practice of the profession of law bear in mind that anyone genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an Advocate owes to society. Moreover, the Legal Services Authorities Act, 1987 Section 4 (e) imposes an obligation on the National Legal Services Authority to "organize legal aid camps, especially in rural areas, slums or labor colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats." This obligation has to be carried by the Chief Justice of the Supreme Court at the national level. In addition, Section 7 (c) imposes an obligation on the State Legal Services Authority to "undertake preventive and strategic legal aid programs." This obligation has to be carried by the Chief Justice of the High Court in every state. Finally, Section 10

It is equally important to provide a fair, effective, quick, and inexpensive system for dispensing justice. Easy access to justice is meaningless unless there is a guarantee to fair and effective justice. Lawyers should also take responsibility for quick disposal of disputes, especially given the chronically high volume of cases pending in Indian courts.⁹⁶ Thus, the provision of effective resolution of disputes involves two interrelated fundamental values for the profession: providing fair, effective, and accessible legal system; and providing quick and inexpensive resolution of disputes.

Value 2: Striving for social justice. India is a country with many of its resources concentrated in the hands of few, and with a large number of poor people. As noted earlier, the immediate concern of the nation after independence was to provide social welfare and to bring social order.⁹⁷ The main objective behind the Directive Principles of State Policy in Part IV of the Indian Constitution is to establish a welfare state and to provide socio-economic justice. Free India expected the law to play a vital role in bringing social order.⁹⁸

imposes a similar obligation on District Judges at each district, and Section 11(b) on Senior Civil Judges at the Taluka (County) level. As far as law faculty members are concerned, they are under a mandatory obligation to extend legal aid services as part of the law school curriculum under Practical Paper IV: Public Interest Lawyering, Legal Aid and Para-legal Services. *See infra*, text accompanying note 114; Appendix 1.

⁹⁶ Thus, for example, in 1997 3.18 million cases were pending at High Courts and 20 million cases were at subordinate courts; in 1998, 19, 806 cases were pending at the Supreme Court. Government of India, Ministry of Home Affairs, available at <http://mha.nic.in/justi.htm>.

⁹⁷ This concern was well expressed in the Preamble and the Directive Principles of State Policy in the Indian Constitution. *See* Constitution of India, Part IV, Articles 38, 39, 39A, 42, 43, 46.

⁹⁸ Thus, various enactments that followed after independence—in the field of land ceilings, agricultural tenancy, rent control, minimum wages etc.—were aimed at securing social order. *See, e.g.*, Minimum Wages Act, 1948 (national legislation setting provisions on minimum wages applicable throughout the territory of India). Different Indian states have legislated in the areas of land ceilings, agricultural tenancy, and rent control.

In many countries, social welfare cannot be implemented through constitutional provisions.⁹⁹ The Supreme Court of India has, by contrast, a rich history of judicially enforcing socio-economic rights by liberal interpretation of fundamental rights.¹⁰⁰ The Court has conferred the status of fundamental rights to directive principles—particularly in the area of social welfare. Thus, in a number of decisions it recognized directive principles—such as equal pay for equal work, protection of children from exploitation, free and compulsory education for children, prevention of sexual harassment, free legal aid to the poor, medical assistance to workers, the right to health, the right to shelter, the right to livelihood, the right to live with human dignity, and the right to minimum wage—as fundamental rights.¹⁰¹ All these judgments impose a positive constitutional obligation on the state to implement social welfare programs to guarantee these judicially recognized rights. It is now a well established principle that free legal aid is a state's duty and not government charity.¹⁰²

⁹⁹ See generally, Mark Tushnet, *Social Welfare Rights and the Forms of Judicial Review*, 82 TEX. L. REV. 1895 (2004); Peter E. Quint, *The Constitutional Guarantees of Social Welfare in the Process of German Unification*, 47 AM. J. COMP. L. 303 (1999).

¹⁰⁰ See, e.g., *Olga Tellis v. Bombay Municipal Corporation* A.I.R. 1986 S.C. 180; *Unni Krishnan v. State of A.P.* A.I.R. 1993 S.C. 2178; *PUDR v. Union of India* A.I.R. 1982 S.C. 1437; *Sodan Singh v. New Delhi Municipal Corporation* A.I.R. 1989 S.C. 1988; *Chameli Singh v. State of U.P.* A.I.R. 1996 S.C. 1051; *P.B. Khet Mazdoor Samity v. State of West Bengal* A.I.R. 1996 S.C. 2426; *Jolly George Varghese v. Bank of Cochin* A.I.R. 1980 S.C. 470.

¹⁰¹ See *Dhirendra Chamoli v. State of U.P.* 1986 1 SCC 637; *M. C. Mehta v. State of Tamil Nadu* AIR 1997 SC 699; *Unni Krishnan v. State of A.P.* AIR 1997 SC 449; *Visaka v. State of Rajasthan*, AIR 1997 SC 3014; *Hussainara Khatoun v. Home Secretary, Bihar*, AIR 1979 SC 1369; *Consumer Research Centre v. Union of India* 1995 3 SCC 42; *Paschim Bang Khet Mazdoor Samiti v. State of W.B.* 1996 4 SCC 37; *Chameli Singh v. State of U.P.* 1996 2 SCC 549; *Olga Tellis v. Bombay Municipal Corporation* A.I.R. 1986 S.C. 180; *Francis Coralie v. Union of India*, AIR 1978 SC 597; *PUDR v. Union of India* A.I.R. 1982 S.C. 1437.

¹⁰² See *M. H. Hoskat v. State of Maharashtra* AIR 1978 SC 1548; *Hussainara Khatoun v. Home Secretary, Bihar*, AIR 1979 SC 1369; *Khatri v. State of Bihar*, AIR 1981 SC 928; *Veena Sethi v. State of Bihar* AIR

Although social justice is the ultimate goal of law in India, very few people in India understand that social welfare is a legal entitlement of the poor. The value of striving for social justice is particularly important in this context. It focuses on making the legal process an instrument of social development and on developing the legal profession as a vehicle for social justice. Socially relevant legal education can meet the constitutional goal of providing socio-economic and political justice by promoting a legal profession that can meet the needs of the common person through the rule of law and a progressive social order.

