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LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT OF FUTURE JUDGES : ROLE OF LAW SCHOOL

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PREFACE

It is axiomatic that the success of a profession lies in the individuals that comprise it. The nature of legal profession is largely public oriented. The services rendered by the law graduates to the society depend on their legal education and training. The disjunction between legal education and the legal profession needs early attention in order to rectify any lacunae in the legal system of the land.

The field of legal education reforms has been traversed by many academicians yet there remain some corners unmapped and unexplored. Around the world, the reforms in legal education have been talked about and discussed largely by several committees and reports in relation to address the inadequacies of curriculum to train practice -ready lawyers. The need for the professional development of future judges is almost essential to be looked upon.

The importation of the English legal system in India with the British regime also brought with itself the foreign methods of legal education whose primary aim remained to impart information about the static view of law rather than developing critical understanding. The insulated nature of the legal education imparted in the law schools revolving around the legal theory, statutory interpretations and judgments sans any human interactions fail the objective of this profession. There is greater need to recognise the integral nature of access to justice and legal education in order to secure the day-to-day legal needs of the ordinary people.

The edifice of legal education is built around the amalgamation of legal theory, legislative texts and judicial pronouncements. They must be interwoven whenever the status quo is unsettled in order to attain the needs of the transformative society keeping in view the spirit of social-context judging. Legal thinking is not a matter of education alone but something that needs to be inwardly appropriated through experiential learning. The course curriculum based on the integration of theory with practice provides an opportunity to the law students to view the ways in which law operates in society. Therefore, the attempts to include the practical component in the forms of moot court exercises, client counselling competitions, internships and legal aid clinics need a renewed look.

This report titled, "Legal Education and Professional Development of Future Judges" is a modest attempt to initiate a discussion around reshaping legal education. The best way to attain that is by merging the academic discipline and professional development. In order to inculcate the ethical and professional responsibilities in the future judges, arguments are advanced in this report to adopt "justice education" in law school curriculum which comprises of the introduction of courses focussing on building the attributes essential to becoming a judge. With the above in mind Judicial Academy, Jharkhand has carried out a study of international practices and global jurisprudence to ensure reforms in legal education and professional development of future Judges.

On behalf of the Judicial Academy, Jharkhand I owe a deep debt of gratitude to Hon'ble the Chief Justice-cum-Patron in Chief, Judicial Academy, Jharkhand for His Lordship's unwavering support towards developing the Academy as a centre of judicial research. I am further honoured to express my gratitude towards Hon'ble Justice Shree Chandrashekar, Judge, High Court of Jharkhand- cum-Judge In-Charge, Judicial Academy, Jharkhand under whose able guidance the idea to undertake this project germinated. On behalf of the Judicial Academy, Jharkhand we feel privileged to be under His Lordship's tutelage.

It is my privilege to extend my sincerest gratitude towards the Hon'ble members of the Executive Committee, Hon'ble Mr. Justice Sujit Narayan Prasad (Judge, High Court of Jharkhand), Hon'ble Mr. Justice Ratnaker Bhengra (Judge, High Court of Jharkhand) and Hon'ble Mr. Justice Rajesh Shankar (Judge, High Court of Jharkhand) for their Lordships' inputs which were of critical importance in the unhindered completion of the report.

The suggestions from Mr. Rajesh Kumar (Additional Director-I) and Mr. Onkar Nath Choudhary (Additional Director -II) of the Judicial Academy, Jharkhand have greatly benefitted the articulation of this report.

The enthusiasm and hard work of the research team comprising of Mr. Achhat Srivastava (Administrative Officer), Mr. Abhijeet Tushar (Research Scholar) and Ms. Isha Anupriya (Research Scholar) has made an immense contribution towards the conceptualisation of the report. The efforts of Mr. Abhijyot Sahay (Legal Researcher) in collating and discussing the global position regarding legal education in the report are also worth mentioning.

Last but not the least, there are many who deserve appreciation for putting together the report in its final form.

CHAPTER - I

INTRODUCTION

"The more I read, the more I acquire, the more certain I am that I know nothing."
-Voltaire

By its very definition, education is the process of facilitating learning and acquiring knowledge, skills, and values that lead to personal development. It is imperative then that we understand legal education as a continuous process of self-evolutions and bridge gaps that may exist between where we are and where we wish to be. Plato understood education to be a means to achieve justice, both individual and social. It is self-evident then that the study of law is the study of the development of human civilization and the progress of society through it.

The role of the judiciary as a pillar of democracy in a modern developing country such as India is vital to the nation's place on global platforms. The range and scope of legal education must then expand to include aspects critical and relevant to not just lawyers but also those who aspire to find a different place in the world of law and, instead of practicing law, choose to preside over it. Therefore, it is essential that we undertake the education and development of future judges as a matter of utmost importance, for they will stand tomorrow at the helm of affairs as guardians and protectors of the rights and liberties of our citizens.

The entire edifice of legal system of the land is built around legal education. It is the stepping stone to have well trained legal professionals who have the necessary skill set to understand the enactment, enforcement and interpretation of the laws. In order to reduce the inequalities in status and opportunity, legal education becomes a precursor for ensuring justice-social, economic and political, the three preambular concepts.

The significance of legal education was well defined by the Plato, who tells us that, "of all kinds of knowledge, the knowledge of good laws may do most for the learner. A deep study of the science of law, he adds, may do more than all other writing to give soundness to our judgment and stability to the state." Significance of legal education was further explained by Roscoe Pound, Dean of Harvard Law School in 1923, as "if we are to do our duty by the common law in the 20th century, we must make it a living system of doing justice for the society of today and tomorrow, as the framers of our polity made of the traditional materials of their generation an instrument of

justice for that time and for ours."Although his words resonate nearly a century later,but missing are three other possibilities regarding the value of legal education:

- To assess, critique, and improve laws and legal institutions;
- To train those who pursue careers based on legal training, which may mean work as lawyers and judges; leaders of businesses, civic institutions, and political bodies; legal academics; or entrepreneurs, writers, and social critics; and
- To advance the practice in and study of reasoned arguments used to express and resolve disputes, to identify commonalities and differences, to build institutions of governance within and between communities, and to model alternatives to violence in the inevitable differences that people, groups, and nations see and feel with one another.

The themes and issues for legal education have persisted for more than a century. The linkage of same find elaboration in case of State of Maharashtra Vs. Manubhai Pragaji Vashi, (1995) 5 SCC 730, wherein the Hon'ble Supreme Court of India emphasized theneed for a continuing and well-organised legal education, as "The need for a continuing and well-organised legal educationis absolutely essential reckoning the new trends in the world order, to meet the ever-growing challenges. The legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late there is a fall in the standard of legal education. The area of 'deficiency' should be located and correctives should be effected with the cooperation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right matters."

Therefore, it is equitable justice that should remain the locus of the law school curriculum if the country has to usher into a welfare state. Like Law itself, Law schools have the capacity to retain traditions and to enable change, to protect reliance on past practices and laws and also to inspire reforms.

Legal education has long immersed students in the task of recognizing competing values such as freedom and security, fairness and efficiency, and predictability and individualized justice in the context of particular issues or as systematic concerns.54 To address these and other questions, legal education since World War II has increasingly drawn upon other disciplines. These include microeconomics, behavioral economics, history, political science, decision analysis, philosophy, psychology, and organizational behavior. These and other disciplines inform legal scholarship and even what it means to "think like a lawyer."

The use of other disciplines risks pulling legal education away from practice and toward theoretical inquiries. Pushing toward practice and service, on the other hand, is the rise of clinical education in law schools, a substantial trend over the past sixty years. Several schools, including Harvard, had developed programs offering legal services for the poor as early as 1913 but did not include such programs in the instructional and credit-bearing work of legal education In the 1960s, some law schoolsbegan to develop clinics as a part of legal education, similar to teaching hospitals, while elevating attention to poverty, racial and gender discrimination, and access to justice. Clinical legal education offers students a chance to engage in public service with more time and opportunity for instruction than many practice settings afford. For law schools themselves, clinical education requires committing instructional resources and space and linking the schools to communities and clients with needs.

As legal education turned to strengthen attention to theory, practice, ethics, and students' personal development, the purview of law schools expanded from courts, legislatures, agencies, and physical spaces to virtual reality, political organizing, economic and social change, and efforts to shape individual behavior.64 Continuously present, though, is the focus on reasoned argument, addressing objections and disagreements with evidence and logic while seeking to persuade.

Legal education has changed considerably over the past 200 years, and changes will likely not only continue but also accelerate. Developments in society, technology, and politics provide topics, pressures, and resources to fuel changes. Consider the transformations ushered inthrough information technology and digital tools; the biomedical revolution, including genetic breakthroughs, biotechnology, and nanotechnology; globalization, integrating economies, professions, cultures, and even biological and computer viruses through worldwide networks of exchange; resource scarcity and global climate change; and the demographic changes of mass population

growth and migrations of people due to economic, political, and climate-related challenges.

These shifts generate fundamental questions whose answers will alter the shape of the human experience. The topics addressed in law schools, the nature of day-to-day activities in legal education, and the very people engaged in the work reflect these changes. Lawyers will play indispensable roles in tackling the issues raised by these developments and harnessing opportunities to secure orderly change and enhance human welfare.

Even more striking than the persistence of the case method are the continuous struggles in legal education over how to balance theory and practice, how to prepare lawyers who serve paying clients versus those who cannot pay, and how to both critique and strengthen law and the legal profession. The influence of the business model of law schools and the business model of legal service delivery cannot be dismissed. Who has access to enter the legal profession, how much the profession and the law schools think about interests other than those of paying clients, and whether students perceive opportunities to do good as well as to do well, will be shaped by the terms of financial aid, loan forgiveness, and other funding to cover the costs of legal education.

The current status of legal education in India needs some reflections and the limitations too need to be recognised in terms of the values and skills imparted to them for being "practice ready" or "profession ready." The Singapore Declaration on Global Standards and Outcomes of a Legal Education provides the skills a law graduate should possess in the following manner:

I. General academic skills, including critical analysis and reasoning;

ii. Researching, reading and analysing legal materials;

iii. Problem solving, planning and strategizing how to comply with legal requirements; and

iv. Constructing a legal position and effectively communicating (orally and in writing) within a legal context

However, if we turn to the law schools' curriculum, it becomes apparent that the law graduates in India are taught to become legal professionals such as lawyers, legal

officers, judicial officers, corporate lawyers and academicians by undertaking the study of the same law curriculum. This may sometimes result in hampering the specific skill set required for a particular professional role. When we talk about the role Judicial Officers play in the society as the adjudicators of disputes, as the initial point of contact between the aggrieved party and the justice delivery system, the short sightedness of such training becomes apparent.

Keeping this in perspective, State Judicial Academies were established to provide judicial education to in- training officers on a continued basis. However, at present the eligibility requirement to become a Civil Judge (Jr. Division) does not differentiate between fresh graduates and the person having experiences at the Bar. Therefore, it becomes a daunting task for the Academies to bring the fresh graduates at par with those having experiences through on -the- job training scheme in a short duration of 1 year training period. After the training period is over, they are then granted the charge of dispensing justice. It is in this light that the role and functions of law schools in shaping the minds and personality of future judges assumes immense significance.

Prof. (Dr.) NR Madhava Menon while delivering a lecture[1] suggested the following strategies in organizing instruction both in the law schools and in the community during the five year period the student is at the Law School:

"(a) Every professional Law School interested in the alternative model of justice education should establish a Legal Practice Incubation Clinic (LPIC). The main function of LPIC is to organize experiential learning or learning through practice during the final year of law study transforming the students from being mere law graduates to justice providers with appropriate skills, attitudes and ethics.

(b) The taught subjects (compulsory and optional) in the law curriculum should be completed in the first four years at the Law School. The optional subjects should be grouped in appropriate cluster so that the students are helped to select the subjects relevant to the type of legal practice of their choice. (eg. Corporate legal practice, litigation practice, ADR practice, rural/tribal legal practice, etc.).

1. https://www.legallyindia.com/lawschools/prof-madhav-menon-asks-to-split-law-courses-law-unis-to-step-up-more-in-dsnlu-foundation-day-speech-20161004-8017

(c) Students who want to join corporate legal practice will be spending the final year of their study not in law school but in a law firm learning the skills and ethics according to the design developed by the law school in consultation with the firms concerned. On satisfactory completion of this year-long practical training, students will receive the LLB degree along with a certificate on Corporate Legal Practice.

Similarly, those who are interested in litigation practice will be accordingly placed for the whole year in the office of senior advocates on a planned curriculum of practical training and will be conferred a certificate in litigation practice along with LLB degree. Those who are interested in a career of mediation or arbitration will accordingly learn the skills, attitude and ethics required under the guidance of experts in the respective fields and will have a certificate of ADR practice along with LLB degree.

(d) An innovative contribution of this alternative model is producing justice providers competent to provide appropriate legal services to the rural and tribal communities.

The Legal Practice Incubation Clinic will encourage students inclined to become community lawyers in rural and tribal habitations to take subjects like land law, water law, forest law, co-operative law, natural resources law, consumer law, laws on micro-credit, agricultural law, IPR on traditional knowledge etc. which are related to the justice needs of the rural and tribal people. In the final year, students will be helped to work on their own in rural/tribal areas with support of local bodies, legal aid committees and NGOs as most of the problems of rural/tribal people can be remedied through administrative advocacy. These students can be provided with stipends mobilized by the law school LPIC from law firms as part of their corporate social responsibility. Once they are so helped for 2 or 3 years, they settle themselves as justice providers and community lawyers in the area giving both preventive and remedial legal services. They will be conferred a certificate on Rural Legal Practice along with LLB degree. With Gram Nyayalaya and LokAdalats in place, these people will provide access to justice to those who are still outside the formal justice system.

> This new model of legal education has potential in generating specialization in the profession leading to improvement in the standard of services provided. Along with specialization, attitudinal changes required for professionalism and ethical conduct will also be acquired. Apart from enhancing access to justice, it will provide opportunities for law graduates to understand social realities and learn by themselves the larger role that lawyers play in social engineering and legal development."

The need for the introduction of judicial training curriculum at the Law Schools has its resonance in a paper titled "The Role of Law Schools in Educating Judges to Increase Access to Justice"[2] . This paper states in the context of India that the law schools focus more on producing lawyers than the judges as the activities of law schools are regulated by the Bar Council of India and is bestowed with the duty to maintain standards of law schools and determining the courses to be taught in the law schools. Therefore, the BCI Rules of legal education provides compulsory clinical courses to be studied at the Law Schools such as Drafting, Pleading and Conveyancing, Moot court exercises and internships, Professional ethics and Professional Accounting system, Alternate Dispute resolution, the focus of which remains at developing skill sets as a lawyer rather than as a judge.

There is a huge difference in the professional and ethical responsibility of a lawyer and a judge. While the lawyer, being officers of the Court are there to assist the Court in reaching a just decision, the judges themselves are endowed with the duty to dispense justice. The Bangalore Principles of Judicial Conduct, 2002 enlists the six core values of a Judge which are as follows: independence, impartiality, integrity, propriety, equality, competence and diligence. Being in the position of a judge requires the development of "objective and creative thought" which is a precondition for the success of our justice delivery system. These core values do not find any mention in the curriculum prescribed by the BCI Rules of legal education.

At present, there is no legal pedagogy except the one adopted recently by the MNLU, Nagpur (whose success is yet to be seen) which emphasises on training future judges. The practice of adopting clinical legal education is also scattered and they

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2. Buhai, S.L., Kumari, V., Omaka C., A., Rosenbaum, S.A., Routh, S. & Taylor, A. (2011). The Role of Law Schools in Educating Judges to Increase Access to Justice. Pacific McGeorge Global Business & Development Law Journal, 24(1), 161-199. https://scholarlycommons.pacific.edu/globe/vol24/iss1/10/

are very few Law Schools/Universities having a functional Legal Aid committee/Centre. Therefore, it is the need of the hour to develop a training curriculum for future judges in the law schools itself in order to bridge the gap between theoretical training and skill sets such as ethics, discipline, integrity along with case management, social context judging, arriving at conciliation between the parties to remedy a situation which are some of the qualities required as a judicial officer.

Also, in the present context, where full time teachers are restricted from practicing before the courts, it becomes almost an impossibility to train future judges in the court crafts. If ever, they are called to impart training to the judicial officers at the State Judicial Academies, they remain unaware of the practical difficulties faced by the judicial officers related to a matter and the critical analysis of law, principles and doctrines by the law teachers, are of little help to those officers who are bound by the precedents of the higher courts. In this regard, Prof. (Dr.) Shamnad Basheer had moved a petition arguing against the rule barring the academics from practicing in the courts.[3]

Within this contextual backdrop, the Judicial Academy Jharkhand has undertaken this study titled **"LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT OF FUTURE JUDGES": ROLE OF LAW SCHOOLS.**

3. https://www.barandbench.com/apprentice-lawyer/active-engagement-with-practice-enables-legal-academics-to-be-better-teachers-prof-shamnad-basheers-petition-to-bci

CHAPTER - II

LEGAL SYSTEM AND LEGAL EDUCATION IN INDIA : TRACING THE JOURNEY FROM PAST TO PRESENT

"In some respect, the judicial system of ancient India was theoretically in advance of our own today."

John W. Spellman in his book
"Political Theory of Ancient India"

Significance of Legal Education

The law commission of India defines 'Legal education as a science which imparts to students knowledge of certain principles and provisions of law to enable them to enter the legal profession'. Law, legal education and development have become inter-related concepts in modern developing countries. The main function of the legal education is to produce lawyers with social vision. However, in modern times legal education should not only produce lawyers, it should be regarded as a legal instrument for social design. The significance of legal education in a democratic society cannot be over-emphasized. Knowledge of law increases one understands of public affairs. Its study promotes accuracy of the expression, facility in arguments and skill in interpreting the written words, as well as some understanding of social values. It is pivotal duty of everyone to know the law. Ignorance of law is not innocence but a sin which cannot be excused. Thus, legal education is imperative not only to produce good lawyers but also to create cultured law abiding citizens, who are inculcated with concepts of human values and human rights. According to Justice. Krishna Iyer, 'Profession of law is a noble calling and the members of the Legal profession occupy a very high status.' Law is the foundation of every society and it develops abiding citizens, lawyers, academicians and aspiring judges. Legal education in India refers to education of lawyers before their entry into practice. In a welfare society law plays a very important role in every affair of human being. Law serves as an important instrument to achieve socio-economic development. Today law is not viewed merely as an instrument of social control but also an instrument of social change. The aim of legal education should be not only to produce good lawyers but also create cultured, law abiding citizens who are inculcated

with concepts of human values and human rights who can serve humanity in various capacities such as, administrators, law teachers, jurists, judges, and industrial entrepreneurs etc. As far as creation of good advocates and solicitors is concerned, the legal education should aim at equipping them with legal techniques and professional skills.

A well administered and socially relevant legal education is a sine qua non for a proper dispensation of justice. Giving legal education a human face would create cultured law abiding citizens who are able to serve as professionals and not merely as business men.

The quality and standard of legal education acquired at the law school is reflected through the standard of Bar and Bench and consequently affects the legal system. The primary focus of law schools should be to identify the various skills that define a lawyer and then train and equip its students with requirements of the field of law. Besides that, **apart from the above motive of legal education it is a matter of concerned that the Judges are also being selected among the law graduates or among the legal professionals.** Since after recommendations of First National Judicial Pay Commission (Shetty Commission Report, 1999) the mandatory three years experience of Bar of the aspirants of Judicial service has been waived off and under the principle of 'young one to catch' now fresh law graduates having no working experience either in bar or in any organization are also being selected as Judges. So now it is an incumbent duty casted upon the law schools to design their course and curriculum which gives us special practical trainings to the students aspiring to be future Judges.

History of Legal Education

Historically speaking, legal education traces back to ancient period, where the kings and princes were given teachings about dharma and nyaya. Legal historian's record instances of legal practitioners indigenously known as 'Pleaders' or 'Niyogis' representing parties in litigation at least from the time of Manu Smriti. There are difference of opinion on the exact role these 'lawyer' played in ancient times and whether they aware at all organized as a profession. Legal system in India is the natural outcome of its deep roots in ancient Indian traditions. It has existed in India from the dawn of Aryan civilization. But there are different viewpoints in the matter of legal education in ancient India.