Value 3: Promotion of alternative lawyer roles. Lawyers need to play a vital role in dispensing justice. They cannot be mere spectators of the judicial process; they must be an integral part the process of providing justice. The present Indian system of adversarial justice is largely influenced by the British model. The complexities and technicalities imposed by the British model need to be simplified. In its place, modern India needs a system that provides non-judicial forums and various types of informal proceedings to satisfy natural justice, involving little cost and speedy disposal.¹⁰³

Alternative dispute resolution (ADR) is considered to be an outstanding development in 20th century law. In fact, various forms of ADR, such as negotiation, mediation,

1983 SC 339; Sheela Barse v. State of Maharashtra, AIR 1983 SC 378; Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991.

¹⁰³ V. R. Krishna Iyer, *supra* note 64.

arbitration, and conciliation, were the traditional methods of dispute resolution in ancient India.¹⁰⁴

Recognizing this need, ADR was given statutory status in India in the form of *lok adalats*.¹⁰⁵ Although not without controversy,¹⁰⁶ *lok adalats* have proved to be cost effective, simple, and easy—and, more importantly, they provide speedy justice.¹⁰⁷

Socio-economic conditions in India necessitate more ADR programs. India's ancient culture and philosophy of simple living require lawyers to shift their traditional role of problem solving to the roles of negotiator, mediator, counselor and public policy maker. The legal profession must change its purpose from providing client-centered legal services to securing the social justice mission of providing fair justice. The legal profession should recognize that lawyers must be loyal to justice rather than just to their clients.

¹⁰⁴ During the Vedic period, disputes were tried and settled generally by the elders of the family; however, if this failed the disputants approached a *Sabha*, or village council, consisting of elders of the community or village heads. Three kinds of popular bodies emerged to settle disputes after Vedic period: *Kula* (a group of family relations), *Sreni* (a guild committee), and *Puga* (members of different casts and professions residing in the same village or town). Disputants could appeal their disputes from *Kula* to *Sreni* and then to *Puga*. *Kula* and *Sreni* used mostly mediation and negotiation for settling disputes; *Puga* acted more like an arbitration than a negotiation or a mediation. These popular bodies subsequently became village *Panchayats* in modern India. See P. C. RAO & SHEFFIELD WILLIAM, ALTERNATIVE DISPUTE RESOLUTION (2002); V.D. MAHAJAN, ANCIENT INDIA (1999); A. S. ALTEKAR, STATE AND GOVERNMENT OF ANCIENT INDIA (1997).

¹⁰⁵ The Legal Services Authorities Act, 1987 §§ 19-22.

¹⁰⁶ See, e.g., Dr. P. B. Shanker Rao, *Establishment of Permanent Lok Adalats – A Boon or Bane?* 26(1) INDIAN BAR REV. 49 (1999); Natwarlal S. Bhatt, *Lok Adalats*, 21 (1) INDIAN BAR REV. 181 (1994); D. K. Sharma, *Lawyers and Lok Adalats*, 91 AIR 2004 (Jour) 251. For a recent scholarly critique, see Marc Galanter & Jayanth K. Krishnan, “*Bread for the Poor*”: *Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789 (2004).

¹⁰⁷ Justice Jitendra N. Bhatt, *A Round Table Justice Through Lok-Adalat (Peoples' Court)—A Vibrant ADR In India*, 1 SCC (JOUR) 11 (2002).

Apart from promoting ADR, it is also necessary for lawyers to make citizens aware of their legal rights and duties. Legal literacy is a condition precedent to making the law relevant and meaningful. With the national literacy rate at 68.4%,¹⁰⁸ disseminating basic legal knowledge is as important as any other function of the legal profession. All members of the profession have a moral and professional responsibility to impart legal literacy by way of simplifying legal rules that one may encounter in day-to-day life. This may include translating laws into vernacular languages, as laws are written customarily in English.

The agenda of promoting alternative lawyer roles thus includes shifting the traditional role of the lawyer from problem solver to dispensing justice, promoting loyalty towards justice rather than only to the client, and disseminating basic legal knowledge to the common person.

Value 4: Protecting judicial independence and accountability. India is ranked as low as 83rd out of 133 countries in the Corruption Perceptions Index.¹⁰⁹ By contrast, the Indian judiciary—particularly in the higher courts—has emerged in the recent past as a powerful institution that enjoys the faith and esteem of the people due to a low level of corruption among its members. When the two other organs of the modern state are held in low esteem, the judiciary has a special duty to protect the common person's interests and to join in fighting against corruption. Therefore, it is very important to protect the judiciary's independence from the influence of the legislature and the executive.

¹⁰⁸ Census of India 2001, T 00-006, available at http://www.censusindia.net/t_00_006.html

¹⁰⁹ Transparency International's 2003 Survey, available at <http://www.eurasianet.org/departments/insight/articles/eav102003.shtml>

To protect the judiciary's independence, it is imperative to have a transparent legal profession. In addition to transparency, all members of bar, bench, and law faculties must be accountable to their profession and to society in general. Thus, this value stresses the need to promote and preserve judicial independence and to develop accountability among lawyers, judges, and law teachers.

To complete a modified MacCrate conception of fundamental skills and values for the Indian legal profession, certain skills must be targeted to assure that lawyers can implement the previously identified values. Almost all of the skills set out in the MacCrate Report are required for securing these India-focused values; however, special emphasis should be given to certain skills enumerated in the Report for securing the first three values. The fourth value—provision of judicial independence and accountability—does not implicate skills in the same way as the others.

For securing the first value—effective resolution of disputes—the following skills enumerated in the Report are helpful: legal research (Skill # 3), communication (Skill # 5), litigation and alternative dispute resolution procedures (Skill # 8), and organization and management of legal work (Skill # 9). For securing the second value—striving for social justice—the following skills are important: generating alternative solutions and strategies (Skill # 1.2), elaborating legal theory (Skill # 2.3), evaluating legal theory (Skill # 2.4), and identifying and evaluating other possible legal theories (Skill # 2.5.c). For securing the third value—alternative role of lawyer—the following skills may play a significant role: methods of effectively tailoring the nature, form, or

content of the written or oral communication (Skill # 5.2.c), counseling (Skill # 6), negotiation (Skill # 7), and knowledge of the fundamentals of proceedings in other dispute-resolution forums (Skill # 8.4).

Although these skills are helpful in promoting the proposed values for Indian lawyers, other skills are required in order to secure them in a meaningful way. New, additional fundamental skills required for Indian lawyers may include the following:

Skill 1: Innovative/alternative problem-solving techniques. In order to provide fair, effective and accessible justice, the mere achievement of minimum competency in analyzing and applying legal rules and doctrines is not sufficient. Lawyers need to develop the skills to invent innovative techniques to provide alternatives to the adversarial process. They need to be creative in developing new methods of problem solving to provide a quick, fair, and cost effective justice-dispensation process.

Skill 2: Skills to invent new options beyond the established norms. To secure the constitutional goal of bringing about a just social order, lawyers need to think about options beyond traditional norms. They need to be able to handle group actions and community- or social-oriented litigation. They must also have strong interpretative skills to convince judges to recognize the need for considering a client's socio-economic conditions in analyzing and disposing of legal problems.

Skill 3: Mass communication skills. Lawyers need the skill to communicate not only with judges and clients, but also with the society as a whole. Skills in mass communication are necessary to carry out legal literacy projects, which are extremely

important in view of India's high rate of illiteracy in general and legal illiteracy in particular. Communication skills are needed also to explain public policy issues and to convince the public to influence public policy by putting pressure on the government.

Skill 4: Skills to analyze the socio-economic background of legal problems. In a developing country like India, most legal problems are related to social relations and poverty. To deal with these problems, skills in understanding the broader social and economical issues behind the problem are essential.

Skill 5: Skills in research with a sense of responsibility to serve the society. Sound research skills are essential to virtually all aspects of lawyering. However, a mechanical application of research findings is not sufficient to achieve the values identified earlier as fundamental for Indian lawyers. Lawyers conducting research need to have a commitment to serve society. Thus, the goal is to develop research skills that will serve society rather than simply applying legal rules mechanically to problems.

These various skills are not a comprehensive listing of what lawyers need to be able to do, nor do they and the fundamental values discussed earlier address all of the problems facing the Indian legal profession. They provide only a possible outline of the values and skills that could be identified and developed further by an appropriate task force or working group. Moreover, the skills that may be needed to support certain values might vary from place to place and from time to time, depending on local conditions and community needs.

The burden for providing lawyers these skills lies heavily on law schools, particularly in India. All legal training in India takes place in law schools and once students graduate from law school they can straightaway enter the legal profession. There is no requirement for apprenticeships or to pass a bar exam, as exists in most other countries.¹¹⁰ Thus, in highlighting the need for quality legal education, Justice A. S. Anand said that “the quality of education has a direct impact on the prestige of the legal profession. We must therefore identify the areas of default and initiate corrective action to repair the damage.”¹¹¹

IV

Carpe Diem: Implementing the Bar Council's Mandatory Practical Papers Through a Social Justice-Based Clinical Curriculum

A close look at the four mandatory practical papers introduced by the Bar Council of India (and also mentioned in the Law Commission's recent report) reveals that they place an overriding emphasis on providing traditional skills, with a few exceptions such as negotiation and mediation.¹¹² Paper I covers moot-court, pre-trial preparations, and

¹¹⁰ Thus, in *State of Maharashtra v. Manubhai Pragji Vashi and Others*, A.I.R. 1996 S.C. 1, the Supreme Court of India held that the state government, in concurrence with the concerned university, the Bar Council of India, and the State Bar Council and other competent bodies or persons, should take the necessary steps to ensure high standards to achieve excellence in legal education. An effort to revive a one-year apprenticeship in the mid-1990s failed. *See supra*, note 15.

¹¹¹ Dr. Justice A. S. Anand, Inaugural Address at the Second Annual Meeting of the State Legal Services Authority, held at Hyderabad (1999).

¹¹² For detailed syllabi of these papers, see Appendix I.

participation in trial proceedings. The purpose of making every student participate in moot court is to develop advocacy skills. Students are also required to observe at least two sessions of client interviews in a lawyers office and they must participate in preparing various documents that are required to be filed with the court. Finally, students are expected to observe one civil and one criminal trial in order to become familiar with trial advocacy and court proceedings. Paper II covers drafting, pleading, and conveyancing. This paper aims at developing drafting skills and gives students an opportunity to learn how to draft complaints, written statements, sale deeds, etc. Paper III covers professional ethics, accountancy for lawyers, and bar-bench relations. It focuses on ethical issues formulated by the Bar Council of India under the Advocates Act, including duties toward clients, opponents, colleagues, and the courts.¹¹³ Students must also undertake a mandatory 30-day internship in a lawyer's office.

At the same time, Paper IV—dealing with public interest lawyering, legal aid, and para-legal services—aims at providing social justice. This paper is flexible, allowing law schools to design course content according to local needs. The aim is to involve students in public service projects that address legal problems faced by people in local communities. These activities involve students in community service so that they can learn the difference between law in books and law in practice. This can be done in many ways, as discuss in detail later in this section.¹¹⁴ Paper IV also provides for instruction in

¹¹³ See Advocates Act, 1961 § 49 (1) (C).

¹¹⁴ See *infra*, text accompanying notes 119-37. Examples include *lok adalats* and legal aid camps, legal literacy projects, and paralegal training.

various skills necessary to carry out these and other types of public interest projects, such as negotiation, counseling, fact investigation, and legal research.

Although the four papers, on their face, appear adequate to provide certain basic skills to law students, in reality they have not met the expectations of the Bar Council—let alone the long term goal of establishing a fair, effective, and competent legal system, accessible to all citizens. As noted earlier, most Indian law schools are not able to implement these papers due to a lack of expertise; they have neither the infrastructure nor the personnel to implement them. Many law schools faculty have no familiarity with the new subjects and, due to the no-practice rule, the majority of faculty members do not have the necessary practical knowledge or experience.