In ancient India law was understood as a branch of Dharma. It is difficult to draw

a distinction between secular law and religious ordinances in Ancient India. The Vedas were the original sources of law, and the Smritis announced the message of Vedas and Smritikars were great jurists. Smritikars, commentators and Nibandhakars [essayists] were the legal guardians of law. King made laws were also interpreted, thus, the commentators were virtually law-makers. Sadachara, custom, Nyaya or Yukti were the base of legal process in Ancient India.

The concept of dharma, in the Vedic period, can be seen as the concept of the legal education in India. Although there is no record of formal training in law, the dispensation of justice was to be done by the king on the basis of a self-acquired training. Justice was also administered by the King through his appointees who in turn were persons of known integrity and reputation of being fair and impartial. The guiding force for the King or his appointee was the upholding of the Dharma.

The legal system of ancient India was well developed as described from the text like *Vedas, Smritis , Purans, Shrutis, Rajshashanadesh etc.* reveals about a systematic establishment of justice delivery system which was not only rules the people but the king being a State, were also be guided. Before going through the details of ancient legal system, the key words of that system are worth to know like *Dharma* (law), *Vyavahar* (place where dispute of two persons are adjudicated), *Shrutis* (stands for universal eternal and fundamental principles) *Smritis* (stands for a group of values derived from these principles and finding their expression in field of social life), *prang nayaya* (res judicata) etc.[4]

The concept of *Dharma* which ruled Indian civilization from Vaidic period upto Muslim invasion bound the king as well as the last person of the society. The word *Dharma* is derived from 'Dhr' to mean to uphold, sustain or nourish. Taittirya Upnishad uses 'Satya' and *'Dharma'* as 'Satya Vadha *Dharma* Chara' means speak truth and follow the law.

As per Manusmriti, there were ten essential rules for observance of *'Dharma'* as: patience (Dhriti), forgiveness (Kshma), piety or self control (Dama), honesty (asteya), sanctity (Shauch),control of senses (Indriya-Nigrah),reason (Dhi), knowledge of learning (Vidya), truthfulness (Satya) and absence of anger (Krodh). Besides that non-violence, non-coveting, purity of body and mind are also the essence of *Dharma.* Therefore, *Dharma* was the law which governed not only the individual but also to the society at large.

4. Justice M. Rama Jois, Legal and Constitutional History of India: Ancient Legal, Judicial And Constitutional System (2014).

Dharma generally means principle of righteousness.*'Dharma'* has two aspects one is Sanatan *Dharma,* which is for all individuals forever whereas another one is 'Yuga *Dharma'* which is valid and followed by the people during a particular age/era. The *Smritis* themselves recognize these principles of social changes as Manu *Smriti* reveals that there was one set of *Dharma* in Kritayuga, a different set of each of Tretayug, Dwapara and Kalyuga. Basically, Sanatan *Dharma* makes rooms for essential changes without any violent break in social hereditary and stress conflict and confusions will have to be faced when truths of spirit are permanent the rules changes from age to age. Basically, *Dharma* is unique blend of rigidity and flexibility which protects eternal principles and accepts continued valid traditions.

According to the *Smritis,* one of the most important and obligatory functions of a king was Administration of justice. The *Smritis* stressed that the very object with which the institution of 'kingship' was conceived and brought into existence was for the enforcement of *Dharma* by the use of the might of the king (State) and also to punish individuals for contravention of *Dharma* and to give protection and relief to those who were subjected to injury and in whose favour *Dharma* (law) lay. The *Smritis* greatly emphasized that it was the responsibility of the king to protect the people through proper and impartial administration of justice and that alone could bring peace and prosperity to the king as well as to the people. Any indifference towards this important function of the king, the *Smritis* cautioned, would bring calamity to the king himself and to the people as well.

In ancient India, the king (State) himself was also subject to *Dharma* (law) and concept of use of arbitrary power was unknown to Indian Political theory and jurisprudence. The king's right to govern was subject to the fulfillment of duties and breach of which resulted in forfeiture of kingship. The Judges were independent and subject only to the law. The ancient India had the highest standard of any nation of antiquity as regards the ability, learning, integrity, impartiality and independence of the judiciary and these standards have yet considered as paramount consideration for a Judge and the judicial system.

Disputes were decided essentially in accordance with the same principles of natural justice which governed the judicial process in the modern State today. The rules of procedure and evidence were similar to those followed today. The supernatural modes of proof like the ordial were discourage. In criminal trials, the accused could not be punished unless his guilt was proved according to law. In civil cases, the trial consists

of four stages like any modern trial and plaint, reply hearing and decree. Doctrine of res judicata (prang nayaya) were familiar to Indian jurisprudence. All trials civil or criminals were heard by a Bench of several Judges and rarely by a Judge sittings singly. The decrees of all Court except the Court of king were subject to appeal or review according to fix principles. The fundamental duty of the Court was to do justice "without fear or favour".The concept of judgment to be free from bias which is ultimate concept of principle of natural justice was also prevalent in ancient Indian society as in Sukraniti IV-5-14-15, it is stated that:

पक्षपाताधिरोपस्य कारणानि च पञ्च वै।
रागलोभभयद्वेशा वादिनोच्श्र रहष्श्रुतिः।।

There are five causes which give rise to the charge of partiality[against the judge]. They are: [i] Raga [affection in favour of a party][ii] Lobha [greed], [iii] Bhaya [fear], [iv] Dvesha [ill-will against aparty]; and [v] Vadinoscha Rahashrutihi [the judge meeting andhearing a party to a case secretly]. [Sukraniti IV-5-14-15].

Regarding the appointment and qualifications of a Judge, the ancient Indian scriptures [*Nar.* p. 36-4-5 (*Dharmakosa* p. 43)] state the following :-

व्यवहारेशु धर्मेशु योक्त्व्याष्च बहुश्रताः।
प्रमाणज्ञा महीपाल न्यायषास्त्रावलम्बिनः।।
वेदार्थतत्वविद् राजन् तर्कषास्त्रबहुश्रुताः।
मन्त्रे च व्यवहारे च नियोक्तया विजानता।।

"A person who is (i) well versed in Vyavahara [laws regulatingjudicial proceedings] and Dharma [law on all topics], (ii) aBahushruta [profound scholar] (iii) a Pramanajna [well versed in thelaw of evidence], (iv) Nyayasastravalambinah [law abiding] and (v)has fully studied the vedas and Tarka [logic] should be appointed tocarry on the administration of justice. [Mahabharata Shanti Parva24-18]. [Courts of India, p-40].

Katyayana Smriti had a few more criteria to indicate the suitability of personsto be appointed as Judges.

अकूरो मधुरः स्निग्धः क्षमायातो विचक्षणः।
उत्साहवानलुब्धष्च वादे योज्यो नृपेण तु।।

"For deciding disputes, the King should appoint as a Judge one who is not cruel, who is sweet tempered, kind, clever and energetic but not greedy".

Even in Sukraniti quality of a person to be appointed as Judge has been discussed as

व्यवहारविदः प्राज्ञा वृत्तषीलगुणान्विताः।
रिपौ मित्रे सभा ये च धर्मज्ञाः सत्यवादिनः।।
निरालसा जितक्रोधकामलोभाः प्रियंवदाः।
सभ्याः सभासदः कार्या वृद्धाः सर्वासु जातिशु।।

"Those who are well versed in the arts of polities, have intelligence and are men of good deeds, habits and attributes, who are impartial to friends and foes alike, religious-minded and truthful, who are not slothful, who have conquered the passions of anger, just and cupidity, who are gentle in speech and old in age should be made members of Council irrespective of caste".

During the ancient period the independence of the judiciary and supremacy of Dharma as binding even on the king were not questioned. This was also in conformity with the definition that 'law was the king of kings'. The law received its sanction from the faith of the people and the king in Dharma. Thus the Smritishad laid down a firm foundation for an independent judiciary to ensure Dharmic supremacy where the king was the head of the State under the monarchic system.

Legal Education in Modern India : during British Period

Britishers came to this country for the purpose of trade, which they started through a company popularly known as East India Company formed in 1600 in England. In the beginning the courts were presided by merchants who were having very rudimentary knowledge of law, but later on legally trained persons were put for the job.

First British court was established in Bombay in 1672 by Governor Gerald Angier. The first Attorney General appointed by Governor was George Wilcox who was acquainted with legal business and particularly in the administration of estates of deceased persons and granting of probate. He made provision for parties to be represented by attorneys and fixed the counsel fee a little more than Re.one. First concrete step in the direction of organising legal profession was taken through Regulating Act of 1773 which empowered to enrol advocates and Attorneys-at-law to the Supreme Court. The Supreme Court was established in Fort William in Bengal through a charter issued in 1774. At that time Indian Lawyers had no right to

appearance in the Courts. The position was same when the Supreme Courts with the same jurisdiction and power were established at Bombay and Madras later. The Bengal Regulation VII of 1793 which created for the first time a regular legal profession for the company's courts, which allowed the appointment of Vakils or native pleaders in the courts of civil judicature in the provinces of Bengal, Bihar and Orissa. In 1861 three High Courts were established at Calcutta, Madras and Bombay. At this time three bodies of practitioners viz, advocates, Attorneys and Vakils were in existence. Advocates were the barristers of England or Ireland but the Vakils were Indian Practioners. According to Clause 19 of Letters Patent 1865 of the High Court of Calcutta empowered the court to approve, admit and enrol such and so many Advocates, Attorneys and Vakils as the High Court shall deem fit. As already state Supreme Court not allowed but High Courts were allowed them which increased the prestige of Indian Lawyers. Legal Practioners Act, 1879, provided for enrolment to only those practioners who had taken LL.B degree from Indian Universities. Under Section 41, the High Court could dismiss any advocate or suspend him from practice by giving an opportunity to defend him. Bar Councils Act, 1926 unified two grades of legal practioners, the Vakils and Pleaders, by merging them in the class of advocates. It also provided for making rules for giving facilities of legal education and training.

The pattern of legal education which is in vogue in India was transplanted by the English; after the establishment of their rule in India. Formal legal education in India came into existence in 1855 when the first professorship of law was established at the Government Ephistone College in Bombay and Madras and Hindu College at Calcutta. At that time the primary aim of legal education was to equip law students so that they could help the lower courts and the High Courts in the administration of justice by enrolling themselves as Vakils or becoming judicial officers, and thus serve the interests of the Administration.As majority of the population was rural and illiterate, the need was felt to bridge the gap between the existing law and the uneducated masses crying for justice, by rendering importance to formal legal education. Initially a law school had to be a self - financing institution, and if possible a money making concern so that it could feed the teaching of other disciplines in the University. There is no tradition of legal research and academic legal training. In the year, 1857 legal education was introduced as a subject for teaching in three universities in the presidency towns of Calcutta, Madras and Bombay. Thus, a beginning of the formal legal education was made in the sub-continent. The language of the British statutes being English, so any Indian who learnt English could study law and was considered qualified to practice the

profession. At that time law classes were attached with arts colleges. However, if one aspired to something higher, he could go to England and join the Inns court, provided one could afford it.

First time common law system where laws based on legal precedents was brought in Indian society after advent of the British with the East India Company. In 1776, under the seal of King George-I, Mayor's Courts were established in Madras, Bombay and Calcutta. After the crown take over in 1857, Supreme Court came to be set up replacing Mayor's Court. The India High Court Act, 1862 replaced the first established Supreme Court, setting up a hierarchical system of Courts. The existing "Vakils" during the Mugal's period continued as client representatives however, newly established Supreme Court only allowed English, Irish and Scotish law practitioners, the restriction was later lifted with the Legal Practitioners Act, 1879 opening the door to legal professionals regardless of nationality or religion. First Law Commission in 1834 took up the task of coding law and under the Chairmanship of Thomas Babington Maculay, Indian Penal Code was enacted and brought into force in 1862. The formal legal education in India was firstly started in the year 1855 when law courses were offered at Hindu College in Calcutta, Elphinstone College in Bombay, and Madras. The primary goal of legal education at the time was to prepare law students to assist the subordinate courts and the High Courts in the administration of justice by enrolling as Vakils, or judicial officers, and thereby serving the Administration's interests. Professional lawyers taught the majority of the law classes on a part-time basis. These lawyers used to work in the courts throughout the day and then took some time off in the evening to give a few lectures without any thought, structure, or perspective. There was no research or academic legal writing traditions.

Legal education was in existence even before Indian independence as many of our freedom fighters are from legal background. But, it gained its significance only in post-independence period. Law courses are offered for a term of three years in some traditional universities but it can be pursued only after getting a degree.

Development of Legal Education in Independent India (Post British Period)

With the Independence the situation has completely changed. In 1950 we gave ourselves democratic foam of government. The rule of law became the foundational doctrine. It is also clear that a polity based on rule of law would require a legal profession sufficiently skilled and possessing knowledge of laws and their principles in order to maintain and preserve the legal system.

For almost a century from 1857 to 1957 a stereotyped system of teaching compulsory subjects under a straight lecture method and the two year course continued. The need for upgrading legal education has been felt for long. Numerous committees were set up periodically to consider and propose reforms in legal education such as :-

Calcutta University Commission [1917-1919],

University Education Commission, was set up in 1948-49,

In the year 1949 the Bombay Legal Education Committee was set up to promote legal education. The All India Bar Committee made certain recommendations in 1951.

In 1954, XIVth [14th] Report the Law Commission (Setalvad Commission) of India discussed the status of legal education and recognized the need for reform in the system of legal education and made certain recommendations.

1. Only graduates should be eligible for legal studies.
2. The theory and principles of law should be taught in the law schools and the procedural law and the law of practical character should be taught by the Bar Council.
3. The university course should be for two years and the Bar Council training should be for one year.
4. The principal method of teaching being lecture to be supplemented by tutorials, seminars, moot courts, and case methods.
5. Admission to law schools should be restricted on merit and seriousness.
6. All India Bar Council should be empowered to ascertain whether law colleges maintain the requisite minimum standards and should be empowered to refuse recognition for law colleges.

The recommendations accepted by All India Law Conference [1959] and also the All India Law Teachers Association. After the year 1961 the Bar Council of India was empowered to lay down standards of Indian Legal education. In 1967 this body established a uniform three years LL .B Course with annual examinations and prescribed compulsory and optional subjects to be taught at LL.B level. Most of these subjects were traditional topics and there is no guidance relating to curriculum planning.

It depicted a very gloomy picture of legal education. It was only from 1958 that many universities switched over to three year law degree courses. It was only by 1967, that it became onerous task for the three year law colleges to include procedural subjects into the curriculum of their law school.

The Advocates' Act, enacted in 1961, became the focal point of the legal education system presently in existence. The Bar Council of India Rules, inducted under The Advocates' Act 1961, lays down the curriculum for imparting legal education throughout India and these said Bar Council of India Rules have been governing the procedural aspects of legal education, including, but not restricted to, the subjects to be taught, mode of examination to be conducted, the various Degrees to be conferred on successful students and the like. It was only in 1967 that it became the burdensome task of the three year law colleges to include procedural subjects into the curriculum of their law school. The monologue lecture scheme adopted in law schools, where practical training is either totally neglected or marginally implemented at the level of Moot Courts, Court visits and legal research will not make good lawyers in today's scheme of legal education.

Rules on Legal Education, which were incorporated into the pre-existing regulations, have been amended from time to time. There were demands for a consolidated latest version of the Rules under Part IV on standards of Legal Education and Recognition of Degrees in Law for admission as Advocates from Universities and Colleges teaching Law in the Country. In response to popular demand, the Bar Council of India published the Rules in its final shape as applicable from 30 November 1998.

The minimum qualification for being an advocate is an LLB Degree, generally a three year course, which can be obtained after graduation in other disciplines. A debate as to its efficacy in the recent past led to a proposal of a five year integrated course after an intermediate (10+2) examination (from 1st class to 12th class - total period of 12 years of study). The three year course itself came to be restructured into a semestered system and several papers came to be included and excluded as per the Bar Council Guidelines. Hence, the Council today allows both the 3 year course and 5 year course to continue. The Advocates' Act, enacted in 1961, became the focal point of the legal education system presently in existence. The Bar Council of India Rules, inducted under The Advocates' Act 1961, lays down the curriculum for imparting legal education throughout India and these said Bar Council of India Rules have been governing the procedural aspects of legal education, including, but not restricted to, the

subjects to be taught, mode of examination to be conducted, the various Degrees to be conferred on successful students and the like. It was only in 1967 that it became the onerous task of the three year law colleges to include procedural subjects into the curriculum of their law school. The monologue lecture scheme adopted in law schools, where practical training is either totally neglected or marginally implemented at the level of Moot Courts, Court visits and legal research will not make good lawyers in today's scheme of legal education.

Agencies Regulating Legal Education in India.

The Constitution of India basically laid down the duty of imparting education on the states by putting the matter pertaining to education in List II of the Seventh Schedule. But it now forms part of List III, giving concurrent legislative powers to the Union and the States. Legal profession along with the medical and other professions also falls under List III (Entry 26). However, the Union is empowered to co-ordinate and determine standards in institutions for higher education or research and scientific and technical institutions besides having exclusive power, inter alia, pertaining to educational institutions of national importance, professional, vocational or technical training and promotion of special studies or research.

Empowered by the Constitution to legislate in respect of legal profession, Parliament enacted the Advocates Act, 1961, which brought uniformity in the system of legal practitioners in the form of Advocates and provided for setting up of the Bar Council of India and State Bar Councils in the States. Under clause (h) of sub-sec (1) of Sec.7 of the Advocates Act, 1961 the Bar Council of India has power to fix a minimum academic standard as a pre-condition for commencement of a studies in law . Under clause (i) of sub-sec (1) of Sec. 7, the Bar Council of India is also empowered "to recognize Universities whose degree in law shall be taken as a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities". The Act thus confers on the Bar Council power to prescribe standards of legal education and recognition of law degrees for enrolment of persons as Advocates. However, for promoting legal education and for laying down standards of legal education, the Universities and State Bar Councils must be effectively consulted. The University Grants Commission has in the course of time evinced interest in improving legal education and has taken various steps towards at end, through adequate funding, creating of senior posts and other means.

Commissions, Committees and Statutes.

University Education Commission

The Government of India established the University Education Commission to review the quality of university education and provide recommendations for improvements in the year 1948. The Commission also looked into the state of legal studies at the time in various universities. The Commission assessed the legal education situation to be extremely poor. The Report of The University Education Commission (December 1948-August 1949), lamented the state of law colleges which has failed to make law "become an area of profound scholarship and enlightened research". The conditions in law colleges in India were generally such that they did not hold "a place of high esteem either at home or abroad."The Commission however pointed out that such a pitiable situation had arisen mainly from conditions inherent in our position as a dependent nation. Emphasizing the great importance of legal education in Independent India, the Commission observed:

> *"With the attainment of independence and the consequent responsibility of developing our own constitutional government, together with international relations, now as important as domestic affairs, it becomes imperative that we develop high grade colleges of law, manned with real scholars, and capable of producing men who can cope with international, constitutional and administrative problems, as well as with the civil, criminal and routine demands which exist. Our gifts for philosophical studies would indicate that it is possible to have as great students of systematic law and the principles of jurisprudence as any other people."*

The Commission made a number of recommendations to improve legal education, including focusing on law as a single degree course that can produce both lawyers and scholars; there should be a fairly long period of pre-legal or general education before beginning legal studies, and thus a degree course in Arts or Science should be a pre-requisite; and this should be followed by a three-year degree course in law.[5]

The objectives of commissions, committees and reports etc was to give their recommendations on reforming legal education in India. The main questions before all the committees, commissions and seminars etc. Were,

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5. M.P.Jain, Outlines of Indian Legal and Constitutional History (2014)

1. What should be the pattern of the legal education be impacted by law colleges and law faculties of the universities to fulfil their mission.