In effect, the Bar Council washed its hands of the matter by simply passing the obligation on to law schools—and the law schools have, in turn, relinquished their responsibility by assigning the four papers to the faculty without providing necessary support. The four papers are, in effect, “paper tigers”: most schools have introduced these papers with only token compliance, passing all students without observing serious standards. And most unfortunate of all, everyone seems to be happy; the Bar Council can claim it made its effort to improve legal education, law schools can claim they have successfully incorporated practical training, the faculty breathes a sigh of relief that the new system does not affect them much, and the students continue to graduate.

Nonetheless, the four papers have caused considerable debate in India. This debate must address seriously the ultimate ambitions for the papers.

Law schools are now in a position to accept responsibility for the practical training called for in the four papers. What is needed to make these papers meaningful is a combined effort from the law schools, the Bar, and the bench to implement them finally through a model of social justice-based clinical legal education—and to do so keeping in mind the principles behind the fundamental values and skills set out earlier. The purpose of legal education is not simply to encourage the lawyer's function as champion of his or her client's cause; lawyers are also educators, policy makers, and counselors. Lawyers can make people aware of their legal rights and duties and they can bring public opinion to bear on law making, thus helping make the law more responsive to national concerns.¹¹⁵ By producing such lawyers, law schools can begin to serve India's social justice needs.¹¹⁶

Clinical legal education must shoulder the burden of preparing law students to meet these expectations for Indian lawyers. As noted earlier, this will not be easy as clinical education in India faces several serious challenges. First among these is the fact that neither full-time faculty nor law students can represent clients.¹¹⁷ Further, stringent rules for qualifying to become a law teacher discourage many advocates from becoming involved in clinical teaching.¹¹⁸ Since India is a vast multilingual and multiethnic

¹¹⁵ See *supra*, Part II. See also Dinesh Kshosla, *supra* note 85, at 604.

¹¹⁶ See K. K. Mathew, *Goals of Law Study*, 17 J.I.L.I, 11 (1975) (noting the importance of serving the needs of society).

¹¹⁷ The Advocates Act strictly forbids students from representing clients and BCI rules prohibit full-time faculty from practice as well, even *pro bono* litigation. See *supra*, text accompanying note 41.

¹¹⁸ To become a law teacher, one is required to complete a two-year course for a masters in law—and then must pass the National Eligibility Test conducted by UGC or State Eligibility Test conducted by the states. If a law teacher passes only the State Eligibility Test then he or she is eligible only for teaching in that particular state.

country, a single clinical teaching program is not possible. Particularly in providing legal aid, students are required to have sufficient knowledge about the local culture, living conditions, ethnic problems, and—most importantly—the local language. Further, significant differences between urban and rural lifestyles require different approaches to urban and rural social issues.

In spite of these problems and drawbacks, law schools can implement a social justice curriculum through clinical education without changing the present curriculum. The key to success in this endeavor lies in the implementation of the four practical papers mandated by the Bar Council of India. Those papers can be used to instill in law students, and thus in new lawyers, those fundamental values and skills needed to transform the legal profession in India.

Even with the ban on representing clients, students can be placed with an advocate willing to work with them. In addition, students can be encouraged to conduct legal research pertaining to a particular case assigned by the advocate under the supervision of a faculty member. Though students may not be able to acquire advocacy skills in this setting, they can acquire many other important lawyering skills. In addition, they can be encouraged to conduct legal research on issues of public importance. In appropriate cases, where their findings are placed before the concerned government officer responsible for the matter involved and the officer does not take appropriate

action, students can approach either the state High Court or the Supreme Court of India for redress in the form of Public Interest Litigation.¹¹⁹

Law schools can also play a major role in sensitizing the public about their legal rights and duties. In a country like India, where about 260 million people live below the poverty line and some two-thirds of a population of more than a billion is dependent on agriculture,¹²⁰ focus on legal literacy programs is extremely important. Thus, the National Legal Services Authority recently established the National Legal Literacy Mission 2005-2010 in an attempt to empower economically and socially disadvantaged citizens by making them legally literate. The Mission is also intended to improve access to justice by disseminating legal awareness and knowledge of legal rights and by providing information about the availability of free legal aid. Thus, the Mission will follow a three-pronged approach: education on legal rights, education on fundamental duties, and education on the availability and benefits of legal aid.¹²¹ Working with these

¹¹⁹ In all appropriate public interest litigation, students can appear before the court. Moreover, in suitable cases the Court usually appoints *amicus curie* to assist the court and the students in judicial proceedings. See generally, G. L. Peiris, *Public Interest Litigation in the Indian Subcontinent: Current Dimensions*, 40 INT'L & COMP. L.Q. 66 (1991); N.R. Madhava Menon, *Public Interest Litigation: A Major Breakthrough in the Delivery of Social Justice*, 9 J. BAR COUNCIL INDIA 150 (1982); Gobinda Mukhoty, *Public Interest Litigation: A Silent Revolution?*, (1985) 1 S.C.C. 1. For more on clinical education and Public Interest Litigation, see *infra* text accompanying notes 136-37.

¹²⁰ P. Chidambaram, Finance Minister of India, *Economic Times* (Mar. 1, 2005) available at <http://economictimes.indiatimes.com/search.cms>.

¹²¹ The Mission defines legal literacy as "legal education of people's rights; educating the citizens on their fundamental duties and legal obligations; education and awareness on the process of delivery of legal aid to the disadvantaged; provisions of legal aid; and empowering members of judiciary and lawyers community resulting in a holistic legal empowerment of communities and individuals." The Mission has identified its immediate beneficiaries as including children; minority communities; the landless farming community; Dalits (backward communities) and tribal communities; farmers hit by droughts and floods; trafficked girls and sex workers; victims of militancy; crime, disaster, and disease; and persons subject to child and bonded labor. See <http://causelists.nic.in/nalsa/>. See also the Prime Minister of India's address inaugurating the Mission, available at <http://pib.nic.in/release/release.asp?relid=7566>.

programs can help students in developing important organization, research, public speaking, and translation skills.¹²² And legal literacy campaigns require neither large financial resources nor special expertise.

Another option is for students to conduct legal research on welfare benefits provided under various social welfare schemes in order to identify the beneficiaries and to help them in submitting applications. Social welfare legislation can achieve its goals only when the people for whom they were advanced take advantage of them.¹²³ Assisting in this task is a key factor in carrying out the social justice mission of legal education as it will expose students to the plight of their country's poor and help them develop a sense of professional social responsibility.

Law schools can also establish legal aid cells where students and teachers can guide people in identifying their problems and make them aware of the remedies available to them.¹²⁴ Students in these cells can also provide paralegal services such as drafting affidavits, assisting in registration of marriages, births and deaths, electoral rolls, and filling out various forms. This type of work gives students ample opportunity to learn key interviewing, counseling, and drafting skills.

Another approach is for law schools to adopt a village and encourage students to conduct a survey to identify the problems that the people in that particular village face.

¹²² Most of the laws in India are in English. So students need to translate them in to the local language to disseminate legal information.

¹²³ See A .S. Anand, *From the Desk of the Executive Chairman*, available at <http://causelists.nic.in/nalsa/index.html>.

¹²⁴ Law schools can do this easily by associating with local governmental institutions, such as *Panchayats* and municipalities.

After identifying the problems, students can approach the concerned authorities and arrange a public forum. Often, local authorities are not responsive to local citizens' concerns, especially those from disadvantaged communities. The idea here is to inform villagers about the program and to encourage them to participate in the forum so that they can meet the concerned officers on that particular day and can settle their grievances in public. Students can be instrumental in the smooth functioning of the entire program, and they can follow up on particular matters with the concerned officers. These kinds of programs are very effective, as the officers have given an assurance publicly and thus it is less likely that they will follow the usual practice and not fulfill their promises.

Law schools also can encourage and train students in performing street plays, skits, and other public performances to promote legal literacy and to advertise their legal aid clinics. Various issues such as untouchability, gender discrimination, domestic violence, children rights, and environmental issues can be the subjects for such plays. Students can also go to nearby schools and educate school children about the legal issues that concern them. Finally, law schools can affiliate with various NGOs to widen the practical training opportunities for their students.

As noted earlier, the Bar Council of India's four practical papers—particularly Paper IV on legal aid—must be implemented with the goal of imparting the fundamental professional values and skills that the modern Indian lawyer needs in order to fulfill the social and professional responsibilities of the legal profession. They can thus be used to institutionalize clinical education, including as its social justice mission of providing a

quick and effective, competent, fair, and accessible legal system. A few examples—the operation of *lok adalats*, the provision of paralegal services at correctional facilities, and the various activities of legal aid cells at V. M. Salgaocar College of Law in the State of Goa—demonstrate how social-justice based clinical education can be institutionalized in India consistent with the implementation of the Bar Council's four practical papers. These examples also show that, at least for the time being, this can be achieved without major changes in the present setup of law schools and without significant additional financial support from either government or private organizations.

Lok Adalats

A *lok adalat* (People's Court) is an informal and voluntary dispute settlement process that operates outside the court system.¹²⁵ *Lok adalats* are aimed primarily at settling disputes at the pre-litigation stage, as well as more contentious pending matters in trial courts where the parties can be motivated to arrive at settlement only by repeated sittings. They can well be described as a modern official version of India's ancient

¹²⁵ *Lok adalat* settlement is no longer purely a voluntary concept. With the passage of the Legal Services Authorities (Amendment) Act 1994, *lok adalats* have statutory character and have been legally recognized. Thus, the Act creates authorities to organize *lok adalats* at the Central, State and Taluka levels, comprised of a sitting or retired judicial officer and other persons of repute as may be prescribed by the State government in consultation with the Chief Justice of the State High Court. (§ 19) Cases can be referred by consent of both parties to the disputes, where the Court is satisfied that the matter is appropriate to be taken cognizance of by the *lok adalat*. (§ 20) Settlements shall be guided by the principles of justice, equity, fair play and other legal principles; if agreement is reached by the consent of the parties and passed on by the conciliators, the award is final and the matter need not be referred back to the concerned court for consent decree; if no compromise is reached through conciliation, the matter shall be returned to the concerned court for disposal in accordance with law. (§ 21)

method of dispute settlement by *Nyaya Panchayats*.¹²⁶ The *lok adalat* movement was started in 1982 in the State of Gujarat and become a major source of reducing pending litigation before the courts.¹²⁷ Despite this success, however, they have come under some serious criticism as a form of lesser justice for the poor.¹²⁸

Law schools can take the initiative in organizing *lok adalats* with the help of the local bench and bar, as they are held across the length and breadth of India. As Prof. N. R. Madhav Menon has observed, *lok adalats* provide students a variety of educational opportunities and can be incorporated very successfully into law school practical training.¹²⁹ By studying *lok adalats* and participating in them, students gain a critical understanding of the proper role of lawyers in the legal system at the same time that they acquire professional skills.¹³⁰ Working with *lok adalats* also affords students the chance to learn most of the important values and skills necessary for modern practice in India, including many of those discussed earlier in Part III of this paper and in the MacCrate Report.¹³¹ For example, *lok adalats* are ideal for learning negotiation and counseling

¹²⁶ *Nyaya Panchayats* were informal bodies set up in rural areas in ancient India to settle disputes by negotiation, mediation and arbitration. These bodies were headed by the village Elders. See also supra, note 104.

¹²⁷ Government of India, Ministry of Home Affairs, available at <http://mha.nic.in/justi.htm>. According to National Legal Services Authority (NALSA), 72,038 Lok Adalats had been organized throughout the country by the end of June, 2000 and about 12 million cases had been settled. In 1999 alone, 15,198 Lok Adalats were organized and nearly 967,000 cases were settled amicably. R.C.Chopra, Member Secretary, National Legal Service Authority, *Legal Aid Movement in India – Its Development and Present Status*, at <http://causelists.nic.in/nalsa/index.html>.

¹²⁸ See supra, note 106 and accompanying text.

¹²⁹ N. R. MADHAVA MENON, LOK ADALAT IN DELHI: A REPORT FROM A LEGAL EDUCATION PERSPECTIVE 2 (1985).