2. Should it be exclusively academic and theoretical or shoud it is exclusively practical and procedural?

3. Should it be meant for any research purposes of law?

In view to achieve the above objectives number of committees / commissions were set up during post-independence period as:

All India Bar Committee

The All India Bar Committee appointed in 1951 did consider some aspects of legal education and deemed a bachelor's degree in the arts, sciences, or commerce to be a necessary pre-requisite for admission to the law programme. On the question of the duration of a course of legal studies, the Committee had this to say:

> *"...the uniform minimum qualification for admission to the roll of Advocates should be a law degree obtained after at least a two years' study of law in the University after having first graduated in Arts, Science or Commerce and a further apprentice course of study for one year in practical subjects... after attending a certain percentage of lectures arranged for imparting instruction during the apprentice course."*

The Committee also recommended that the new All India Bar Council, which would be made up of representatives from the several State Bar Councils, include a 12-person Legal Education Committee to look into legal education issues.

Section 7 of the Advocates Act, 1961 provides the functions of Bar Council of India. Relevant extract of the provision are:

(1) The functions of the Bar Council of India shall be

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(I) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this

behalf

Section 49 of the Advocates Act, 1961 which states the General power of the Bar Council of India to make rules provides as follows:

(2) (1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe–

(3) (a) ……...

(4) (ab)……..

(5) (ac) ……..

(6) (ad) ……..

(7) (ae) ……...

(8) (af) the minimum qualifications required for admission to a course of degree in law in any recognised University;

(9) (ag) the class or category of persons entitled to be enrolled as advocates;

(10) (ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;

(11) (b) ……..

(12) (c) the standards of professional conduct and etiquette to be observed by advocates;

(d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose

Law Commission of India, 1958

The Volume 1 of the 14th Report of the Law Commission of India published in 1958 (hereinafter, LCI -14th report) raises a pertinent question, "It is true that our country has produced eminent practitioners in law and learned Judges. But have they owed their eminence and learning to the education received by them in the University?"

The Commission was quite emphatic on the great importance of the legal education and research in modern India. In this connection, it endorsed fully the sentiments expressed by the University Education Commission favouring promotion

of legal education and research. The Commission observed:

> *"Apart from other considerations, the changes that have occurred and are occurring in the political, economic and social life of the nation since the emergence of India as a sovereign democratic state requires radical alteration in the patterns of legal education, its objectives, scope and technique. In the India of to-day, men of law are bound to be called upon to play many and varied roles."*

In LCI -14th report, it was noted *"there need be no conflict between the academic and practical training in law."* Earlier also, the Bombay Legal Education Committee stressed that there is no real antimony between the professional and the cultural aspects of the law.

The LCI -14th report mulled over the question, *"Should the Universities have a purely academic course leaving the procedural and cognate laws to be the subject of a further practical training?"*

Sidney Post Simpson once wrote *"Competence in the practical pursuits of the law is promoted far more by understanding of the law's underlying purposes and theories than by acquaintance with the tricks of the trade.* "It was recommended by the Law Commission of India in its 14th report that instead of the part- time colleges providing law education, there shall be properly equipped, full -time law colleges providing law education for 2 years. Further it was contemplated, "teaching at the Universities should not include procedural, taxation and local laws and other cognate subjects which may, with advantage, be left to be taught later to those who intend to take a professional career, in a course where teaching will be imparted by professional men."

The 14th Report of the Law Commission of India report suggested, *"The Law graduate produced by the University has to be a person who has mastery of legal theory and legal principles…..If he chooses to enter the profession of law, he will have to take a practical course in law, which perhaps, would be best imparted by bodies of professional men like Bar Councils."*

In this regard, the observations of A.E.W. Hazel were referred to which is reproduced here with emphasis:

> *The function of University law teachers is in the main to teach fully those subjects which, while valuable to the properly equipped lawyer are not definitely practical, and the main principles only of those subjects which are definitely practical. The*

detailed study of procedure, of the law evidence, of conveyancing, and of specialized topics such as negotiable instruments or bankruptcy is not well suited to a University Course.

While acting on the two suggestions- firstly, Apprenticeship with a lawyer approved by the Bar Council and secondly, requirement of attendance for a certain number of days in the High Court and other principal courts, the 14th Report of the Law Commission of India was of the view that for obtaining the requisite practical knowledge, a combination of both these methods was necessary. Therefore, it was felt that the young apprentice can learn the work of drafting, pleadings and documents as well as have an idea of professional work only by attendance in an experienced lawyer's chamber for a certain period of time.

The Commission therefore made the following recommendations inter alia for organising legal education:

(1) The entrance qualification for the Bachelor in Law Course (LLB) should be Graduation from a University. The Commission rejected the suggestion of prescribing Intermediate Examination for the purpose. The Commission thought that "a general liberal education in cultural or scientific subjects... is an essential pre-requisite to his embarking upon a study of law."

(2) The duration of a law course at a University should be two years. During this period, the University should teach law students "the science of law and the principles underlying different branches of law. A law graduate produced by a University should be a person who has a mastery of legal theory and legal principles. Such a course will also serve those who take the law course with a view to obtain a cultural or liberal education or to equip themselves for public services or commercial employments. If such education is imparted in the right manner, we can have scholars in law as well as erudite and efficient legal practitioners. Jurisprudence must be taught but the Law Commission, disagreeing with the University Education Commission, suggested that Roman Law need not be taught as a compulsory subject. Teaching of such subjects as procedure and taxation may be left to the professional bodies."

(3) After the Bachelor of Law Degree, the law graduate can make a choice whether to adopt an academic and professional carrier.

(4) If he chooses to enter the legal profession, he should undergo practical course in law. Such a course is best imparted by professional bodies like the Bar Councils. "A practical training is as essential to the making of a professional lawyer as a thorough academic training." The legal profession is vitally interested in this task and the Bar Councils should therefore be entrusted with this task,

(5) Teaching of law should be imparted in full-time institutions. It was on this basis that the Commission recommended a two year law degree course at a University. The Commission emphasized this aspect of the matter as follows:

"...law is a social science closely related to other social sciences and, if the country is to hold its own and develop so as to fall into line with advanced nations, it is indispensable that our institutions and methods of legal teaching should be of the same nature as are to be found in the advanced nations of the West."

The Commission decried the practice of law teaching in part-time institutions which make profit. This showed that the state was not discharging its duty in a proper measure to legal education. According to the Commission, "...for the teaching of law in its scientific, cultural and educational aspects we need, full-time teachers, and, as far as possible, men of outstanding distinction in law and legal research."

(6) The Commission exhorted the Government to provide financial assistance to law teaching institutions so that imparting of legal education could be placed on a sound or modern footing. The Commission considered it "imperative in the interests of the nation that adequate finance should be made available for the establishment of full-time institutions." The Commission emphasized:

"What, however, needs to be basically recognized is that teaching and development in law are at much a vital concern of the nation as its development in other educational, cultural and industrial fields."

(7) The lecture method of teaching should be supplemented by seminars, group discussions, tutorials. Case-method should be adopted so far as it may be feasible.

(8) Those in employment or prosecuting other studies ought to be ineligible for admission to these full-time institutions. But people may want to study law in order to better their employment career. Persons with a knowledge of law are preferred in many public and privateemployments.

(9) Closely allied to the subject of University legal education is that of research in law. The Universities should establish institutions where legal research can be carried on. There should be financial support for such institutions. According to the Commission *"...law as a subject of study and research is, in the interest of the nation, entitled to a reasonable share in the large outlays that are being made for its progress."*

(10) The object of achieving a uniform standard of legal education for admission to the Bar should be left to the Bar Council of India.25 If the Council "is of the view that the standards prescribed by a particular University in legal education are not adequate or that institutions established by it or affiliated to it for imparting legal education are not well equipped or properly run, it may decide to refuse admission of the graduates of that University to the professional examination till the University has taken steps to reach the minimum standards.

Advocates Act, 1961

The Advocates' Act, enacted in 1961, became the focal point of the legal education system presently in existence. The Bar Council of India Rules, inducted under The Advocates' Act 1961, lays down the curriculum for imparting legal education throughout India and these said Bar Council of India Rules have been governing the procedural aspects of legal education, including, but not restricted to, the subjects to be taught, mode of examination to be conducted, the various Degrees to be conferred on successful students and the like. It was only in 1967 that it became the burdensome task of the three year law colleges to include procedural subjects into the curriculum of their law school. The monologue lecture scheme adopted in law schools, where practical training is either totally neglected or marginally implemented at the level of Moot Courts, Court visits and legal research will not make good lawyers in today's scheme of legal education.

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consolidated latest version of the Rules under Part IV on standards of Legal Education and Recognition of Degrees in Law for admission as Advocates from Universities and Colleges teaching Law in the Country. In response to popular demand, the Bar Council of India published the Rules in its final shape as applicable from 30 November 1998.

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Committee on Legal Education

The Committee on Legal Education debated the Law Commission's report and recommendations on legal education at the Indian Law Institute's All-India Lawyers' Conference in March 1959. The Conference Committee's final recommendations were nearly identical to the Law Commission's suggestions. One significant difference between the two was that, while the Law Commission recommended a two-year course in law schools followed by a year of training in procedure and other aspects of practise, the Conference Committee preferred a three-year course that included procedural subjects in the final year.

Other important Committees on development of legal education during post-independence period were :-

1. Gajendra Gadkar Committee, 1964
2. All India Seminars on Legal Education, 1972
3. Establishment of Bar Council of India Trust, 1974
4. Legal Education Seminar, Bombay, 1977
5. First National Convention on Legal Education, 1977
6. National Conference on legal Education, Hyderabad, 1981
7. All India Law Teachers Conference, 1981
8. Report of Bar Council of India, 1982
9. All India Council for Technical Education Act, 1987
10. Report of the Curriculum Development Centre in Law, 1990
11. Bar Council of India Training Rules, 1995
12. Report of Professional Legal Education Reform Committee, 1996

Regulatory Framework for imparting Legal Education: Role of the BCI

In Bar Council of India v. Bonnie FOI Law College &Ors.,[6] the Supreme Court of India vide order dated June 29, 2009, noted with concern the diminishing standards of professional legal education provided at various Law Colleges across the country. The Supreme Court, therefore, constituted a committee to examine issues relating to affiliation and recognition of law colleges.

According to the Final Report of the 3-Member Committee on Reform of Legal Education pursuant to orders of the Supreme Court :

> *"It is with reference to Entries 66, 77 and 78 of List I that the Parliament has enacted laws for the regulation of professional legal education in India. The regulation is partaken by two statutory bodies constituted under the above-mentioned laws - the Bar Council of India as the apex professional body concerned with the standards of the legal profession, and the University Grants Commission as an umbrella organization for all institutions of higher education."*

6. (2017) 11 SCC 185.

Integrating Societal Relevance Component in Legal Education

Now coming to the report prepared by Professor Upendra Baxi titled "Towards a Socially Relevant Legal Education" , an important question is raised regarding the meaning of "profession" and its role in the society. Pointing out to the fact that the traditional meaning of legal profession is modelled on a court-centric view of lawyer's role, he emphasied that the modernist, however may see the lawyer as an "architect of social structures". Instead of harping on the professional v. liberal arts objectives of legal education, he stressed on "social relevance" which requires that a curriculum recognises the contemporary problems of the Indian society and the corresponding tasks before the law and the lawyers,something that remained according to him largely ignored as per the existing law curricula.

He advised that the "problem -posing method is the most naturally suited to legal education" and finds its resemblance in the "case-method". He also advised in favour of a five year integrated law course.

According to the U.G.C. Regional Workshop on Legal Education, University of Punjab(1976), consensus was reached that in order to give the students some exposure to the "real life socio- legal problems of the poor and the depressed classes" it was thought essential to involve them in the "National Service Scheme" through legal aid clinics and interaction with the specific sub communities such as manual workers, labourers, beggars etc. in order to understand their specific social and legal problems and to spread legal literacy about their rights and duties.

Special Curriculum Development

Though in our country number of reputed National Law Schools regularly produces Law Graduates but there are also number of institutions that call themselves law colleges are freely giving degrees without bothering to give the students a proper education. Thus the quality of students from different institutions is vastly different and those law colleges failed to train students for the practice of law in a more effective manner. Lack of organizing moot courts, provisions of internship, use of advanced technologies and lack of research work to be continued in those institutions are some of the important challenges faced by those colleges are the most important factors for that ineffectiveness.

UGC and Bar Councils have repeatedly requested legal institutions to revise their curriculum and syllabus but to no avail. Furthermore, there is always a tussle

between the introduction of new and contemporary subjects at the cost of focusing on traditionally important and basic subjects. The curriculum does not reflect the changing role of law and teaching does not take into account the social engineering skills which are imperative in a practicing lawyer today.

A very significant development in the area of legal education took place when the bar council of India was set up under the Advocates Act 1981. Under the act, the bar council enjoy a very significant function in relation to legal education. Under Sec. 7 of the Advocates Act, one of the most important functions of the bar council of India is to promote legal education and to lay down standards of such education in consultation with the universities in India imparting such education and the state bar council.

The vision of legal education is to provide justice-oriented education essential to the realization of the various enshrined in the Constitution Of India. At the same time, it also prepares professionals equipped to meet the new challenges and dimensions of globalization.

Even, National Knowledge Commission in its Report submitted in the year 2007 has very emphatically recommended to develop a curriculum with regard to **justice oriented legal education system in India** as *"The vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the Constitution of India. In keeping with this vision, legal education must aim at preparing legal professionals who will play decisive leadership roles, not only as advocates practicing in courts, but also as academics, legislators, judges, policy makers, public officials, civil society activists as well as legal counsels in the private sector, maintaining the highest standards of professional ethics and a spirit of public service."*

Further, it was stated:

> *"Law teaching must be interwoven with related contemporary issues, including international and comparative law perspectives. The curricula and syllabi must be based in a multidisciplinary body of social science and scientific knowledge. Curriculum development should include expanding the domain of optional courses, providing deeper understanding of professional ethics, modernizing clinic courses, mainstreaming legal aid programmes and developing innovative pedagogic methods. Legal education must also be socially engaged and sensitize students on issues of social justice."*

The Bar Council of India, in its meeting held on September 14, 2008 through

resolution no. 110/2008, approved the Rules on Standards of Legal Education and Recognition of Degrees ('BCI Education Rules, 2008'). Schedule II provides the Academic standards and Courses to be studied. Part -IV of these rules specifically deal with the "Rules of Legal Education" of which Rule 8 prescribes the Standard of Courses as such:

> *"Whereas all Universities and its constituent and affiliated Centers of Legal Education conducting either the three year law degree program or the integrated double degree program for not less than five years of study or both would follow the outline of the minimum number of law courses both theoretical and practical, compulsory and optional, as the case may be, prescribed by the Bar Council of India and specified in the Schedule II and ensuring that:-*
>
> *(a)……*
>
> *(b)……*
>
> *©……*
>
> *Provided that the University for the said purpose shall submit to the Bar Council of India, copies of the curriculum designed and developed in each course of study, rules of academic discipline and of examination and evaluation and also the amendments to those as and when so amended."*

New Challenges to the Legal Education in India:

Half a century ago, the main purpose of university legal education in India was not the teaching of law as a branch of learning and as a science but simply to impart to students a knowledge of the black letter law, that is, certain principles and provisions of law to enable them to enter the legal practice exclusively for local needs. Gradually this perception changed and the process of reform in law and legal education was initiated. The real break came in 1990s when the new challenges posed by scientific and technological revolution and greater interaction between nations, trade in goods and services, information technology and free capital flow across international boundaries made the world a global village. Consequently, the concept of "local practice" widened to that of "transnational practice" in the context of globalisation and opening up of most of the economies of the world.

How should the legal profession and legal education respond to the new

challenges? Never before in history has the need for sound thinking and planning on all issues been felt so intensely as today. Unless the topics of universal application are integrated into legal education in developing countries, our lawyers and those of other countries would not be able to compete in the transnational marketplace. In the present day, an innovative programme of integrated interdisciplinary legal learning and in the new areas such as Comparative Law, information technology, intellectual property, corporate governance, human rights, environment, and international trade law, investment, and commerce, transfer of technology, alternative dispute resolution and space is important. Comparative Legal education for professional excellence is needed in these and other areas on a global basis.

Conclusion :

For a new beginning, with regard to justice oriented legal education one has to think within the paradigm of change and bring to the forefront the need for developing new approaches to the ongoing challenges posed by globalization and by existing method of selection of Civil Judges (Jr. Division) in the entry level under the theory of "young one to catch" so a positive change in curriculum of legal education in order to develop a practical approach for appreciation of issues for adjudication, should be prioritized in the framework of legal education in India, in order to cope with the current and future pressures upon the law graduates in working as a Judge.

CHAPTER - III

JUDICIAL STRUCTURE IN INDIA AND ROLE OF A TRIAL JUDGE

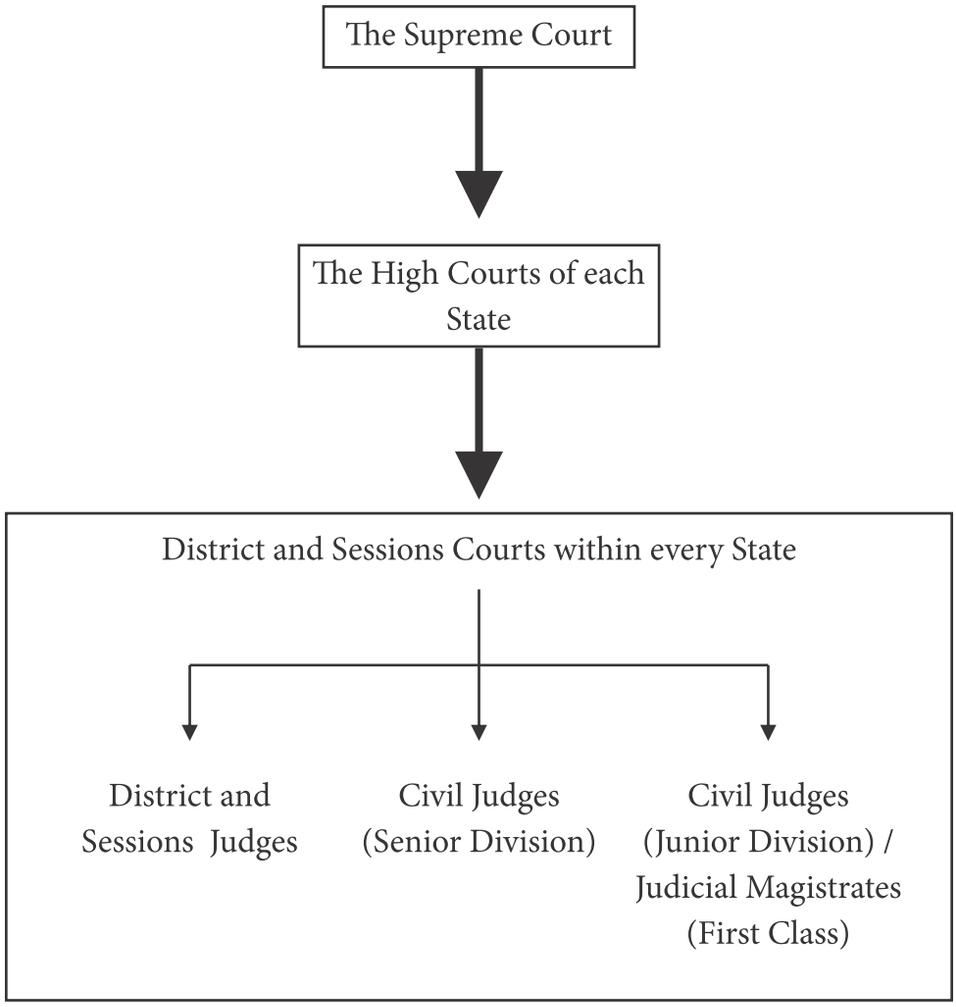
"When a judge sits to try a case, he is himself on trial before his fellow countrymen. It is on his behavior that they will form their opinion on our system of justice."