¹³⁰ *Id.* at 21.

¹³¹ See supra, text accompanying notes 73-79, 93-110.

skills because they work only when both parties consent to participate. Students learn how to negotiate between parties and help them bring their causes to a conclusion.

In addition to these advantages, early exposure to the *lok adalat* system helps students adjust some of their general attitudes about the legal profession. *Lok adalats* have been viewed by practicing Indian lawyers as a threat to their practice, reasoning that if clients settle their dispute through *lok adalats*, which are faster than traditional dispute settlement, there will be nothing left for them to do. Through their direct involvement with *lok adalats*, students can experience the negative effect of this type of professional ethic, and will become more likely to accept alternative methods for settling legal disputes. More importantly, students are involved directly in improving accesses to justice and helping disadvantaged members of society, which opens them up to the wider roles of law in society and also gives them a sense of satisfaction and accomplishment.¹³²

Law schools can easily afford to involve students in *lok adalats*, as there is no financial burden. *Lok adalats* are conducted by the local, district and high courts. Organizing *lok adalats* in collaboration with the local bar and judiciary is a natural choice for law schools to impart social justice-based clinical education.

Paralegal services in correctional facilities

¹³² For the experiences of the students who participated in *lok adalats*, see N.R. MADHAVA MENON, *supra* note 129, at 10-13.

Another opportunity for law schools to impart social justice-based clinical education is by providing legal aid and other paralegal services to prisoners. Nearly 73% of inmates in India are awaiting trial, with many prisoners languishing in jails due to delays in filing police reports.¹³³ Often these prisoners are illiterate and poor, and are not able to pay bail bonds. In fact, many prisoners are detained far longer than they would have been had they been found guilty soon after their arrest. Even those willing to confess must wait until their case comes up for a hearing.

Law schools can have a significant impact on prison administration in India by providing basic legal help. In fact, the National Legal Services Authority has requested that State Legal Services Authorities set up legal aid cells in jails to provide prompt legal services to prisoners.¹³⁴ And as with *lok adalats*, this type of clinical experience can be provided at no significant additional cost to the law schools in cooperation with the relevant legal services and local prison authorities.

Through this work law students would have opportunities to acquire and practice skills such as interviewing, drafting, and fact finding techniques. It is also a golden opportunity for the students to learn how criminal administration works and what their responsibilities would be as public defenders, prosecutors, or even presiding officers. And by entering into the field in a real-world context, they will gain an understanding of the human side of the criminal process and perhaps even an understanding of the patterns and causation of crime.

¹³³ Dr. Justice A. S. Anand, *supra* note 111.

¹³⁴ R. C. Chopra, *supra* note 127.

Legal aid clinics in the State of Goa

With a strong desire to serve the society dually, by providing free legal assistance to the general public as well as by producing competent and socially sensitive legal professionals, V. M. Salgaocar College of Law started the “V. M. Salgaocar College of Law Legal Aid Society” in 1998. After prolonged discussions with faculty members, the principal of the college convinced the students to make it compulsory for all students to join. Today, the college’s legal aid society operates 35 permanent free legal aid cells all over the southwestern coastal state of Goa. The underlying ideology of legal aid cells is that legal professionals cannot live in ivory towers. They should not only see and sense social realities, but also direct their activities towards promoting social justice.

The Legal Aid Society works toward achieving its stated objectives in a number of diverse ways, including permanent free legal aid cells, mobile legal aid cells, paralegal services, and public interest litigation. These clinical projects implement directly Practical Paper IV, the paper on public interest lawyering, legal aid, and paralegal services. They also implicate, as is the case with *lok adalats* and prisoner paralegal services discussed above, much of the content of the other three papers—as well as most, if not all, of the values and skills that would be included in an India-modified MacCrate Report. Each of these is described briefly below, as well as some other projects of the college’s clinical program.

Permanent free legal aid cells. The Legal Aid Society's 35 permanent legal aid cells are setup and housed largely in *Panchayati* (county) buildings, schools, and church or temple premises, selected on the basis of availability and easy accessibility to the public. Students carry out an awareness campaign about the cell and the services they offer. In addition to releasing information through local media, the student groups visit every house and extend personal invitations. The cells, which are operated by a team of students, are open to the general public without limitation once a week, preferably on weekends. Any person having any sort of law-related problem can go to the legal aid cells; the students either provide legal advice or, when required, take positive action such as meeting the other party, filing an application before the concerned government officers, or securing free legal services for the client under the Legal Services Authorities Act. In addition to this, every legal aid cell carries on a sustained campaign for creating legal awareness by conducting village-level programs such as seminars, symposia, and talks by lawyers, police officers, presiding officers, and members of district consumer forums. The legal aid cell members also function in coordination with other NGOs and participate in any activity meant to advance the welfare of the local population.

The legal aid cells work not only with individual members of the community but also with the local administration. Thus, every legal aid cell member is required to attend the local *Gram Sabha*.¹³⁵ With the association of the *Sarpanch* (elected head of the *Panchayati*) and other *Panch* members, students are required to ensure attendance of the

¹³⁵ *Gram Sabha* is a mandatory meeting of elected member of *Panchayati* and residents of that village. This meeting is very important, as various policies of the village administration are discussed and also it gives residents an opportunity to interact, and discuss their problems, with the *Panchayati* members.

villagers at the *Gram Sabhas*. They also take notes of the proceedings of the *Gram Sabha*, which are kept in their journals and also supplied to the *Sarpanch* in order to ensure that whatever promises that were made are fulfilled.

Mobile legal aid cells. The mobile legal aid cells do not have a permanent setup but rather go to different places to educate the people on various legal and social issues. Groups of students regularly and systematically visit other colleges and schools, youth organizations, trade unions, and workers organizations to carry out awareness programs on various laws relevant to such groups. The main purpose of these cells is to bring to the attention of various groups those laws that affect them and to explain to them how they can be used to improve their lives. These awareness programs also serve to publicize the permanent legal aid cells.

Paralegal services. Members of the Legal Aid Society also perform a number of paralegal aid services. These include visiting jails, registering marriages, births, and deaths, obtaining ration cards, and preparing affidavits. Students also assist the public in preparing and filing various documents that are required for obtaining benefits under welfare schemes.