- Lord Denning

Rule of law is one of the tenets which form the basic structure of our Constitution which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure[7] and the judiciary of our country plays a pivotal role in upholding this constitutional ethos and in balancing the societal interest on one hand and individual's freedom granted by the Constitution on the other. The role of courts transcends much beyond resolving disputes between parties. Aharon Barak, former President of the Supreme Court of Israel, in his book "The Judge in a Democracy" highlights two significant roles of a judge - one is to bridge the gap between law and society and to maintain coherence of the legal system as a whole and the other is to protect the constitution and democracy.[8]

Judiciary is one of the most important parts of the Indian polity and one of the arms of governance in a democracy which functions independently. India has a three-tier hierarchy in the judiciary, the Supreme Court, being at the top, followed by the High Courts of the State and then by the District and Sessions Courts within each state. Subordinate judiciary refers to the judges at the District and Sessions level which includes the District Judges, Labour Court Judges, Family Court Judges the Civil Judges (Senior Division) and Civil Judges (Junior Division) or Judicial Magistrates (First Class). The structural hierarchy can be demonstrated by the chart in the following page :-

7. Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.,AIR 1973 SC 1461.
8. Aharon Barak, The Judge in a Democracy (2006).



The scope of the present paper is limited to the discussion related to Civil Judges (Junior Division) / Judicial Magistrates (First Class) who are entry-level judges in the aforementioned structural hierarchy.

The Supreme Court of India has been established under Article 124 of the Constitution and the jurisdiction of the Court has been laid down under the provisions of Articles 32, 129, 131, 132, 133, 134A, 135, 136, 137, 139A, 140, 142 and 143 of the Constitution. Article 141 provides that the law declared by the Supreme Court shall be binding on all courts. Further, Article 144 stipulates that all civil and judicial authorities shall act in aid of the Supreme Court.

The establishment of High Court in the States is governed by Article 214 of the Constitution. The High Courts have writ jurisdiction under Article 226 and has the power of superintendence over all courts within the State under Article 227. High Courts, like the Supreme Court, are also courts of records and have the power to punish for contempt of the Courts.

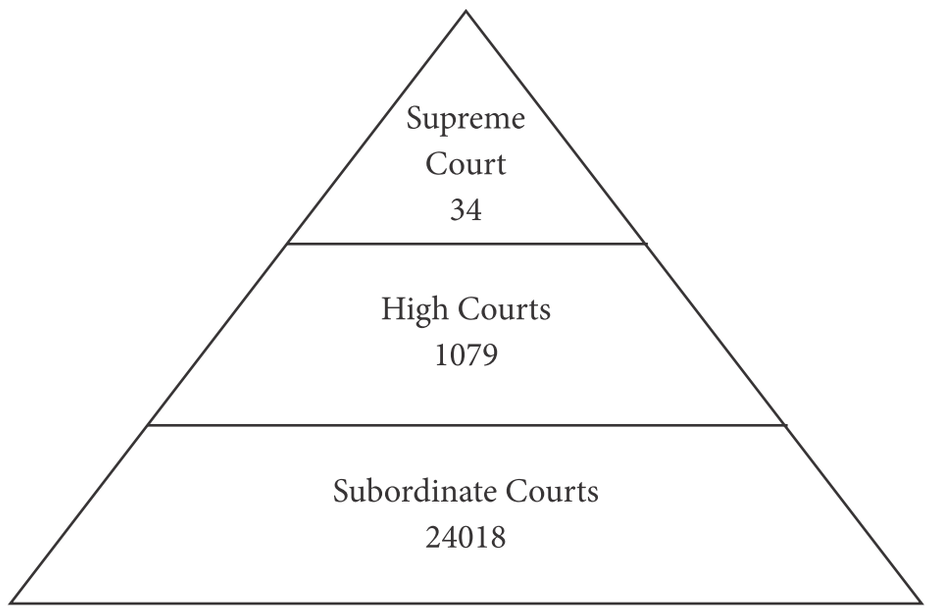
The provisions for subordinate courts have been laid down under Chapter VI of Part VI of the Constitution. Article 233 provides for the appointment of District Judges and Article 234 governs the recruitment of persons other than District Judges to the judicial service.

SANCTIONED STRENGTH

Supreme Court Judges[9] - 34

High Court Judges[10] - 1079

Subordinate Court Judges[11] - 24018



9. As on 20.02.2020, as per One Hundred First Report on Demands for Grants (2020-2021) of the Ministry of Law and Justice, Department-Related Parliamentary Standing Committee, Rajya Sabha, available at https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/18/125/101_2020_3_13.pdf
10. Ibid.
11. Ibid.

FUNCTIONS OF JUDGES AT ENTRY LEVEL

Recently, the Hon'ble Supreme Court in ***Rajasthan High Court, Jodhpur v. AkashdeepMorya and Anr.,*** reported in 2021 SCC OnLine799, emphasizing on the role of Judicial Magistrates, observed as follows at Para :-

> *…….The post of a judicial officer at any level of the hierarchy involves applying the most exacting standards. This is for reasons which are obvious. The incumbent of a judicial post discharges one of the most important functions of the State, that is, the resolution of disputes involving the people of the country. Judges occupying the highest moral ground go a long way in building public confidence in the justice delivery system. In fact, even in the advertisement, there is a reference to the requirement of the candidate being possessed of character. Character cannot be understood as being limited to a mere certifying of the character by the competent authority. The High Court is involved with the appointment of judicial officers and rightly so, under the scheme of the Constitution. Though the order of appointment is issued by the State, the involvement of the High Court in the appointment of judicial officers essentially flows from its position in the constitutional scheme. The High Court is duty bound to recommend the most suitable persons to occupy the post. The post of a Civil Judge or a Magistrate is of the highest importance notwithstanding the fact that in the pyramidical structure of the judiciary, the Civil Judge or the Magistrate is at the lowest rung. We say this for the reason that of all the litigation which is instituted in the country, the highest volume of the same takes place at the lowest level. Not many of the cases finally reach the highest Court. It is through the Civil Judge (Junior Division)/Magistrate that the common man has the greatest interface. Most importantly, the perception of the common man about the credentials and background of the judicial officer is vital. We have only highlighted these aspects as a prelude to consider the facts of the case further. In other words, in the absence of honorable acquittal, the alleged involvement of an officer in criminal cases may undermine public faith in the system.*

In ***High Court of Judicature at Bombay*** v. **ShirishkumarRangrao Patil and Anr.,** reported in (1997) 6 SCC 339, the Hon'ble Supreme Court observed as follows:-

> *The Judges do not do an easy job. They repeatedly do what the rest of us seek to avoid, i.e., make decisions. Judges, though are mortals, they are called upon to perform a function that is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the day to day*

proceedings in the Court. On him lies the responsibility to build solemn atmosphere in dispensation of justice, the personality, knowledge, judicial restraint, capacity to maintain dignity character, conduct, official as well as personal, and integrity are the additional aspects which make the functioning of the court successful and acceptable. Law is a means to an end and justice is that end. But in actuality, Law and Justice are distant neighbours; sometimes even strange hostiles. If law shoots down justice, the people shoot down law and lawlessness paralyses development, disrupts order and retards progress.

……..

The conduct of every judicial officer, therefore, should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. If he tipps the scales of justice, its nippling effect would be disastrous and deleterious.

Obligations delineated under the Constitution

The Constitutional obligations of a Judge under the Constitution has been described by the Hon'ble ***Supreme Court in Supreme Court Advocates on Record Association and Ors.*** v. ***Union of India,*** reported in (1993) 4 SCC 441, as follows :-

329. The role of the judiciary under the Constitution is a pious trust reposed by the people. The Constitution and the democratic-polity thereunder shall not survive, the day judiciary fails to justify the said trust. If the judiciary fails, the Constitution fails and the people might opt for some other alternative.

330. In view of the role of the judiciary in the context of the Constitution it is fallacious to say that the legislators alone are answerable to the people regarding the functioning of the judiciary.

The Hon'ble Supreme Court in the case of Keshavanand Bharti has aptly observed that the Fundamental Rights and the Directive Principles of State Policy are the conscience of the Constitution. Every citizen and every State machinery

particularly the Judiciary must ensure that the conscience of the Constitution is upheld at all times and under any circumstance.

In India, the fundamental rights to the citizens of India and in some cases to every person have been guaranteed under Part III of the Constitution. The Judiciary, even at the lowest level, must ensure that the fundamental rights of any person are not violated by its actions or even under its supervision. Articles 14 and 21 are amongst the most important fundamental rights available under the Constitution to every person within the territory of India. Article 14 provides that any person shall not be denied equality before the law or the equal protection of the laws within the territory of India. According to Article 21, no person shall be deprived of his life or personal liberty except according to procedure established by law. Apart from these, Articles 20 and 22 (1) and (2) are also the provisions which the Judicial Magistrates must follow in letter and spirit in the court proceedings. Articles 20 and 22 (1) and (2) read as follows:-

> *20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*
>
> *(2) No person shall be prosecuted and punished for the same offence more than once.*
>
> *(3) No person accused of any offence shall be compelled to be a witness against himself.*
>
> ……..
>
> *22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
>
> *(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrat*e.

Apart from the aforementioned provisions, one of the Directive Principles of State Policy enshrined under Article 39A provides for equal justice and free legal aid,

which is considered to be fundamental in the governance of the State. Article 39A reads as follows :-

> ***39A.*** *The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*

Trial of Cases

One of the most important functions of the courts of Judicial Magistrates is the trial of cases. Under the provisions of the Criminal Procedure Code (CrPC), they are empowered to try both summons cases and warrants cases. Summons cases are the cases dealing with offences which are punishable by fines only or by imprisonment upto two years. Warrant cases, on the other hand, are the cases dealing with offences which are punishable with death, by imprisonment for life or for imprisonment of more than two years. Under Schedule I of the CrPC, there are about 103 offences in the Indian Penal Code which are exclusively triable by the Court of Sessions while about 337 offences under the Indian Penal Code are triable by Courts of Magistrates. Apart from this, Part II of Schedule I of the CrPC provides that any offence under any Act where it has not been specifically provided otherwise, the offences punishable upto 7 years can be tried by Judicial Magistrates.

The trial of a case starts from the framing of charges in warrants cases and the reading out of substance of accusation in summons cases. The completion of the trial ends in either conviction or acquittal of the accused persons. During the trial the witnesses are examined and other evidences are proved. The job of the trial court is to churn out the truth of the case after due appreciation of evidences. It is also equally important that the proceedings are conducted as per the provisions of law and the decorum of the court and the rights of the parties are not violated.

Adjudication affecting liberty of persons

No court, other than the Court of Magistrates, under the provisions of the CrPC, is empowered to take cognizance of any offence including those exclusively triable by Court of Sessions. Apart from the power to take cognizance, the Magistrates have been conferred with other crucial and important roles under the CrPC. The significance of cognizance and the issuance of process by a Magistrate have been highlighted in a

recent case by the Hon'ble Jharkhand High Court in ***Amresh Kumar Dhiraj and Ors. v. State of Jharkhand and Anr.,*** reported in 2019 SCC OnLineJhar 2775, where after referring to the judgments[12] of the Hon'ble Supreme Court it was held as follows :-

> ***12.*** *It is settled that, cognizance is always taken against offence and not against offender. The offence herein means "any offence." It is not limited to the penal provision mentioned in the FIR or in the complaint only. Since cognizance is taken not against the offender but against offence, it can be said that the order taking cognizance is "offence centric" and not "person centric". Against a person summons/warrants are issued, cognizance is not taken.*
>
> ***13.*** *At the stage of taking cognizance it is only to be seen as to whether any offence is made out or not. At this stage the court is not to go into the merit of the case made out by the police in the charge sheet or in the complaint. Nor at this stage the success of the case is to be weighed by a detail order. The duty of the Magistrate is limited at this stage.*
>
> ***17.*** *The question is, when can a process under Section 204 Cr.P.C. be issued? It does not mean that if cognizance of an offence is taken, the Magistrate has to issue summon against all the named accused persons in the complaint or FIR. This is not what Section 204 Cr.P.C. envisages. As per the provision of Section 204 Cr.P.C. only if there is sufficient ground to proceed, then only the Magistrate has to proceed. As the proceeding is against a person/accused, the Magistrate has to form an opinion that there are sufficient materials against the accused to proceed. There may be situation when from the records it would be evident that there are no sufficient materials to proceed against some of the accused persons, though in general an offence is made out. If this would be the situation, then summons cannot be issued against all the accused, rather it should be issued only against those accused persons against whom there are sufficient materials to proceed.*

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12. S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89; GHCL Employees Stock Option Trust v. India Infoline Limited, [2013 (2) East Cr. C. 326 (SC); Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4 SCC 139; Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609; Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705; Pepsi Food Limited v. Special Judicial Magistrate, (1998) 5 SCC 749; Ramdev Food Products Private Limited v. State of Gujrat, (2015) 6 SCC 439

26. *Applying the aforesaid principle, while going through this impugned order, I find that though the Magistrate has mention that there are statements of the witnesses, but what are the prima-facie materials to proceed against these petitioners and others have not been whispered. In a most mechanical manner, in one line, this impugned order has been passed summoning the accused. The Hon'ble Supreme Court in the case of "S.M.S. Pharmaceuticals Ltd." and "Ramdev Food Products Private Limited" (supra) has held that summoning an accused is a very serious matter and has got far reaching implications on the person who has been summoned.*

27. *Thus, a serious order, i.e. summoning order should not be issued casually in a mechanical manner. I find that the order taking cognizance and the summoning order, in this case, is passed in a most casual manner without recording his satisfaction and as to what are the bare minimum materials available on record. I also find that the court has taken cognizance against the accused, which is not the mandate of law. As mentioned earlier cognizance is to be taken against an offence and warrant/summon is to be issued against accused. Further, the nature of satisfaction will also have to be different while passing both the orders.*

The statements of witnesses on oath or the confession of accused during investigation are conducted by the Magistrates under Section 164 of the CrPC. The issuance of process especially non-bailable warrants is done by the Court of Magistrates. The remand of an accused under Section 167 of the CrPC is ordered by the Magistrates. The issuance of warrants and the proceedings under Section 82 and 83 are of extreme importance and affect the liberty of a person, as observed in a catena of judgments by the Hon'ble Supreme Court such as in RaghuvanshDewanchand Bhasin versus State of Maharashtrareported in (2012) 9 SCC 791 and Inder Mohan Goswami versus State of Uttaranchalreported in (2007) 12 SCC 1and the Hon'ble High Court of Jharkhand. In Md. RustumAlam v. State of Jharkhand, (2020) 2 JLJR 712, the Hon'ble Jharkhand High Court, regarding the issuance of warrants and the proceedings under Sections 82 and 83 of the CrPC, held as follows :-

13. *If liberty of a person is to be curtailed, the same has to be done strictly in accordance with the law so provided for. In this case, it is being curtailed by issuance of non-bailable warrant of arrest. Thus, the Court has to record his satisfaction that the conditions laid down in the law for issuing warrant of arrest has been fulfilled and the procedure has been complied with. This satisfaction of the*

Court should be reflected in the order itself, to be gathered from the record, then only warrant of arrest can be issued. The Court has to prima-facie be satisfied that the person accused of committing a non-bailable offence is also evading his arrest. There has to be material before the Court to reach at the aforesaid conclusion. Without recording such subjective satisfaction to the effect that the accused is also evading his arrest, which should be on the basis of the materials placed before the Court, warrant of arrest cannot be issued. This satisfaction can be derived from the police paper/ case diary. Mere absence of the accused cannot give rise to a presumption that he is evading arrest, which in turn cannot be the sole ground to issue warrant of arrest.

27. *While going through the order issuing processes under Section 82 of the Code in this case, I find that simply because the accused are absent, the Courts have issued processes under Section 82 of the Code in a most mechanical manner without recording subjective satisfaction as to why it is necessary to issue the proclamation. There is no material which suggests that the Court has reasons to believe that the petitioners have absconded or are concealing themselves so that warrant cannot be executed. Further, neither the place nor the date of appearance of the accused is mentioned in the ordersheet, recording of which is mandatory in terms of Section 82(1) of the Code. These laches make the order issuing processes under Section 82 of the Code, absolutely bad and unsustainable in the eyes of law. Thus, the said order is also, hereby, quashed and set aside.*

30. *Section 83(1) of the Code clearly provides that the Court, which is issuing proclamation under Section 82 of the Code, for the reasons to be recorded in writing, may order for attachment of moveable or immovable properties. It is, thus, the mandate of the law that the reasons for issuing attachment order has to be recorded in the order itself. Non recording of the reasons will make the order invalid and unsustainable.*

31. *Further, from the aforesaid provision of law, it is clear that attachment order under Section 83 of the Code can be issued to attach the property belonging to the proclaimed person. Statement to the effect that the proclamation was duly published has to be made in terms of Section 82(3) of the Code, which provides that the Court has to record a statement in writing to the effect that the proclamation was duly published on the specified date in the specified manner as provided in Clause (i) of sub section (2) to Section 82 of the Code. This statement of the Court,*

which is to be recorded as per the statute, is a conclusive evidence that the requirement of law has been complied with, which is a pre-requisite for declaring a person a proclaimed offender/person absconding. Without recording the aforesaid statement in writing to the effect that the requirement of Section 82 of the Code has been complied with, a person cannot be declared to be a proclaimed offender/absconder, an attachment order in terms of Section 83 of the Code cannot be issued.

***32.** Thus, before issuing any attachment order under Section 83 of the Code against a person absconding, the statement, as envisaged in terms of Section 82(3) of the Code has to be on record. This is all the more necessary, as mentioned earlier, the said person can be tried and punished for a separate offence punishable under Section 174A of the Indian Penal Co*de.

Therefore, it can be seen that the Courts of Magistrates have been conferred with very important and significant roles in a criminal case under the CrPC and the Constitution.

ELIGIBILITY CRITERIAFOR APPOINTMENT AS A JUDGE

Supreme Court

For a person to be eligible for being appointed as a Supreme Court Judge, the following conditions must be satisfied, as specified under Article 124 (3) :-

124 (3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and-

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

High Court

Similarly, for being appointed as a High Court Judge, a person must satisfy the following criteria, as laid down under Article 217 (2) :-

217 (2) A person shall not be qualified for appointment as a Judge of a High

Court unless he is a citizen of India and-

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

District Judge

As far as the subordinate judiciary is concerned, the Constitution of India, under Article 233 (2), lays down the criteria for appointment to the post of District Judges in following terms :-

> *233 (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.*

The aforementioned eligibility criteria are the minimum constitutional mandates which are required to be compulsorily adhered to in appointments made for the Supreme Court, the High Courts and as a District Judge, though Constitutional conventions have supplemented these mandatory criteria with additional requirements for appointments to the Supreme Court or to the High Courts to ensure that the best of the most suited persons are appointed to these courts. Similarly for appointments as District Judges, every High Court has made Rules laying down conditions in addition to those mentioned in Article 233(2) of the Constitution such as the bar of minimum and maximum ages. Appointments as a District Judge are made through three modes - firstly, through promotion on merit cum seniority basis from amongst the officers belonging to the Judicial Service. Secondly, through direct examination for advocates.Thirdly, by way of promotion (by way of selection) strictly on the basis of merit through limited competitive examination or Sub-Judges (Civil Judge Senior Division having five years of service).In Jharkhand, of the total posts in the cadre of the service, 65% is filled in by promotion and 25% by direct recruitment from Bar and 10% through limited examination from the cadre of Civil Judges (Sr. Division), having not less than five years of service.For the persons appearing in direct recruitment examination from Bar, it is mandatory that they have an experience of seven years of practice as an advocate as required by the Constitution. No State can make any relaxation in this requirement. Even for the appointment through promotion or departmental examination, the requirement of a minimum period of experience as a

Judge has been mandated by different High Courts. In Jharkhand, the eligibility criteria for appointment of District Judges through recruitment examination have been laid down under Rule 9 of the Jharkhand Superior Judicial Service (Recruitment. Appointment and Conditions of Service) Rules, 2001 , as follows :-

9. Eligibility: A candidate shall be eligible to be appointed as an Additional District Judge under these Rules,if :

(a) he is above the age of 35 years and below the age of 45 years as on the last day of January preceding the year in which the examination is held; provided that in the case of a candidate belonging to scheduled caste or scheduled tribe, there may be a relaxation of upper age limit by three years;

(b) is a graduate in law from a Universityrecognised for the purpose of enrollment as an Advocate under the Advocates' Act, 1961;

(c) has an experience of more than seven years at the Bar as a practicing Advocate after having been duly enrolled as such under the Advocates; Act, 1961;

(d) possesses good health, is of sound moral character and is not involved in or related to any criminal case of any type involving moral turpitude.