Public interest litigation. Student involvement in public interest litigation starts when they become sensitized to social justice issues in the course of regular lectures and at Legal Aid Society meetings. By this process of sensitization to the general social situation and the persistence of injustice in their own immediate society, students are able to identify various areas where they feel that the intervention of the judiciary might be

required. The faculty then guides them as to how they should further investigate or research the issue to ensure that there is a real situation of injustice and that a member of the public could genuinely be interested. Thereafter, the students are advised to write to competent authorities who are obliged under law to remedy the injustice. If such authorities do not provide relief, the students—with guidance from members of the profession—file a petition before the High Court together with all of the information that they had gathered concerning the problem. Public Interest Litigation operates in India under special rules that allow any member of the public to present the case. Therefore, if the litigation proceeds the students themselves argue the case before the court.¹³⁶

Students at V. M. Salgaocar College of Law have filed successfully 11 public interest litigations before the Mumbai High Court (Panaji Bench) on various issues ranging from the use of motorcycle helmets to violations of Coastal Regulation Zones.¹³⁷ This work has enabled them to develop sensitivity to social issues and an interest in researching matters of social importance. And, most importantly, it shows them—as they themselves are providing legal services to advance social justice—how lawyers and the law can and must function in a modern and socially just Indian legal profession.¹³⁸

¹³⁶ See *supra*, note 119 and accompanying text.

¹³⁷ See, e.g., Anjali Salkar and others v. State of Goa & another, Writ Petition (PIL) No: 446/2002 (correcting failure of state government to constitute a juvenile board under Juvenile Justice (Care & Protection of Children Act, 2003)); Dwijpal Patkar & others v. Mapusa Municipal Council & another, Writ Petition (PIL) No: 387/2003 (ensuring sufficient parking spaces in newly constructed housing apartments); Anand S. Kuwelkar & others v. Chief Secretary & others, Writ Petition (PIL) No: 562/2003 (persuading government authorities to take action against illegal shrimp farming); Shane Sapco & others v. State of Goa & others, Writ Petition (PIL) NO:354/2003 (striking down Goa Motor Vehicles Rules provision weakening mandatory helmet law for motor cyclists).

¹³⁸ Student involvement in public interest litigation has not been welcomed universally by senior lawyers and members of the judiciary. One of the main complaints is that students receive academic credit for

Other projects. In order to encourage students to be conscious of and concerned about existing legal and social issues, every year the faculty identifies an area or legal issue that needs to be addressed. After deciding on the topic, two or three faculty members are chosen to formulate student teams that will study, research, and investigate the chosen topic. The students are guided by the faculty at every stage of their project. Toward the end of the academic year, the students' findings are presented in a research paper at a state level law seminar. These projects provide students with obvious opportunities to develop critical research and writing skills aimed directly at matters of social justice. Moreover, the projects produce concrete results. Thus, a seminar on consumer protection law, for which the Law Secretary was the Chief Guest, resulted in the setting up of a regular Consumer Forum at the District level; a seminar on human rights of children, at which many NGOs participated, prompted the government of Goa to enact a comprehensive law for the benefit of children; a seminar on human rights of women, which was presided over by the then Secretary for Child and Women Welfare, resulted in a group of recommendations on the working condition of nurses that were accepted by the Government of Goa.

The example of the Legal Aid Society at V. M. Salgaocar College of Law—despite all of the current constraints on implementing clinical legal education in India, including prohibitions on representation of clients by students and faculty—demonstrates

their work on public interest litigation, which is seen as an improper external incentive. However, they do not realize that academic credit is only an incidental incentive to the students. Moreover, they fail to recognize the value of having students bring instances of injustice to the notice of the judiciary, which is, ultimately, what lawyers and the judiciary are charged to do.

the viability and effectiveness of using a social justice-centered clinical program to implement the four practical papers mandated by the Bar Council of India, but it is not an ideal model. Both faculty and students must work on weekends, and faculty supervise the various projects without any expectation of financial benefit and without compromising their teaching hours. Further, the college has no additional funding for the projects themselves, either from the government or from private organizations. Every student member pays a membership fee to finance all activities of the Legal Aid Society.

Conclusion

Legal education is both professional and liberal.¹³⁹ As professional education, it needs to impart professional skills; as liberal education, it should aim at providing value- and social justice-oriented education. In other words, legal education's ultimate mission is to transform law students into socially sensitive, justice-oriented legal professionals.

Although the broad aim of legal education is social justice, its particular aim differs from country to country and society to society. The particular social justice aim of Indian legal education is to provide a fair, effective, competent, and accessible legal system to the citizens.

As discussed in Part II, India's broadly defined concept of legal aid provides Indian law schools a unique opportunity to achieve the social justice mission of legal

¹³⁹ N.L. Mitra, *supra* note 22.

education. However, this noble mission has remained a distant dream. The euphoria of the 1960s and 1970s about the ideal role of law schools in providing legal aid had withered away by the 1980s. Various efforts to revive this ideal and to reform legal education have not succeeded in arresting the decline of standards in legal education. These developments finally led the Bar Council of India to introduce clinical legal education as a mandatory component in the law school curriculum by way of four mandatory practical papers.

As discussed in Part III, the Law Commission of India's recent recommendations on clinical legal education drew on at the American Bar Association's MacCrate Report. Although the MacCrate Report can be used as a model to identify values and skills suitable to Indian conditions, a tentative listing of which is presented in this paper, a full Indian MacCrate-style report is needed to identify those fundamental values and skills appropriate to the Indian legal profession—and, by extension, to a reformed curriculum and methodology for legal education.

Preparing an Indian MacCrate-style report will not be a simple task. In the meantime, law schools can use the opportunities created by the Bar Council in introducing the four practical papers to enhance clinical legal education and to accomplish legal education's social justice mission to a substantial degree. As demonstrated in Part IV, the opportunities exist in India already to achieve the broadest educational goals of the practical papers through a social justice-based clinical curriculum. Certain projects already undertaken at law schools, such as introducing *lok*

adalats into the curriculum and setting up legal aid cells such as those operated by the V. M. Salgaocar College of Law, are relatively simple and have the potential of addressing virtually all of the values and skills that are advocated in this paper.