Thus, it can be seen from the Constitutional mandates discussed above that for appointment as a Judge to the Supreme Court or to a High Court or as a District Judge, the experience for a minimum period as an advocate or as a Judge is mandatory for being eligible to be a Judge at these levels.

Civil Judges (Junior Division)

The appointments of Judges at the lowest level of structural hierarchy, that is, at the level of Civil Judges (Junior Division) or Judicial Magistrates (First Class) are made entirely through recruitment examinations. The Constitution, unlike for appointments as a Judge to a higher level, does not lay down any mandatory requirements or criterion for appointments at the lowest level.In the absence of any Constitutional mandate, the States were free to prescribe any qualification criterion or selection method for recruitment at this level.

14thReport of the Law Commission (1958)

The 14th Report of the Law Commission was submitted in 1958. The Report was related, amongst other things, to the system of judicial administration in this country. Regarding the eligibility requirement for appointment to the cadre of Civil Judges (Junior Division), the Report made the following observations under the Chapter - Subordinate Judiciary:-

> *35. We shall consider next the important question of the Nature of the written nature of the written examination to be held. We have already dealt in part with the question of the field for recruitment to these services and expressed our preference for recruitment from among persons who have had experience at the Bar for a period of three to five years. It is obvious that subjecting candidates who have already taken a law degree and spent some years at the Bar to a written examination in legal subjects in the ordinary manner will not result in a satisfactory selection. The young man who has spent some time at the Bar hardly be expected to devote time and attention to text books and law reports and answer question papers of the type usually set at law examinations. Even if he prepares himself for such a test, it would only enable the young lawyer with a good memory to score better in the examination and not bring to the fore the young man with a real aptitude for legal and judicial work. What we therefore suggest is a test of a practical nature. To quote the Civil Justice Committee, "an examination should be held to test the candidate's practical acquaintance with law and procedure with special reference to his ability to draft pleadings, appreciate evidence and write judgments. A simple method would be to give the candidate records of some decided cases. He should then be required to draft the issues and write the judgment, discussing the law including the case-law applicable to the facts". The candidate may be provided with bare Acts and law reports so that he may not be forced to rely on his memory and have ample opportunity of verifying the law. The emphasis will not be much on knowledge of the law as on its application with the aid of books, to a given set of facts. It may be pointed out that examinations of this nature are being held in the State of Uttar Pradesh for recruitment to the higher judicial service.*
>
> *******
>
> *40.Having regard to the considerations mentioned above, we are of the view that*

*three years' practice at the Bar should be prescribed as one of the minimum qualifications of eligibility for entry into the lower judicial service (civil judge junior division) recruited at the State le*vel.

116thReport of the Law Commission (1986)

This 116th Report was submitted in 1986 and was related to judicial reforms particularly in light of the "Formation of an All India Judicial Service". Regarding the eligibility requirement for appointment to the cadre of Civil Judges (Junior Division), the Report made the following observations under Chapter IV titled as "Positive Approach":-

> 4.4. Before briefly ref*erring to reservations disclosed by some Judges of the High Courts, a classic adage about Indian judiciary be recalled. As a general rule, members of Judiciary in their individual and corporate capacity are averse to any change. Precedent-oriented legal system and the principle of stare decisis combine to provide not only a myopic vision but an inbuilt resistance to any change. With this background, let us refer to the strong opposition to the concept of all-India judicial service emanating from some of the Judges of the High Court. It was said that 'the formation of all-India judicial service will give a death blow to the State Subordinate Judicial Service. If officers of all-India judicial service will become Chief Judicial Magistrates and District and Sessions Judges over the State subordinate judicial service officers, the effect will be devastating on the morale of the latter. Finding that they have no avenues for further promotion because there is a block created by the all-India judicial service officers, the lower judiciary will become restless, hopeless and may become corrupt. This apart, recruitment to the cadre of district judges directly from the Bar is to be stopped in case of formation of all-India judicial service. The criticism, apart from being not well merited, is the outcome of lack of knowledge about how Indian Judicial Service will be formed, set up and manned. The Service conceived in this report is one in which there will be direct recruitment through competitive examination, there will be substantial promotion from State sub-ordinate judicial service cadres and there will be an opening for direct recruitment from senior and experienced members of the Bar. The best features of the present situation will be retained and the ugly dispensed with. One other Judge strongly expressed himself against setting up of the Service. According to him, 'there is basic fallacy in equating judiciary with police or administrative officers where perhaps the principle of "catch them young" may be*

advantageous. But in the administration of justice, experience and knowledge of law and correct perspective is required. The formation of Indian Judicial Service is the thin end of a political wedge by which the judicial service may be brought under political control and deprive the High Courts of the same. It will sound the death knell of an independent subordinate judiciary. Thus independent and cogent objections are grouped together. The first is 'catch them young' slogan is unsuited to a service where experience and knowledge of law and correct perspective is a must. Senior well placed members of the Bar are reluctant to accept judicial services a fact universally accepted. Service with poor or inadequate salary is hardly attractive to a lawyer who has started earning because he is aware that sky is the limit. This is true of every layer of judicial service. If experienced lawyer is impervious to judicial service or social accountability, why not catch people young and give them intensive training. A short practice hardly trains effectively. If, on the other hand, as is contemplated herein, intensive pre-service training is given to the fresh young recruits, they will turn out to be better judges. There are countries in which practice at the Bar is not a pre-requisite or essential qualification to be eligible to become a Judge. Undoubtedly, in common law countries practice at the Bar is a must to be a judge at any level. But experience shows that practice for a very short period say for a period of two to three years at the Bar hardly imparts such training so as to make him a good judge.

*Second and more formidable objection is that formation of Indian Judicial Service is the thin end of a political wedge by which judicial service may, by a covert operation, be brought under political control. Is the State Judicial Service exposed to this possibility? If the answer is in the negative, it would all the more be impossible to penetrate political interference at all-India level. However, one can guard against this threat effectively by retaining the effective control of the High Court and setting up National Judicial Service Commission which is an integral part of the sche*me.

All India Judges' Association case (1993)

The Hon'ble Supreme Court, in ***All India Judges' Assn. (II)*** *v.* ***Union of India, (1993) 4 SCC 288,*** observed that "the judges are not employees and judicial service is not service in the sense of 'employment'. As members of the judiciary, they exercise the sovereign judicial power of the State." Therefore, the utmost priority in appointments to the judicial service has always been the quality of the prospective judges. In this context,

the Hon'ble Supreme Court further held :-

> 20. It has, how*ever, become imperative, in this connection, to take notice of the fact that the qualifications prescribed and the procedure adopted for recruitment of the Judges at the lowest rung are not uniform in all the States. In view of the uniformity in the hierarchy and designations as well as the service conditions that we have suggested, it is necessary that all the States should prescribe uniform qualifications and adopt uniform procedure in recruiting the judicial officers at the lowest rung in the hierarchy. In most of the States, the minimum qualifications for being eligible to the post of the Civil Judge-cum-Magistrate First Class/Magistrate First Class/Munsiff Magistrate is minimum three years' practice as a lawyer in addition to the degree in law. In some States, however, the requirement of practice is altogether dispensed with and judicial officers are recruited with only a degree in law to their credit. The recruitment of raw graduates as judicial officers without any training or background of lawyering has not proved to be a successful experiment. Considering the fact that from the first day of his assuming office, the Judge has to decide, among others, questions of life, liberty, property and reputation of the litigants, to induct graduates fresh from the Universities to occupy seats of such vital powers is neither prudent nor desirable. Neither knowledge derived from books nor pre-service training can be an adequate substitute for the first-hand experience of the working of the court-system and the administration of justice begotten through legal practice. The practice involves much more than mere advocacy. A lawyer has to interact with several components of the administration of justice. Unless the judicial officer is familiar with the working of the said components, his education and equipment as a Judge is likely to remain incomplete. The experience as a lawyer is, therefore, essential to enable the Judge to discharge his duties and functions efficiently and with confidence and circumspection. Many States have hence prescribed a minimum of three years' practice as a lawyer as an essential qualification for appointment as a judicial officer at the lowest rung. It is, hence, necessary that all the States prescribe the said minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary. In this connection, it may be pointed out that under Article 233(2) of the Constitution, no person is eligible to be appointed a District Judge unless he has been an advocate or a pleader for not less than seven years while Articles 217(2)(b) and 124(3)(b) require at least ten years' practice as an advocate of a High Court for the appointment of a person to the posts of the Judge of*

the High Court and the Judge of the Supreme Court, respectively. We, therefore, direct that all States shall take immediate steps to prescribe three years' practice as a lawyer as one of the essential qualifications for recruitment as the judicial officer at the lowest rung.

In compliance of the order of the Hon'ble Supreme Court, all the States prescribed the minimum period of three years of practice as an advocate to be an essential criterion for appointment as a judicial officer at the lowest level of the structural hierarchy while some of the States, such as Gujarat, Kerala, Orissa, Karnataka, prescribed the minimum period of practice to be even more than 3 years.

First National Judicial Pay Commission (Shetty Commission Report, 1999)

Under the resolution of the Ministry of Law, Justice and Company Affairs (Department of Justice), the First National Judicial Pay Commission was constituted by the Government of India on 21st March, 1996. It was headed by Justice Jagannatha Shetty, Former Judge,Supreme Court of India. The Commission submitted its report related to the Subordinate Judiciary particularly its pay structure in November 1999. Regarding the eligibility criterion of the requirement of minimum three years of experience as an advocate for appointment of Civil Judges at the entry level, the Commission's observations and recommendations were as follows :-

8.30 *As to the observation of the Law Commission in its 14th Report recommending three years practice at the Bar, we may state that observation was evidently based on the then existing system of legal education. The Law Commission made that report in 1958 when the L.L.B degree course was only of two years duration for which law practice as a subject was not in the curriculum.*

8.31 *In the present system of legal education of 3 years or 5 years, law practice is one of the subjects prescribed for the students particularly in the curriculum under the present 5 years law degree course, the students have to attend Court compulsorily to get themselves educated in the practical training in Court craft.*

8.32 *It would be, therefore, futile to prescribe three years practice as an Advocate to have intimate knowledge of the Court work as a condition for recruitment to the cadre of Civil Judges (Jr. Divn.).*

8.33 *If it is not out of place to mention, that the students coming out of the Institute like National Law School of India University Bangalore to be better equipped and more informed than a junior advocate with three years standing. The*

students from National Law School of India University are the favourites for campus selection by multi-nationals. Every year, multi-national companies land at the school campus and select students of the final year by offering them a flat salary of Rs.20,000 to Rs.25,000. The entire purpose of establishing the National Law School of India University is to produce good law graduates for enriching the Indian Bar. The purpose has been practically defeated by insisting upon three years Bar practice as a pre-condition for entering the judicial service.

8.34 *Further, in our opinion, 3 years standing at the Bar as the minimum qualification for entry into the judicial service may be wholly unnecessary and uncalled-for in view of the Commission's recommendations on Institutional training for the selected candidates. Attention of the concerned authorities is invited to the report of the Commission on judicial education and training and in particular the broad themes of the curriculum for induction training. It includes among other things, practical training through field placement. The Commission has recommended the induction training course for about one year by qualified trainers.*

RECOMMENDATIONS BY THE COMMISSION:

8.35 *If intensive training is given to young and brilliant law graduates, it may be unnecessary to prescribe three years practice in the Bar as a condition for entering the judicial service. It is not the opinion of any High Court or State Government that induction to service of fresh law graduates with brilliant academic career would be counter-productive. We consider that it is proper and necessary to reserve liberty to High Court and State Governments, as the case may be, to select either Advocates with certain standing at the Bar or outstanding law graduates with aptitude for service. It is not correct to deny such discretion to High Authorities like, High Courts and State Governments.*

8.36 *Those High Courts and State Governments who are interested in selecting the fresh law graduates with a scheme of intensive induction training may move the Supreme Court for reconsidering the view taken in All India Judges' Association Case for deleting the condition of three years standing as Advocate for recruitment to the cadre of Civil Judges (Jr. Divn.). We trust and hope that the Supreme Court will consider that aspect.*

All India Judges' Association Case

The Hon'ble Supreme Court, in ***All India Judges' Association and Others v. Union of India and Others,*** reported in (2002) 4 SCC 247 agreeing with the recommendations of the Shetty Commission, observed and held as follows :-

> *32. In All India Judges' Assn. case [(1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818] (SCC at p. 314) this Court has observed that in order to enter the judicial service, an applicant must be an advocate of at least three years' standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate after 3 years of practice finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges case direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years.*

From the aforementioned Reports of the Law Commission, the First National Judicial Pay Commission (Shetty Commission) and the judgments of the Hon'ble Supreme Court, it can be conclusively said that before the judgment rendered in ***All India Judges' Assn. (II) v. Union of India, (1993) 4 SCC 288,*** the eligibility criteria for appointments to the cadre of Civil Judges (Junior Division) were not uniform in the country including the requirement of experience at Bar. After the Hon'ble Court directed all the States to uniformly adopt the requirement of minimum 3 years' experience at Bar to be a compulsory criterion for appointment at the entry level in the judiciary, the requirement was adopted as a mandatory precondition by all the States. However, the Hon'ble Supreme Court, inAll India Judges' Association and Others v. Union of India and Others, reported in (2002) 4 SCC 247, agreed with the

recommendations of the Shetty Commission and in light of the experience gained after the judgment in All India Judges case (1993) directed the High Courts and the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. In pursuance to this direction, almost all the States amended their rules accordingly. Telangana and Andhra Pradesh, until recently, had not made the amendment to enable fresh law graduates to appear for the recruitment examination for the post of Civil Judge (Junior Division). The Rule requiring experience at Bar as an eligibility criterion has been held to be unconstitutional by the Andhra Pradesh High Court and the Telangana High Court.[13] At present, throughout India, for being appointed as a Judge at the lowest level of structural hierarchy, that is, Civil Judge (Junior Division)/Judicial Magistrate (First Class), a person requires only to fulfil the criteria of the age limits and the educational qualifications. A fresh law graduate of 21 years can also appear for the recruitment examinations for Civil Judges (Junior Division). As aptly observed by the Hon'ble Supreme Court, the judiciary must be open to fresh and talented law graduates and a requirement of experience at Bar as an eligibility requirement only hinders this possibility. To ensure that the lack of experience, do not have adverse impact on the justice delivery system, the Hon'ble Court had also directed for a mandatory training of the newly recruited Civil Judges and in compliance thereof Judicial Academies have been established for every State and a mandatory induction training of at least one year comprising of academic as well as field training has been designed for them.

CRITICISM OF THE ENTRY LEVEL RECRUITMENT IN JUDICIARY

The main argument against the recruitment of fresh law graduates as Judges at entry level is that they lack practical experience and are not well versed with the functioning of the Courts which adversely impact their adjudication and decisions. In its Press Release dated 02.01.2021, the Bar Council of India stated the following:-

> *The Bar Council of India and all State Bar Councils are strongly in favour of a 3 year minimum experience at the Bar to be prescribed for being considered eligible to sit for a Judicial Service Exam. Presently, fresh law graduates are being allowed to sit for Judicial Service Examination throughout the territory of India without having any practical experience at the Bar. Judicial Officers not having practical experience at the Bar are mostly found to be incapable and inept in handling*

13. R. Anitha and Ors. v. State of Telangana and Ors., 2019 SCC OnLine TS 2075.

matters. Most of such officers are found impolite and impractical in their behavior with the Members of the Bar and Litigants. They have lack of understanding of the aspirations and expectations of Advocates and Litigants in the matter of proper and decent behavior.

The inexperience at the Bar is one of the primary and major reasons for delays in the disposal of cases in the sub-ordinate Judiciary. Trained and experienced judicial officers can comprehend and dispose of matters at a much faster pace, thereby leading to efficient administration of justice.

In the matter of All India Judges Association & others Vs. Union of India before the Hon'ble Supreme Court of India, the requirement of 3 year experience at the Bar had been done away with by the Hon'ble Supreme Court of India by passing an order dated 21.03.2002. The Bar Council of India is filing an application before the Apex Court to seek the modification of the said order.

The Andhra Pradesh Public Service Commission had invited applications vide notification bearing No.9/2020-RC dated 03.12.2020 for appointment of Civil Judges Junior Division in the AP State Judicial Services for Advocates having a minimum eligibility requirement of 3 years as practicing advocate.

A Writ Petition (Civil) bearing No.1479/2020 has been filed before the Hon'ble Supreme Court of India by the petitioner Mr. Regalagadda Venkatesh against the State of Andhra Pradesh wherein he has challenged the above referred notification on the ground that the requirement of 3 year experience at the Bar is illegal and unwarranted.

The Bar Council of India is filing another application to seek impleadment as a party in the said matter and shall plead in favour of the urgency and requirement to have a minimum 3 year experience at the Bar as a requirement to be eligible to sit in the Judicial Service Exam.

An analysis of the reports of the Law Commission and Shetty Commission, the observations of the Hon'ble Supreme Court and the discussions amongst the legal fraternity leads to an undeniable truth that the academic curriculum and training at law schools in India and the professional requirement post completion of law graduation are hardly in consonance to each other. But this is true for every law profession and not just for Judges. After the research and study of the Law Commission and the Shetty Commission and also the decision of the Hon'ble Supreme Court, it would be a futile

exercise to venture in the possibility whether a mandatory requirement of experience at bar would serve the purpose and requirement demanded from entry level Judges. What is required is to rethink and restructure the legal education system so that the law graduates are fit for any profession they undertake after their graduation and the current issue is addressed holistically. Teaching methods and law curricula need to be transformed drastically. The method of mere rote learning of provisions without any development of legal acumen is a wasteful exercise. The training required at law schools should address the professional needs and therefore, clinical legal education seems a better solution. The duration of 3 years or 5 years at law schools is sufficient for honing the students and preparing them for future in such a way that an additional training or professional experience is not required to handle the profession effectively and efficaciously. One of the innovative course structures can be seen at Maharashtra National Law University, Nagpur which has designed its courses to include Honours in Adjudication and Justicing as part of its curriculum. It was the brainchild of the former Chief Justice of India Hon'ble Mr. Justice SaradBobde (retd.) and is claimed to be one of its kind in the world. The aim and purpose of this course is to train the law graduates in such a way that they are ready to discharge the duties of a judicial officer on graduating. In the following chapters, we have attempted to find similar solutions in the legal education system which can be adopted to address the present issue discussed hereinabove.

CHAPTER - IV

LEGAL EDUCATION REFORMS ACROSS THE WORLD

The countries over the world have taken positive steps from time to time to reform their legal education to meet the changing needs of the society and the challenges faced by the justice dispensation system. In view of above it would be necessary to view the reforms taken up by some of the countries in their legal education.

GERMANY

According to the article "Legal Education in Germany Today" of Stefan Korioth Published in Wisconsin International Law Journal Vol. - 24, No.-1. German legal education has four main characteristics. First, legal education is separated into two stages. The first stage consists of legal studies at university law faculties in a program of at least four years. This first stage is followed by a compulsory practical training (Referendarzeit, or apprenticeship) of two years. There is no law school system like that of the United States.

Second, both stages end with a state examination covering the entire scope of the law. Students do not specialize in training for specific legal professions. Only the last reform of 2002 introduced a certain degree of specialization during legal study, this is examined by the law faculty but counts for the state examination.

Third, after successfully passing both state examinations, the young lawyer, at this stage called an Assessor, is theoretically qualified to adopt any legal profession, including that of a judge. The second examination provides a uniform qualification for all legal professions. German legal education produces the socalled Einheitsjurist. Only a few young lawyers, however, become civil servants, judges, or public prosecutors. Most of them practice as Rechtsanw¨ alte (attorneys at law), as only a formal admission to the bar is required for Assessoren.

Fourth, legal education in Germany is strongly regulated by federal and state law. Its focus lies on the judiciary. Law faculties and lawyers traditionally have had very little impact on the frame of legal education. Only recently has their influence grown;

the 2002 reform has strengthened their position.

It has been further stated by Stefan Korioth in his above article that Unlike students in other countries, German law students begin legal studies without an undergraduate degree. At the age of nineteen or twenty, after thirteen years of school (nine years in the Gymnasium with the uniform final examination/graduation Abitur), most students go directly to a university. There is no admission test for law students. Students can choose the law faculty they want to attend. Only in cases of overcrowded law faculties can students be refused, and those not accepted are guaranteed a place at another university. Studies are free of charge. Law faculties are not allowed to establish admission exams.

The legal education in Germany consists of the two stages of university study and legal training, each concluded with a major examination. This system creates the socalled Einheitsjurist. At the moment, there is no other way to become a lawyer. For example, after the First Exam, no student could start as a trainee in a law firm in order to become a lawyer, even if he already knew during university studies that he wanted to become an attorney. Even completing the education process does not necessarily result in obtaining a legal career. About ten thousand students pass the Second State Examination every year. They are, in theory, qualified for every legal profession. In fact, it has become more and more difficult, especially during the last decade, for Assessoren to find a proper career opportunity. Mainly due to the unlimited access to legal studies, the system produces too many lawyers. It is estimated that only three thousand new lawyers are needed per year.

In practice, 85 percent of the Assessoren start a career as Rechtsanwalt after the Second Exam. The reason is quite simple: there is no bar exam in Germany—only a formal admission is required. On the other hand, not all professions are open to every Einheitsjurist. Only candidates with good results in the examination (about 7 to 10 percent) have the option to become a judge. It is the classical aim of the legal education system that only the best shall obtain the office of a judge, but there have always been many highly qualified young Assessoren who do not want to become judges. In comparison to the best attorneys, the income is much lower, and moreover, the position of judge is not as prestigious as it is in common law systems. In the German legal system, judges are powerful but they are part of an anonymous judiciary. In the public sector, the Assessoren can also become civil servants or public prosecutors. The entry to those careers also depends on very good grades.

In the private sector, the greatest group among the jurists, the Rechtsanw¨ alte, has faced many changes in the last fifteen years. Traditionally, German Rechtsanw¨ alte worked only locally in small partnerships of about ten people at most.81 The rules of ethics (Standesregeln) set by the Rechtsanw¨ alte themselves, were strict: self-presentation and advertisements were not allowed. Since the beginning of the 1990s, large law firms, some of them international partnerships, have been established in Germany. They have introduced American customs and have tried to recruit the best Assessoren. In the last five years, however, the situation seems to have deteriorated even for them; economic decline and growing competition makes it more difficult to gain a piece of the pie. Crisis has also reached the traditional small firms, in which 60 percent of the Rechtsanw¨ alte still practice.

For those who want to start an academic career, which may terminate in a professorial post, it is not necessary to have undergone the regular Vorbereitungsdienst, but it is very common. It provides law professors with an understanding for practice. If an academic career fails—which can happen easily, as the selection of professors is very strict and there are few professorial posts— it is possible to launch another legal career. Generally, the path to the teaching profession consists of three stages. First, it is necessary to take one's doctor's degree (while a Ph.D. in law is not necessary, only useful, for practitioners). Immediately after the First Examination, one can begin writing the thesis at the same time as undertaking the Vorbereitungsdienst, subsequently publishing the thesis as a book. It can also be written after the Second Examination. Currently, an academic career usually starts with a post as a Wissenschaftlicher Assistent or Wissenschaftlicher Mitarbeiter (assistant). Those in these posts are chosen to work at the Lehrstuhl (chair) by a professor, which means that they teach under the supervision of the professor and support him with his research, working on their own projects at the same time. The assistant can stay at the university for six years at the most. If the candidate is awarded the doctor's degree with outstanding results, with the professor's approval he or she can start the most crucial and difficult phase on the way to a professorship: the Habilitation (university lecturing qualification), for which candidates must write a second book, which must be an outstanding and innovative work. If it is accepted by the law faculty as a Habilitationsschrift, the candidate obtains the facultas docendi and the status of a Privatdozent (the right to teach without any supervision). The first and second books, among other publications, enable him or her to obtain a professorship at another law faculty.

There are two different levels of professorship at German universities. On the higher level, there is the W3 Lehrstuhl (formerly C4), which is the most prestigious post and includes control over rooms, a library, a secretary, assistants, and one's own budget. The W2 Lehrstuhl (formerly C3) is on the lower level (but there is no difference in the title, it is sometimes called Professur), which does not provide the holder with his or her own secretary or assistants and only gives control over a small budget. A Privatdozent can immediately be offered a Lehrstuhl. A board of professors chooses the candidate for a vacant professorship, either a Privatdozent or a professor from another law faculty. The appointment to a Lehrstuhl and a Professur is for a lifetime. If the Privatdozent fails to obtain a professorship, he or she has to leave university at some time. There are no tenure tracks for academic teachers below the level of a professor.

This system, which has hardly changed since the nineteenth century, may be subject to alterations in the near future. In 2002, federal law abolished the Habilitation, the classical prerequisite for professorship in Germany, and established the Juniorprofessur, a completely new post, which is comparable to an assistant professor in the American system. This change was declared unconstitutional by the Federal Constitutional Court in 2004, but only for formal reasons: the Federation does not have the competence to regulate details of the law concerning the universities because it is subject to state legislation. Some of the sixteen states in Germany want to keep the Habilitation, while others might implement the Juniorprofessur besides or instead of the Habilitation. That post will lead to a professorship after six years, without Habilitation, but is, of course, still dependent on evaluations of publications and research activities. In my opinion, the classical German way to professorship, the Habilitation, has many advantages, at least in the human and social sciences. The intensive study of at least two great subjects, leading to the two books, provides the candidates with essential abilities and knowledge in a relatively early stage of their scientific career. It also proves to be an advantage that the assistants who aspire to a Habilitation have comparatively few teaching obligations and thus can concentrate very much on their scientific publication.

In Germany, it is very unusual for a learned and experienced practitioner to start a university career. This may be the reason for the widespread assumption that a professor at the university with little practical experience (mostly only during the Vorbereitungszeit), and who concentrates on the teaching and research, lives in a more or less comfortable ivory tower. This, assumption, however, is incorrect in most cases.

Some of the professors serve as judges as a sideline,92 and many of them advise companies in legal questions and ministries. In addition, many professors give legal opinions in major law disputes and cases in all fields from criminal law to constitutional law.

UNITED STATES OF AMERICA

Many legal education reforms have occurred in the United States, with various committees producing reports recommending that legal education be more practical rather than theoretical, so that law students can gain practical experience of the functioning of law in courtrooms, advocates' chambers, and to understand the needs of clients through client counseling sessions, which allows students to gain first-hand experience of the skills Judges and Advocates require in the field of law.

Following are the reports to reform the legal education in the U.S.A -

I. The MacCrate Report (1992)

II. The Carnegie Report (2007)

III. The Best Practices Project (2007)

The Mac Crate Report (1992) -

The ABA Task Force, whose chairperson, Robert MacCrate, was a leader of the bar in New York City and a past president of the American Bar Association, produced the MacCrate Report in July 1992.A committee of twenty-seven of the country's most respected and experienced law school deans and faculty members, judges, and practicing attorneys spent over three years researching, studying, and reflecting on the Report.

The MacCrate Report was not just ambitious, but it also had a great impact, especially on legal education in the United States.

Contents of the MacCrate Report -

The MacCrate Report is divided into four chapters:

- **Part I** gives a thorough review of the legal profession in the United States in the early 1990s.
- **Part II** presents a compelling picture of the abilities and values required for

competent client representation, which all lawyers should possess before taking full responsibility for a significant client matter.

- **Part III** acknowledges that legal education does not end with graduation from law school, and hence this section of the Report addresses methods in which a law student's and lawyer's essential abilities and beliefs can be reinforced at any stage of their careers.
- **Part IV** summarises a number of specific recommendations that the Task Force recommended be implemented in order to achieve the Task Force's ultimate goal: continuing improvement in the quality of legal education and the legal profession in the United States through the collaborative efforts of law schools, practicing attorneys, and the judiciary .[14]

The Statement of Fundamental Lawyering Skills and Professional Values, included in Chapter 5, is the most important and well-known part of the Report. It is the most comprehensive assessment of the skills required for competent client representation that has yet to be developed.

The MacCrate Report made the following suggestions for improving legal education:

- Law schools and the practicing bar recognize that they share responsibility for the development of competent lawyers by teaching fundamental professional values.
- One of the fundamental missions of law schools is to teach law students lawyering skills and professional ideals.
- Law schools should review the extent to which their curricula address skills and values, and create a unified skills and values curriculum;
- Law schools should continue to stress legal analysis, research, and reasoning abilities, as well as increase or expand the teaching of problem resolution, fact discovery, communication, counselling, negotiation, litigation, ethical dilemma recognition, and oral and written communication.

14. Valparaiso University Law Review Volume 43 Number 2 Winter 2009 pp.513-594 Winter 2009 Professional Skills and Values in Legal Education: The GPS Model Stephen Gerst Gerald Hess, https://scholar.valpo.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1106&context=vulr

- Law schools should effectively communicate to students that fundamental professional values are as important to prepare for practice as substantive knowledge[15]

Impact of the MacCrate Report

The MacCrate Report's most major impact has been in supporting and hastening what has been the most significant development in legal education in the United States in the last twenty-five years.That shift has been the inclusion of several courses and segments of courses in the curricula of practically all US law schools, providing US law students with extensive training in the "practical" abilities of lawyering, particularly the skills identified in the MacCrate Report.

All law schools in the United States now provide extensive chances for students to improve their lawyering abilities in the context of actual client representation, whether through law school-run legal clinics or externships with judges or public interest law firms.Almost all legal schools in the United States currently offer a variety of simulated skills courses, including trial and appellate advocacy, negotiation and counselling, and planning and drafting .[16] The MacCrate Report, which has received a lot of attention, is an ambitious attempt by the American Bar Association to reform legal education and restore professionalism to the practicing bar.The fundamental concepts of this Report have been accepted and implemented by the *Wisconsin Commission on Legal Education,* an agency of the State Bar, with minor revisions.[17]

The Carnegie Report (2007)

The Carnegie Foundation for the Advancement of Teaching is conducting comparative studies of professional education in law, engineering, religion, nursing, and medicine as part of its Preparation for the Professions Program.Professional education faces a common problem in teaching the "analytical thinking, skillful practice, and intelligent judgment" that each profession requires.

Professional education is viewed through three apprenticeships in the Carnegie Report:

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15. Ibid

16. Valparaiso University Law Review Volume 43 Number 2 Winter 2009 pp.513-594 Winter 2009 Professional Skills and Values in Legal Education: The GPS Model Stephen Gerst Gerald Hess, https://scholar.valpo.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1106&context=vulr.
17. Marquette Law Review Volume 80 Issue 3 Spring 1997: Speeches and EssaysArticle 9 Skills, Values, and Education: The MacCrate Report Finds a Home in Wisconsin Graham C. Lilly, https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1504&context=mulr

(1) cognitive, which emphasizes academic knowledge of the field and analytical reasoning;

(2) practice, which includes the transfer of practical skills among competent experts; and

(3) professional identity, which includes the profession's goals, beliefs, tasks, and obligations.

The Carnegie Report's assessment of the existing condition of legal education and future suggestions are similar to the preceding Cramton and MacCrate studies.Legal education efficiently teaches most students legal doctrine and analysis during their first year because of its distinctive pedagogy-the case-dialog technique. The Carnegie Report points out two flaws in legal education. One drawback is that law schools do not devote enough attention to practical skills training.

A second limitation is that law schools fail to focus on the development of the "ethical and social dimensions of the profession." To build on legal education's strengths and to address its weaknesses, the Carnegie Report calls for the integration of three critical elements of professional education throughout law school:

1. The teaching of legal doctrine and analysis, which provides the basis for professional growth;

2. Introduction to the several facets of practice included under the rubric of lawyering, leading to acting responsibly for clients; and

3. A theoretical and practical emphasis on the inculcation of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession .[18]

The Best Practices Project (2007)

The Best Practices Project was initiated by the Clinical Legal Education Association in 2001 and developed collaboratively over six years. The Project was motivated in part by concerns that law schools were not fully committed for preparing the students to enter the practice of law. More specifically, many law school graduates lack a commitment to providing access to justice for low and middle-income people, are not sufficiently competent to perform adequate services to clients. The Project sets

18. Educating Lawyers -Preparation for the Profession of Law, The Carnegie Foundation for the Advancement of Teaching, 2007, available at http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf

out six attributes of effective, responsible lawyers:

(1) self-reflection and lifelong learning skills;

(2) intellectual and analytical skills, including critical thinking and practical judgment;

(3) core knowledge of legal doctrine;

(4) core understanding of the law, including the ability to apply it in new situations;

(5) adequate professional skills, including communication, advocacy, management, and cooperative skills; and

(6) professionalism, including a commitment to justice, respect for the rule of law, honor, integrity, fair play, truthfulness, candor, and sensitivity to diverse clients and colleagues.

To achieve the aim of preparing competent, responsible lawyers, the Best Practices Project made four recommendations for law school programs of instruction -

a. First, a law school should seek to achieve congruence by articulating its mission, identifying learning outcomes that are consistent with the mission, designing curricula to produce the learning outcomes, and formulating individual course objectives informed by the mission, outcomes, and curricula.

b. Second, law schools should organize their programs progressively to develop students' knowledge, skills, and values through educational experiences that are successively more sophisticated.

c. Third, the Best Practices Project adopted the recommendation of the Carnegie Report that law schools integrate the teaching of knowledge, theory, and practice from the beginning through the end of students' legal education.

d. Finally, the Project endorsed the notion that all law teachers share the responsibility to teach professionalism pervasively during students' three years of law school .[19]

19. Valparaiso University Law Review Volume 43 Number 2 Winter 2009 pp.513-594 Winter 2009 Professional Skills and Values in Legal Education: The GPS Model Stephen Gerst Gerald Hess, https://scholar.valpo.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1106&context=vulr.

UNITED KINGDOM

The Ormrod Report, 1971

The Ormrod Report on Legal Education, 1971 for the first time recommended that the legal profession of England and Wales be a graduate profession. It opened new opportunities for universities and other higher education providers. At the time of the report there were only 22 law faculties/schools and seven other institutions providing the **Council for National Academic Awards (CNAA) law degree,** so law as a subject was, relatively, a minority university discipline. [20]

Recommendations -

1. To promote legal education in England and Wales by enhancing collaboration among the various entities now involved in legal education;
2. To think about and provide recommendations about legal professional qualification training in the two branches of the legal profession, with a focus on:
    a) The contribution that universities and colleges of further education can make; and
    b) The Law Society and the Council of Legal Education are responsible for providing training, coordinating that training, and administering qualifying tests related to it.[21]

The Lord Chancellor's Advisory Committee on Legal Education and Conduct, First Report on Legal Education and Training (ACLEC) (London, 1996)

Background

The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) was created in 1991 with the mission of providing advice on legal service provider education and training. The Committee is required by law to examine whether legal education is relevant to the needs of both practitioners and members of the public. Their work is restricted to legal education in the United Kingdom and Wales.

20. The Law Teacher, ISSN: (Print) (Online), Legal education in England and Wales: what next? Patricia Leighton, DOI: 10.1080/03069400.2021.1939975,
https://www.tandfonline.com/action/journalInformation?journalCode=ralt20
21. Legal Education and Training Review Literature Review2013, Jane Ching, Paul Maharg, Avrom Sherr, Julian Webb ;http://irep.ntu.ac.uk/id/eprint/12214/1/PubSub3107_Maharg.pdf

The ACLEC committee began a review of all aspects of legal education shortly after its appointment in 1991, and solicited input from a wide range of interested parties, including educational providers, government law officers, the judiciary, and private legal practice, through consultative papers and conferences. Expert consultants and existing and commissioned academic research studies were used to enhance the consultative process. As a result, ACLEC's First Report on Legal Education and Training was published in April 1996.

Recommendations

The First Report (Importance of Vocational Training in law curriculum) -

From the perspectives of legal service providers, educators, and consumers, the report places the assessment of legal education squarely in the context of current and future demands. It acknowledges that market pressures have had a considerable impact on legal education since Ormrod's time.

A "legal services revolution" is mentioned, as well as the restructuring and increased complexity of legal service provision in both the private and public sectors.The report also analyses the most significant developments in higher or tertiary education.The increase in university and college student populations, the diversification of programmes and options, and the strain caused by reductions in public education financing are all mentioned.Furthermore, during the last ten years, universities and colleges have become increasingly essential in the provision of vocational and postgraduate legal education.

The need and demand for intellectual and professional skills are highlighted as is the requirement for a strong and clear ethical component. There is an increasing tendency for law students not to follow a vocational career but to follow a variety of (often) non-law specific work related options. This latter point, in part, leads ACLEC to call for "multiple entry and exit points" into, and out of, the legal education structure.The Report prefaces its detailed examination and its recommendations by making raising two significant points (identified in the report as "serious structural weaknesses" in the existing system of legal education in England and Wales). These are:

- "the artificially rigid" separation of the stages of legal education (academic and professional)
- the commonly perceived role of the law degree as largely a preparatory step to entry to vocational training.

The observation is also made, later in the Report, that the quality of legal education provision would be generally enhanced if universities and colleges were given greater autonomy and consequently more freedom to decide on the curriculum and the means by how delivered.

Legal Education and Training Review (LETR) Report, June 2013 -

The Legal Education and Training Review (LETR) was published in June 2013. LETR is a non-profit organisation that focuses on legal education and services in England and Wales.The evaluation revealed concerns about the paucity of educational offerings on professional values and ethics in undergraduate degrees, among several other issues (LLB). LETR emphasises the importance of these areas during the training qualifying stages. Students would benefit from earlier exposure to principles of professional conduct, ethics, and values, according to the LETR .[22]

This report outlines the methodology and findings from the research phase, as well as the evidence that supports those findings, and makes recommendations to the approved regulators and the LSB.The substantive chapters are organised around three major themes: context (the social, economic, and policy environment in which LSET occurs), content (the knowledge, skills, and traits that LSET will produce), and systems (how LSET will be implemented) (the structures and processes informing, administrating, and facilitating LSET).

Recommendations -

1. Learning outcomes should be prescribed for the knowledge, skills, and attributes expected of a competent member of each of the regulated professions. These outcome statements should be supported by additional standards and guidance as necessary.

2. Such guidance should require education and training providers to have appropriate methods in place for setting standards in assessment to ensure that students or trainees have achieved the outcomes prescribed.

3. Learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills, and attributes required. They should begin with a set of

22. Journal of Commonwealth Law and Legal Education, Vol. 11, No. 1, Autumn 2016 ISSN 1476-0401, https://law-school.open.ac.uk/sites/law-school.open.ac.uk/files/files/JCLLE/JCLLE-Vol-11-No-1-Autumn-2016.pdf

'day one' learning outcomes that must be achieved before trainees can receive authorisation to practice. Learning outcomes may also be set for post-qualification activities.

4. Mechanisms should be put in place for regulators to coordinate and co-operate with relevant stakeholders including members of their regulated profession, other regulators, educational providers, trainees and consumers, in the setting of learning outcomes, and prescription of standards.

5. Longer term, further consideration should be given to the development of a common framework of learning outcomes and standards for the legal services sector as a whole.[23]

HONG KONG

In Hong Kong legal education reform was implemented considering the following reports -

I. Redmond-Roper: A Review of Legal Education and Training in Hong Kong (Advisory Steering Committee on the Review of Legal Education and Training in Hong Kong ('Steering Committee, 2001)

II. CB(4) 1249/17-18 (03) For discussion on 25 June 2018 Legislative Council Panel on Administration of Justice and Legal Services Legal Education and Training in Hong Kong

Redmond-Roper: A Review of Legal Education and Training in Hong Kong (Advisory Steering Committee on the Review of Legal Education and Training in Hong Kong ('Steering Committee, 2001)

The government of Hong Kong established an ad hoc Advisory Steering Committee on the Review of Legal Education and Training in Hong Kong ('Steering Committee') in November 1999, on the recommendation of the Advisory Committee on Legal Education, to oversee a comprehensive and independent review of legal education and training in the territory.Paul Redmond, the then dean of the Faculty of Law at The University of New South Wales, Australia, and Christopher Roper, the initial director of the Centre for Legal Education, Australia, formed the consultancy. Before presenting their conclusions in August 2001, Redmond and Roper spent nearly two

23. Setting Standards : The Future Of Legal Services Education And Training Regulationin England And Wales June 2013.

years evaluating Hong Kong's legal education system.