But more is needed to fully institutionalize social justice-based clinical legal education—and for Indian society to obtain the benefits of a reformed legal profession. Law schools need financial and intellectual support from the bench, the bar, and the government. It is true that law schools are the starting point for establishing a legal profession that provides social justice, but the bench and the bar also have an obligation to shoulder this responsibility. The bench can participate by allowing internships and clerkships; the bar by involving practicing lawyers to teach and monitor clinical programs; and the government by amending The Advocates Act, 1961 to allow students and faculty to represent clients in *pro bono* cases. Each of these is an immediate concern for the successful implementation of clinical legal education's mission of social justice. In addition, there must be a consensus—consistent with the recent reforms and pronouncements of the Bar Council and the Law Commission of India—to identify the fundamental values of the legal profession together with skills necessary to achieve those values. Only then can clinical legal education focus fully on the broader goal of teaching social justice and providing socially relevant learning experiences.

APPENDIX 1

Detailed syllabus and scheme of evaluation of four practical papers introduced by Bar Council of India

PRACTICAL PAPER I: Moot Court, Pre-trial Preparations and participation in pre trial proceedings.

This paper will have three components of 30 marks each and a viva for 10 marks.

a) Moot Court (30 marks)

Every student will do at least 3 moot courts in a year with 10 marks for each. The moot court work will be on assigned problems and it will be evaluated for 5 marks for written submissions and 5 marks for oral advocacy.

b) Observance of trial in two cases, one civil and one criminal (30 marks)

Students will attend two trials in the course of the last 2 or 3 years of LL.B. studies. They will maintain a record and enter the various steps observed during their attendance on different days in the Court assignment. This scheme will carry 30 marks.

c) Interviewing techniques and pre trial preparations (30 marks)

Each student will observe two client interviewing sessions of clients at the lawyer's office / legal aid office and record the proceedings in a diary which will carry 15 marks. Each student will further observe the preparation of documents and court papers by the Advocate and the procedure for the filing of the suit / petition. This will be recorded in the diary, which will carry 15 marks.

d) The fourth component of this paper will be viva voce examination on all the above 3 aspects. This will carry 10 marks.

Teaching must focus on building up the students' skills of analysis, language, drafting and argument. Teachers must bear in mind that while most of the students may choose a professional career as a lawyer, some others may choose a judicial career or career as a legal consultant or law officer in government or an academic career.

PRACTICAL PAPER II: Drafting, Pleading and Conveyancing.

This course will be taught through class instructions and simulation exercises preferably with assistance of practicing lawyers/retired judges. Apart from teaching the relevant provisions of law, the course will include 15 exercise in drafting carrying a total of 45 marks and 15 exercises in conveyancing carrying another 45 marks (3 marks for each exercise)

a) Drafting:-

General principles of drafting and relevant substantive rules shall be taught.

b) Pleadings:

Civil

(i) Pleint

- (ii) Written Statement
- (iii) Interlocutory Application
- (iv) Original Petition
- (v) Affidavit
- (vi) Execution Petition and
- (vii) Memorandum of Appeal and revision
- (viii) Petition under Article 226 and 32 of the Constitution of India.

Criminal

- (i) Complaints
 - (ii) Criminal Miscellaneous petition
 - (iii) Bail Application and
 - (iv) Memorandum of Appeal and Revision
- c) Conveyancing:
- (i) Sale Deed
 - (ii) Mortgage Deeds
 - (iii) Lease Deeds
 - (iv) Gift Deed
 - (v) Promissory Note
 - (vi) Power of Attorney
 - (vii) Will

The remaining 10 marks will be given in a viva voce examination which will test the understanding of legal practice in relation to Drafting, Pleading and Conveyancing.

PRACTICAL PAPER III: Professional Ethics, Accountancy for Lawyers and Bar Bench Relations

This course will be taught in association with practicing lawyers on the basis of the following material:

- a) Mr. Krishnamurthy Iyer's Book on Advocacy
- b) The contempt law and practice
- c) The Bar Council Code of Ethics
- d) 50 selected opinions of the Disciplinary Committee of the Bar councils and 10 major judgments of the Supreme Court on the subject.

As part of this practical paper, the students are required to attend a lawyer's office for 30 working days as a trainee and submit a detailed report of the work done or observation made in their journal which should be duly certified by the lawyer whose office they have attended. Those students who do not intend to enter the profession but would like to take up employment in the fields relating to law may opt to undertake the training with any of the industries or large trading houses wherein they are expected to study the legal process involved in the establishment of such an organization and their day to day working in

terms of the legal aspects and issues. Their observations and findings should be recorded in the journal in the form of a project report.

In lieu of the written examination, colleges may be encouraged wherever appropriate to give students seminars and projects where they are expected to research and write persuasive memoranda on topics identified in the above subjects.

PRACTICAL PAPER IV: Public Interest Lawyering, Legal Aid and Para-legal Services.

This course carrying 100 marks will have to be designed and evaluated according to local conditions by the College in consultation with the universities and State Bar Councils. It can be taught partly through class room instruction including simulation exercises and partly through extension programs like Lok Adalat, Legal Aid Camp, Legal Literacy and Para-legal Training. The course should also contain lessons on negotiations and counseling, use of computer in legal work, legal research in support of public interest litigation, writing of case comments, editing of law journals and law office management. The marks may be appropriately divided to the different programs that each University might evolve for introduction in the Colleges under its control. For example at Goa University 50% of the marks will be allotted to Legal Aid and related work done by the students during the first three years. In order to give the students adequate training, the teaching program for the practical papers will be carried out simultaneously along with the teaching program for the theory papers. Students are expected to maintain a journal for each of the practical paper separately and keep a proper record of their activities, attendance at courts, office of the lawyer, legal aid cells, public interest work undertaken in the respective journals. These journals have to be certified and endorsed from time to time by the faculty member in charge as notified by the College. These journals have to be submitted for assessment and viva before the end of the last semester as per the time schedule notified by the College/University.