Recommendations of the Report -

1. The dominance of a black-letter approach to law, as well as the necessity to move away from a rigorous doctrinal approach and introduce liberal education courses into legal education.

2. A sedentary classroom environment that discouraged student participation, as well as the need for significant adjustments in teaching, learning, and evaluation approaches.

3. Failure to fulfill the particular needs of Hong Kong society, as well as the need to train graduates to face the problems of Hong Kong's legal system under PRC control.

Importance and Implementation of the Redmond-Roper Report -

Redmond-Roper was significant because it intended to emphasize the importance of legal education integrating theory and practice, contributing to larger liberal education, and promoting professional and ethical responsibility in a specific social context. The Steering Committee mostly agreed with the report's findings and offered solutions.They extended the LLB curriculum from three to four years in response to the structural difficulties raised in the study, providing law students greater access to non-legal courses and the development of a liberal education. The extension began in the academic year 2004-05. They also recommended the creation of a statutory body-which would replace the current Advisory Committee on Legal Education-with sufficient power to oversee the implementation of the reform of legal education and training and to monitor legal education's future developments. While Redmond- Roper called this body, The Legal Qualifying Council was eventually named The Standing Committee on Legal Education and Training ('Standing Committee') at its establishment in 2004.

However, while the identification of a problem may not have been in dispute, the Steering Committee did find itself at odds with some of the report's recommendations, in particular, with regards to the PCLL. Redmond-Roper Report found the PCLL curricula offered by its two providers insufficient. The programmes in particular were created as extensions of a law degree, focusing primarily on academic pursuits at the expense of skill development and practical training.They argued that the PCLL should

be "a problem-centered rather than a subject-centered curriculum" that "trains students in know-how rather than knowledge."

The Steering Committee chose not to pursue Redmond Roper's recommendation that the PCLL be replaced by a 16-week legal practice course operated by an institution apart from the legal education providers, preferring instead to explore fundamental improvements of the existing programmes. In addition to the PCLL curricula reforms, Redmond-Roper recommended developing a scheme which the consultants referred to as a 'conversion course'-through which persons with academic qualifications other than an LLB from a Hong Kong university could seek admission to a PCLL programme.

The conversion course would be used to "make up shortfalls measured against the statement of academic criteria required for admittance to the vocational base."In response to this request, rather than developing an obligatory conversion course, the Standing Committee established the PCLL Conversion Examination in 2008.The PCLL Conversion Examination, which is administered by the independent PCLL Conversion Examination and Administration Limited, requires candidates to demonstrate proficiency in a several subjects to be admitted to PCLL.As a result of Redmond-Roper, Hong Kong's legal education system has seen significant and concrete advances. However, its various individual reforms would not be its most enduring legacy.[24]

CB(4) 1249/17-18 (03)FINAL REPORT - 25 June 2018 by Legislative Council Panel on Administration of Justice and Legal Services Legal Education and Training in Hong Kong -

On 15 May 2018, the SCELT released the final report of its appointed consultants ("Consultants") on the Comprehensive Review ("Final Report"), which was commissioned by the Standing Committee on Legal Education and Training ("SCLET"). In August 2001, a comprehensive evaluation of Hong Kong's whole legal education and training system was done, with the resulting consulting report published (i.e. the Redmond Roper Report).

Since then, the legal profession has experienced significant changes and new expectations.As a result, in December 2013, SCLET decided to commission independent consultants to conduct a comprehensive review of legal education and

24. Developments in Hong Kong Legal Education Article in Asian Journal of Legal Education · June 2016, DOI: 10.1177/2322005816640333 , file:///tmp/2322005816640333.pdf

training in Hong Kong (the Comprehensive Review) to improve legal practitioners' professional qualifications and standards to meet the emerging needs and challenges in Hong Kong's legal sector.

The following were the terms of reference for the Comprehensive Review:

(1) to critically examine the current system of legal education and training in Hong Kong, including its strengths and weaknesses;

(2) to advise on the requirements of a legal education and training system that is best capable of meeting the challenges of legal practice and the needs of Hong Kong society;

(3) make recommendations, including proposals to improve the existing system or introduce an alternative model of legal education and training system, in light of the findings in (1) and (2) above, to ensure that such improved or alternative system is best capable of meeting those challenges and needs;

(4) to analyse the current curriculum of the various law programmes offered by the three universities and give recommendations for such curricula in order to guarantee that students entering the legal profession are best equipped to address those challenges and needs;

(5) to advise on the feasibility of establishing a mechanism for assessing the quality and standard of legal education and training in Hong Kong, to ensure that those entering the legal profession receive the best legal training possible to maintain or improve professional standards;

(6) to review the current arrangements for pre-qualification vocational training of trainee solicitors and pupils, and to advise on the need (if any) and ways to improve success.

The Recommendations **-**

There are a total of 38 recommendations, which can be categorised as follows:

(1) two recommendations for SCLET:

(i) to strengthen SCLET's role by establishing a standing sub-committee to oversee the development of an appropriate mechanism for oversight of the PCLL's operation in each of the universities; and

(ii) to consider the feasibility of establishing a separate Secretariat for SCLET rather than relying on the Department of Justice, as it has done since March 2018;

(2) four recommendations for legal education at the academic level;

(3) one suggestion for the development of a more advanced legal executive qualification that may lead to direct admission to the PCLL;

(4) six PCLL-related recommendations;

(5) four suggestions for the development of a common entrance examination or some other type of common assessment;

(6) 19 recommendations for solicitors and barristers at the vocational stage, including components of the training contract, pupillage, and abroad qualifying tests; and

(7) two long-term recommendations on how to maintain the system of legal education and training in Hong Kong, one of which touches on the proposed enhanced role of SCLET, namely extension of SCLET's oversight function to enable it to undertake a more substantive quality assurance role.

The Department of Justice was satisfied to note that the Final Report's scope and depth are both comprehensive.The Department of Justice contendedthat the public interest should be the ultimate criterion for any modifications to legal education and training in Hong Kong. The main goal was to think about how Hong Kong's legal education and training can be improved so that our graduates are well-prepared to meet the challenges of legal practice and societal needs in the future, thereby contributing to the development of Hong Kong's legal system and rule of law, as well as Hong Kong's status as a leading centerfor international legal and dispute resolution services in the Asia-Pacific region. The Department of Justice has decided to continue to work constructively with other stakeholders on the SCLET platform on the Final Report and its recommendations.[25]

25. CB(4) 1249/17-18 (03) For discussion on 25 June 2018 Legislative Council Panel on Administration of Justice and Legal Services Legal Education and Training in Hong Kong , https://www.doj.gov.hk/en/publications/pdf/ajls20180625e1.pdf

AUSTRALIA

The Australian legal education reform is guided by the landmark report, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission (Pearce Report) 1987.*

Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission (Pearce Report)

The Pearce Report was one of the most significant events in the development and direction of Australian legal education at the turn of the century.In 1985, the report was commissioned and completed in 1987.The terms of reference for the Pearce Committee's review are set out in Volume 1. However, they are succinctly summarised by Judith Lancaster in her monograph as:

> *Include[ing] assessment of the quality and economic efficiency of each institution providing legal education; the suitability and feasibility of the aims set and followed; the nature and quality of both undergraduate and postgraduate courses; the standards of teaching and research; staff contributions to law reform, the work of government, the profession, and the community's welfare; the effectiveness of resource utilisation and the extent of unnecessary duplication; current deficiencies; the community requirement for graduates, and selection and admission processes of law schools.*

It found several issues with Australian legal education, including stagnation, concerns about teaching commitment, student unhappiness with intellectual caliber, a dull programme, and conflicts and divides.It went on to make a number of recommendations for legal education reform in Australia. The Report is a weighty document consisting of four volumes.

- **Volume 1** contains 48 CTEC recommendations and 64 key recommendations for law schools. The goals and issues of law schools and legal education, teaching and its evaluation, graduate studies, teaching law to non-law students, and continuing legal education are all covered in this first book.
- **Volume 2** focuses on some of the more complex features of law schools, such as research and publishing, community service, enrolment in law classes, and access to legal education.

It also addresses resources such as law professors and the quality of legal education, as well as law school accommodations.

- **In Volume 3** the Committee focused on the practical matters with which law schools were concerned such as administration, law libraries, practical legal training, and relationships between various legal education institutions such as the then Australasian Universities Law Schools Association (AULSA), now the Australasian Law Teachers Association (ALTA); meetings of Law School Heads (the forerunner of the Council of Australian Law Deans (CALD); Australasian Law Students Association (ALSA); and the Australian Professional Legal Education Conference (APLEC), the organization representing practical legal training providers.
- **Volume 4** is wholly devoted to a survey of recent Australian law graduates. This was carried out by a private organisation, MSJ Keys Young Planners Pty Limited, and as the Tertiary Education Commission was unable to finance the study because of budgetary constraints during the 1985?86 financial year, the Committee obtained alternative funding from the Law Foundation of New South Wales and the Victoria Law Foundation.

The Pearce Report was a major undertaking for the three members of the Review Committee. It took a major commitment of their professional lives from the time the Report was commissioned in 1985 until its publication in March 1987 .Althoughthat the Pearce Report was published in March 1987,[26] it continues to have a significant impact on the development of Australian legal education.

Impact of the Pearce Report -

On the advice of the Pearce Report, Australian legal education scholarship evolved in the 1990s to emphasise clinical as well as Critical or skills-based legal education.On the other side, many law schools began to include allusions to legal critique in their teaching practices and course descriptions, while the mainstream legal education researchers increasingly included references to the relevance of critique in their literature.

More law schools now appear to be willing to promote openly that they teach legal critique as part of their curriculum.For example, Griffith University Law School

26. The Pearce Report - Does It Still Influence Australian Legal Education?
David Barker, http://classic.austlii.edu.au/au/journals/JlALawTA/2014/8.pdf

advertises itself as providing a law degree that "balances and integrates the fulfillment of admission requirements with a concentration on the critical and theoretical parts of legal education."

The site of Southern Cross University's School of Law and Justice lists five primary goals for the law school, the first two of which are directly related to legal analysis. According to the school's website, it aims to produce graduates who are "conscious of gender and cross-cultural concerns in law" and "equipped to critically analyse legal and non-legal matters."Some law schools have implemented teaching and learning policies that contain explicit goals for teaching legal critique.

The University of Tasmania Law School's 'Strategic Plan' outlines critical legal characteristics that the school hopes to instill in its students, including critical knowledge and understanding of the nature and function of law, as well as the structures and operations of the Australian legal system and comparative legal systems, as well as the key concepts, principles, and regulations of such systems and the values they convey as prescribed in the Pearce Report.[27]

CANADA

CBA Legal Futures Initiative, The Future of Legal Services in Canada: Trends and Issues (Ottawa: The Canadian Bar Association, 2013)

Chapter-7 titled as Education explores a new paradigm for legal education as consumers want increasingly diverse types of legal services and the need for accessibility in legal services grows. There was a need for flexibility and choice in how legal professionals are educated and trained.This process has already begun, and over the next few years, existing and new educational providers will launch new educational models that complement or streamline present models while also providing further specialty.

Recommendations of the discussion -

1. Recommendation 15

New Approaches to Legal Education - Students should have a choice in how they receive a legal education, whether through traditional models, restructured, streamlined, or specialised programmes, or innovative delivery models. Legal

27. Supra note 9

education providers, including law schools, should be empowered to innovate so that students can have a choice in how they receive legal education.

As the most effective educational approaches combine the teaching of knowledge with the development of relevant skills. This is crucial for the future of Canadian legal services.While it exists in the current academic environment, the Futures discussions revealed a need to improve law students' ability to apply "translational" knowledge - the ability to apply legal principles, regulatory processes, and legal cultures to practical problem-solving skills in practice.Beyond traditional legal theory and substantive law, the consultations yielded a plethora of information on what diverse areas of the profession would like graduates to understand.

Similarly, through innovative ideas like supervised apprenticeships in the middle of law school, or a version of articles in mid-course, law students felt they could refine their studies while at law school, make better and more informed decisions on what they might do after graduation, and be better prepared for their careers in general.

2. Recommendation 16

Problem Solving in the Practising World : An integrated, practical approach, including multidisciplinary skills training, should be incorporated into substantive curricula to provide "translational knowledge" -

As, Educators today recognise that learning processes can be designed around "outcomes" (what a learner should know, comprehend, and be able to demonstrate after completing a course of study) rather than "inputs" (discrete areas requiring study).Legal educators could be more imaginative while still educating knowledgeable and skilled lawyers if they focused on learning outcomes.While there will always be a need for pure legal education, there will also be a need to connect young lawyers' knowledge and talents to the demands of future clients.

To that end, we advocate focusing on learning outcomes that will meet future legal service demands. Again, this will require collaboration between law schools, the legal profession, and key stakeholders.

3. Recommendation 18

Reducing the number of restrictions placed on law students at legal clinics- As by this step the practical training of the law students will increase which will provide them

with an additional opportunity to work in legal clinics.The right of audience of law students is limited in various jurisdictions, which is a limiting factor.Student appearance limits in courts around the country should be reviewed and, if necessary, relaxed. Barriers should be minimised in family courts, where access to justice issues are most pressing and where there are many self-represented plaintiffs. To alleviate constraints, either legislation or judicial decree will be required. Legal regulators, courts, and legislators should change laws, regulations, and directives to allow students to participate in a variety of legal services that is acceptable for them.[28]

28. CBA Legal Future Initiatives, Futures: Transforming The Delivery Of Legal Services In Canada, http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf

CHAPTER - V

ROLE OF LAW SCHOOLS IN PROFESSIONAL DEVELOPMENT OF FUTURE JUDGES

"I hear and I forget, I see and I remember, I do and I understand."

-Confucius

CLINICAL LEGAL EDUCATION AT LAW SCHOOLS

Scholars claim that Legal education has been stifled by the dominant forms of instruction, that is the method of lecture and the Langdell's case method which originated in 1870 at Harvard Law School. These methods achieved widespread attention and imitation throughout the world. However, these methods were critiqued for their emphasis on neutral analytical reasoning sans any human interaction, which is an important component of legal profession. This trend globally has caused widening gap between the legal academia and the professional legal training. It's as if the two realms of legal education and law practise are resolutely refusing to perceive or recognise one other, operating as parallel universes with no overlap. In this backdrop, clinical legal education emerges as a viable alternative.[29]

In advancing the goal of experiential learning at Law Schools, the contributions made by the clinical legal education cannot be emphasised much. It remains an important tool in teaching professional responsibility to the Future judges. The importance of Clinical Legal Education as part of law school curriculum has been given due importance.

In 1917, William V. Rowe was one of the first to discuss the importance of clinical legal education at law schools. His arguments in its favour were as follows:

> *It will be the purpose of the clinic, not merely to educate in practice and to develop, in general, the true professional spirit, but, in the interest of the commonwealth and of good citizenship, to lay the foundations in the individual student for sound personal character and business honor, to make clear, in the concrete, the lawyer's duty to society and to his fellow men, and, in so doing, to combat the idea, prevalent for two generations past, that the law is simply one means, like any trade, of making a living, and is freely open to the world without serious restrictions as to*

29. Prakash Sharma, Abhishek Kumar Pandey and S. Sivakumar, Clinical and Continuing Legal Education - A Roadmap for India (2021)

qualifications, and with no special resulting social obligations.[30]

According to Frank S. Bloch,the most common curricular goals for clinical legal education fall into three categories:

- training law students in lawyering skills,
- introducing students to the complexities of law practise, including the difficulties of interacting with the various institutions and actors involved in the legal system,
- and assisting students in developing an awareness and understanding of professional responsibility issues.[31]

According to Richard J. Wilson[32] the definition of clinical legal education consists of five elements:

(1) provision by students of real legal services to actual clients with real legal problems;

(2) students are responsible for their decisions in the cases, but are closely supervised, with carefully controlled workloads, by an attorney licensed to practice law in the relevant jurisdiction, preferably a professor who shares the pedagogical objectives of clinical legal education;

(3) clients served by the program are generally people, groups, or organizations that are not able to afford the cost of legal representation or they come from traditionally disadvantaged, marginal, or otherwise underserved communities;

(4) academic credit commensurate with effort is awarded for clinic casework; and

(5) casework by students is preceded or accompanied by a law school course, for credit, on the skills, ethics, and values of practice, as well as the necessary predicate doctrinal knowledge for the area of practice of the clinic.

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30. William V. Rowe, "Legal Clinics and Better Trained Lawyers-A Necessity" (1917) 11 Ill. L. Rev. 591

31. Frank S. Bloch & Iqbal S. Ishar, Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States, 12 MICH. J. INT'l L. 92 (1990).

32. Richard J. Wilson, The Global Evolution of Clinical Legal Education, Cambridge UniversityPress. Kindle Edition.

The inclusion of clinical legal education in the law schools has a pivotal role to play with the removal of apprenticeship requirement after law school completion. Also, the clinical legal education shifts the focus from teacher and teaching to student and learning with the teacher acting as a guide, facilitator and mentor. Clinical Legal Education blends knowledge with practice and achieves what is often termed as "learning by doing". The significance of clinical legal education can best be summarised as :

> Pedagogically, clinical legal education seeks not just to impart legal skills, but to encourage students to be responsible and thoughtful practitioners. There is considerable emphasis on problem solving approaches, such as ends-means thinking; on skills training in addition to legal reasoning; on making ethically responsible decisions, particularly when obligations are in conflict; and on being continually self- reflective and critically analytical about one's own experiences.[33]

The value of clinical education lies in helping students:

- adjust to their roles as professionals,
- become better legal problem-solvers,
- develop interpersonal and professional skills, and
- learn how to learn from experience.

Clinical education in the Law schools has three kinds: simulation-based courses, in-house clinics, and externships.According to the "Best Practices for Legal Education : A Vision and a Road Map" (hereinafter referred to as the Best Practices[34] Report) , these courses in law schools differ from each other in the following ways:

Simulation-based courses	In-house clinics	Externships
students assume professional roles and perform law related tasks in hypothetical situations	students represent clients or perform other professional roles under the supervision of members of the faculty	students represent clients or perform other professional roles under the supervision of practicing lawyers or they observe or assist practicing lawyers or judges in their work

33. Mark Neal Aaronson, We Ask You to Consider: Learning About Practical Judgment in Lawyering, 4 Clinical L. Rev. 247 (1998).
34. Roy Stuckey and other, best Practices for Legal Education : A Vision and a Road Map, 1st Ed., 2007, University of South Carolina.

CLINICAL LEGAL EDUCATION IN SOUTH AFRICA

In Africa, David Mcquoid-Mason writes, the Clinical Legal Education can be defined as "teaching legal skills in a reflective social justice context."[35] As a result, clinical legal education aims to connect the teaching of legal skills to the social justice challenges that law students encounter when working with destitute and marginalised clients. Therefore, the CLE movement in Africa was dominated by two objectives: to provide legal services and access to justice, and to teach law students practical skills.

In 1985, Arthur Chaskalson, then the director of the Legal Resource Centre in Johannesburg, advocated for the elimination of articling and pupilage in favour of one year of community service by law graduates in a clinic, which would provide essential legal services while also providing the graduate with valuable practice experience.Chaskalson stated that busy lawyers did not teach graduates in a systematic way; experience in legal firms was inconsistent, and firm placements were difficult and expensive to come by, especially for graduates of colour. The 1993 Attorneys Act, based on the Chaskalson proposal, allowed candidate attorneys - law school graduates who were otherwise required to complete articling - to choose between serving two years as a staff lawyer in a clinic as a full substitute for articling or taking a four-month practice course and serving one full year in a clinic.[36]

Legal Aid Clinic Movement

In 1972, law students at the University of Cape Town created the first legal aid clinic in South Africa. In 1973, the Ford Foundation supported a legal aid conference in South Africa, which sparked the region's law clinic movement. The University of Zimbabwe LLB degree was unique because it was the first university in the Southern African region to place clinical legal education at the heart of its law degree programme in 1974. The final year is dedicated to procedural law courses, and all students are expected to participate in the program's fully integrated law clinic.Under the guidance of a licenced legal practitioner engaged by the university, Zimbabwean law students were offering legal advice and assisting with the drafting of pleadings for litigation up to the pretrial stage by 1983. Under the supervision of the clinic director, they were also authorised to attend pre-trial consultations with clients and lawyers.

35. David Mcquoid-Mason et al., Clinical Legal Education In Africa: Legal Education And Community Service, in The Global Clinical Movement: Educating Lawyers for Social Justice (Frank S. Bloch ed., 2011).

36. Richard J.Wilson, The Global Evolution of Clinical Legal Education, Cambridge University Press. Kindle Edition

In 1984-85, the University of Botswana programme launched a "legal aid service" clinic at the same time that it introduced the LLB degree, which required all final-year law students to take a clinical law course. The students work for a period of time at either the school law clinic or with another legal services organisation, such as a nongovernmental group. They next record their observations in a case book, which is then examined.

In 1990, the Department of Law at Swaziland University and the Department of Legal Aid of the Council of Swaziland Churches signed a collaboration agreement in Swaziland. The Department of Legal Aid informs the public about their legal rights, provides limited legal assistance to the poor, and does limited research on family law and inheritance matters. The arrangement permitted law students to volunteer to help in the department on these issues.

Clinics are located on campus in Zimbabwe, Botswana, Lesotho, and Mozambique, while they are located off-campus in Namibia and Malawi. Internships are used at Universities in Botswana, Zambia, and Swaziland.Most law clinics in South Africa have in-house law clinic manuals, and the Association of University Legal Aid Institutions (AULAI) has sponsored a textbook titled "Clinical Law in South Africa" which gives comprehensive coverage for national use across a range of issues covering skills, ethics, and values for law students.Under the auspices of the Open Society Justice Initiative, an African Law Clinicians Manual has been created. By 1981, there were live client clinics at fourteen of the country's law schools and by 2008, "nearly all law faculties and law schools at universities in South Africa operate live client clinics."[37]

In 2013, the Law Clinic at the University of Witwatersrand ('Wits') collaborated with the South African Human Rights Commission ('SAHRC') to launch a clinical legal education ('CLE') programme. This initiative entailed the establishment of a specialised law clinic based on the right of access to information ('ATI'). Students in various communities carried out consultations as part of the project, which was essentially a mobile clinic.This new CLE model provides students with additional soft skills that are not available in other models. This involves the ability to negotiate government bureaucracy in order to obtain information, as well as ensuring that litigation is only utilised as a last resort when access to sought material is denied. These

37. McQuoid-Mason, The History of Live Client Clinics in Africa, in African Law Clinician's Manual.
38. Fola Adeleke & Sithembiso Maboso, Evaluating a Different Model of Clinical Legal Education in South Africa: Community Consultations, Advocacy and the Right of Access to Information, 133 S. AFRICAN L.J. 874 (2016).

abilities are especially crucial in situations where communities lack the patience or means to carry a lawsuit through to its conclusion, and if the outcome may be negative. As a result, these abilities provide a more promising, positive, and faster resolution of disagreements, which will benefit the community.

CLINICAL LEGAL EDUCATION IN JAPAN

Legal Education In Japan

Japan formed the Justice System Reform Council ("JSRC") in June 1999 to investigate potential legal reforms that would enable the justice system to better serve the country. They also aimed to increase the number and quality of legal professionals who would support the justice system as part of these changes. As a result, Japan agreed to restructure the law education system and revamp the bar exam system, with a stronger focus on clinical legal education.

Following WWII, Japan established a three-tiered legal education system that included undergraduate study at universities, a national bar exam administered by the Ministry of Justice, and practical training under the supervision of the Supreme Court for successful bar exam takers. After passing the national bar examination in Japan, a candidate would enroll in the Supreme Court of Japan's Legal Training and Research Institute ("LTRI," or Shiho Kenshujo) for two years of extra study and practical attorney training. Present and former judges, as well as temporarily appointed prosecutors and practitioners, provided short-term litigation-related training through the LTRI.

The main focus of this clinical-style training was on the drafting of pleadings, indictments, and judgements, as well as the application of facts to law. All attendees were expected to complete a practice-oriented test at the conclusion of the LTRI course. Most pupils were successful and went on to become judges, prosecutors, or lawyers.

Establishment Of New Law Schools

The introduction of new professional law schools in Japan in 2004 was a watershed moment in legal education. The JSRC proposed a legal education system that "organically combines legal education, the national bar exam, and apprenticeship training." The Council advocated an interactive and wide curriculum to improve critical thinking, creativity, and advocacy abilities. As a response, the country passed a law easing the adoption of professional law schools (houkadaigakuin), which resulted in the establishment of 74 new law schools around the country between 2004 and 2005.

Academics and legal practitioners would collaborate in training future attorneys for the first time in the history of Japanese legal education. These law schools provide a juris doctor degree after a three-year course of study for students without a prior law degree and a two-year course of study for those who already have a law

degree.Many Japanese reformers believed that professional law schools modelled after the United States' legal education system could develop a greater pool of high-quality lawyers who could help meet social needs and meet global challenges. Japan used US law schools as a model for developing a new system.The schools used active in-class debate, the case-method of study, and Socratic teaching approaches to engage pupils.

Since this law reform plan intended to reducing the LTRI's apprenticeship from eighteen to one year, the new law schools would need to provide additional training in the practise of law.As a result, reformers began to consider clinical education as a valuable educational tool.The schools sought to incorporate licenced practitioners into the faculty, give practical skills courses, establish legal clinics, offer externship opportunities, reduce class numbers, and make use of law school advisory committees. Many of the new law schools sought to offer speciality courses and use non-traditional educational approaches such as skills courses, clinical programmes, moot court programmes, and legal reviews from the start.

Future lawyers, it was felt, would require "insight into society and human connections, a sense of human rights, knowledge of current legal subjects and foreign law, an international vision, and a firm grasp of language" in order to thrive.To match these expectations, the new Japanese law schools have spent a considerable time experimenting with a variety of approaches, including CLE, with the goal of effectively training law students and imparting a stronger sense of societal values. The curriculum has evolved dramatically, with more practice-oriented courses, simulation courses, externships, and even live-client clinics. The Japan Clinical Legal Education Association (JCLEA) was formed in April 2008 with 212 founding members and is the first academic society that specializes in legal education in Japan.

WasedaUniveristy Law School Clinic

Waseda University Law School, one of Japan's most prestigious universities, has the country's largest clinical law programme.The Waseda Legal Clinic (WLC) is a real law firm that is registered with the Daini Tokyo Bar Association and has a mission of education and community service. Although it deals with civil disputes, the goal is not to make money. Waseda established this legal clinic in 2004 on the ideals of giving practical legal education and providing legal services to those who cannot afford legal expenses.

In essence, the WLC provides three types of legal services: clinical courses for educational purposes; free legal advice provided by WLC attorneys to underprivileged clients on certain weekdays regarding general civil matters, employment issues, family issues, and administrative issues; and traditional law firm services.Waseda University Law School created its Criminal Justice Clinic during the summer of 2004.

CLINICAL LEGAL EDUCATION IN HONG KONG

Legal Education in Hong Kong

After the government became aware that there were rising concerns in Hong Kong that law school instruction was woefully inadequate, Professors Paul Redmond and Chris Roper conducted a significant investigation into the quality of legal education and training in Hong Kong. Before presenting their results in August 2001, Redmond and Roper spent nearly two years evaluating Hong Kong's legal education system and the degree to which it fulfilled the needs of the legal profession. A number of pedagogical difficulties with legal education were mentioned in the consultant's report.It was discovered to be controlled by a "black-letter" legal approach. The social context in which rules were developed and administered was ignored when they were taught. It placed an excessive amount of focus on traditional classroom instruction. It failed to provide graduates with the required skills and values to meet the dynamic challenges of Hong Kong's legal industry. The report also pointed out a lack of experiential learning in the law curriculum, urging its adoption to bring about the pedagogical shift that was much required.Redmond-Roper was significant because it tried to emphasise the need for legal education to integrate theory and practise, contribute to a larger liberal education, and develop professional and ethical responsibilities in a specific societal context.The most significant of these improvements was the establishment of a new law school, CUHK in 2005. The School of Law's founding Vision Statement rooted itself in the learning of law in its social context.

By lessening the distance between academics and practitioners, CLE can help to bridge the gap between legal theory and practise. Clinic-focused practitioners as well as academics would be beneficial to the individual law schools in Hong Kong in order to facilitate CLE.

This viewpoint is shared by Redmond-Roper, who stressed the importance of bridging the gap between legal theory and practise. According to the paper, CLE "may aid students in fully appreciating the significance of many areas of law," with the added benefit of "exposing students to the legal concerns of the poor."

Refugee Rights Clinic

Professor Stacy Caplow, Director of Legal Education at Brooklyn Law School, was engaged as a consultant by Hong Kong University in 2005 to report on the viability

of establishing CLE in Hong Kong.Externships, according to Caplow, are equally laudable in Hong Kong, where students "might work on legal problems in the offices of government agencies, NGOs, or law firms that do pro bono work."CUHK formed a collaboration with the Justice Centre Hong Kong, a local non-governmental organisation that assists asylum seekers and refugees.

Clinic for Public Interest Advocacy

The Clinic for Public Interest Advocacy places up to 30 law students each term in organisations that focus on public interest work, in collaboration with a small number of community partners (legal agencies and NGOs).

Three factors are used to choose clinic partners: (1) Is the organisation capable of providing a conducive learning environment for law students? (2) Does the work fill a gap in the legal system? (3) What casework opportunities does the organisation provide for students? Students can engage in learning activities in a number of public interest groups, extending beyond refugee protection work, by adopting this broad threshold.

CLINICAL LEGAL EDUCATION IN SINGAPORE

Law was first taught in Singapore in 1957, when the Department of Law was established under the then-University of Malaya, which was later renamed the University of Singapore in 1962 and the National University of Singapore in 1981. In 2007, SMU's School of Law obtained official approval. NUS was the only university in Singapore awarding an LLB until 2007, when SMU received its first LLB cohort. In 2001, NUS received informal feedback from legal practitioners, prompting a research on the need for an upgraded legal skills curriculum, which led to curriculum reform and the creation of mandatory courses in legal skills, comparative law, and legal theory.LLB students at NUS were required to take two years of skills courses after the curriculum reform was fully implemented: a year-long course in the first year called Legal Analysis, Writing, and Research (LAWR), which developed fundamental objective and argumentation skills, and two semester-long courses in the second year called 36 Legal Case Studies and Introduction to Trial Advocacy.Since 2008, students have learned about legal ethics in the first-semester course Singapore Legal System, and the Singapore Legal System syllabus has included professional obligations to access to justice since 2012. Students at NUS have been doing pro bono work for many years, prompting the formation of the Pro Bono Group in 2005 and the Criminal Justice Club in 2009, both of which operate under academic supervision.

At the SMU School of Law, both law and nonlaw students take a compulsory course in Ethics and Social Responsibility as part of their overall university requirements. At SMU, student pro bono activities are organized via the Pro Bono Centre.

Students in Singapore's two law schools must participate in pro bono work, according to the Singapore Institute of Legal Education. Students who begin their degree in 2013 must complete 20 hours of pro bono work at any point following their first year of study. There is also concern that areas of community law, such as family and criminal law, will not be adequately served by the current number of law graduates, so the 4th Committee on the Supply of Lawyers recommended that a third law school be established in Singapore, with a focus on community law, including civil, criminal, family, and juvenile law. The Office of Pro Bono Services launched in 2007, manages and develops all of the Law Society of Singapore's pro bono programs.

CLINICAL LEGAL EDUCATION IN CHINA

Legal Education in China

With the end of the Cultural Revolution in 1978, China's legal education, which had been almost non-existent for over a decade, began to resurface. Over the next few years, significant changes in the law and legal education occurred. For example, in 1988, the Lawyer's Law, which governs legal practise in China, was modified to allow lawyers to practise without direct state supervision for the first time-no longer were all lawyers deemed state legal professionals. Lawyers were able to form cooperative law firms and eventually partnership law firms, which provided them with additional professional prospects.In the 1990s, volunteer student legal aid organisations grew in popularity at several colleges as a result of these reforms. The Wuhan Center for the Protection of Disadvantaged Citizens' Rights ("Wuhan Center"), created in 1992 with financial help from the Ford Foundation, is widely regarded as the forerunner and most visible of these legal aid organisations. At the Wuhan Center, student volunteers worked with paid professionals to help members of the community with legal issues, occasionally seeking assistance from teachers or lawyers. The Wuhan Clinic serves particular disadvantaged social groups on five fronts: women, minors, elderly, disabled, and workers. It also handles administrativelitigation suits against governmental entities or officials.The Wuhan Center, which was well-liked by students and attracted cases involving grievances against government institutions, was held in high respect locally. As one scholar put it, "the Wuhan clinic teaches students about justice by exposing them to injustice."[39] The Committee of Chinese Clinical Legal Educators (CCCLE)had 177 member schools throughout the country with 187 different clinics and 800 clinical teachers.The CCCLE has provided directives for the structure and management of clinical legal education throughout China. Their guidelines include five different clinic models: simulation-based, student-run legal assistance centres, a hybrid of the first two, clinics formed in collaboration with partner institutions, and autonomous legal clinics within the university.These models of clinical legal education are often termed as clinics with "Chinese characteristics".

39. *Pamela N. Phan , Clinical Legal Education in China: In Pursuit of a Culture of Lawand a Mission of Social Justice , 8 YALE HUM. RTS. & DEV. L.J . 117 (2005).*

CLINICAL LEGAL EDUCATION IN SOUTH KOREA

In South Korea, clinical legal education examples were hard to come by before the 2007 Act on the Establishment and Management of Professional Law Schools ("Law School Act") took effect, under which newly founded, three-year postgraduate law schools started in March 2009. Clinical education was at best insubstantial, with one notable exception at Korea University, and even in a few schools that exposed students to actual cases with real clients.Prior to the 2007 revisions, law students in undergraduate schools were primarily focused on curricular topics examined on Bar examination known as the National Judicial Examination, which required rote memorising of large amounts of information.A numerical quota determined the maximum number of bar passers each year, limiting the number of applicants who may pass the National Judicial Examination. Korea routinely admitted less than 5% of bar examinees under this quota system.As a result, access to legal services in Korea has been limited, with many areas lacking local lawyers and legal needs requiring specialty going unfulfilled.

Clinical education at Korea University in Seoul began with Professor Park, who was trained in the United States, working with students on the Heibei Spirit case. The country's ratification of the protocols leading to Korea's enrollment in the International Oil Pollution Compensation's Supplementary Fund and the settlement of the web accessibility lawsuit on behalf of the blind against Korean Air Line are two of Clinical Legal Education Center's (CLEC) major victories .General Civil and Criminal Law, International Human Rights, International Humanitarian Law, Public Interest, Social Enterprise, Internet Law, Mediation, Criminal Law, North Korean Human Rights, Legislation, Maritime Insurance, Patent, Tax Law, Competition Law, and Family Law are among the 15 clinics available at Korea University.

Ehwa University and Yonsei University both have eight clinics and nine clinic courses. The Gender Law Clinic at Ehwa was founded in keeping with the institution's identity as an all-women law school.

CLINICAL LEGAL EDUCATION IN TAIWAN

In Taiwan, in order to become a lawyer, there are two pathways: The first step is to pass the bar exam. The second option is to become a judge or prosecutor first, then a lawyer after several years of experience. The bar exam's subjects are theoretical in nature and do not incorporate practical skills or professional values.

The Higher Education Evaluation & Accreditation Council of Taiwan was created in 2005 with the goal of evaluating university teaching performance. (1) curriculum objectives, characteristics, and self-improvement mechanisms; (2) curriculum design and teaching performance; (3) student learning outcomes and extracurricular activities; (4) academic research and professional performance; and (5) graduate employment performance are the five major fields for evaluation. A law professor must have a PhD, which means that most lawyers with years of experience but no doctorate degree are not qualified to teach. Although a few law professors are licenced to practise law, they have only practised for a brief time and hence lack the necessary experience to train students in clinical practise. Only a few law schools employ practicinglawyers or judges as adjuncts.

The models of practical courses are as follows:

Legal Aid Clinics

Legal aid clinics have been a staple of undergraduate law curricula for more than three decades, and they were likely the only sort of clinical course offered prior to 2005. Because students begin learning civil and criminal process in their third year of undergraduate studies, the courses are often only offered to junior or senior undergraduate students. Students can provide legal advice, but they cannot draft documents or argue for persons who need legal help but cannot afford it.

Legal Ethics and Professional Responsibility

Since 2011, the bar exam has included a mandatory section on legal ethics and professional responsibility. Despite the fact that there are only a few short multiple-choice questions on this subject on the exam, most law schools now provide at least one course in this area.

Judicial Court Externships

National Chiao Tung University pioneered the first course that allowed students to learn in a courtroom setting in 2006. Graduate students are chosen to clerk in district courts under the one-on-one supervision of senior judges. Externships include reading case documents, seeing the trial process, debating case concerns with supervising judges, studying precedents and statutes, and producing memos, among other things.The Judicial Yuan (the head of the government's judicial branch) issued an administrative rule in 2008 that allows and encourages courts to engage with law schools to offer practical skills courses.

Externships in Collaboration with Prosecutors Offices

National Chiao Tung University and the Hsinchu District Prosecutors Office formed a collaboration agreement in 2012, allowing students to participate in non-confidential general affairs. Students can, for example, assist victims of crime in understanding their legal rights and assisting prosecutors in litigation.

Government Lawyering Externship

In 2014, the National Chiao Tung University School of Law formed a collaboration agreement with the Ministry of Economic Affairs' Office of Trade Negotiations, allowing students to engage in trade negotiations between Taiwan and other nations. This is Taiwan's sole government lawyering externship programme.

Trial Practice and Litigation Document Drafting

National Chiao Tung University added a new three-credit course named "Litigation Document Drafting" to its curriculum in 2008. This course is designed to equip students to clerk effectively in judicial court externships. Senior judges, prosecutors, and practising lawyers teach students the significance of trial documents and how to make an effective complaint in this course. The majority of the reading assignments are actual trial documents, such as evidence and court records. To be eligible for judicial court externships, students must complete all written assignments and receive high grades.

CLE IN SOUTH EAST ASIAN COUNTRIES

According to Bruce Lasky, Director of the Bridges Across Borders Southeast Asia (BABSEA), "Clinical legal education is a progressive educational system most often implemented through university- based faculty of law programs to help develop better-trained, more socially conscious ethical lawyers".[40]

The Thammasat University in Bangkok created a clinic that focused on offering a wide range of legal services to the general population. Other Thai colleges, such as Chiang Mai University (CMU), have followed Thammasat University's lead and launched programmes focusing on offering free legal guidance and consultation to community people.Clinics in Thailand have distinguished themselves for their work in the areas of public health promotion, particularly HIV/AIDS issues. In 2010, the clinic and BABSEA collaborated to create an HIV/AIDS Community Education Manual, which was later followed by a manual for male sex workers, as part of the Chiang Mai University Legal Clinic's legal literacy programme, which initially focused on female prisoners who had tested HIV-positive.

Similar non-credit, volunteer legal aid or legal assistance clinics have sprung up in a number of Indonesian universities, including the University of Indonesia in Jakarta, where students and professors deal with real clients. With support from the Open Society Justice Initiative (OSJI), and BABSEA CLE, Pannasastra University of Cambodia (PUC) established a fully accredited, social-justice-oriented clinical programme in 2003. PUC's clinical programme began as a two-section clinic, with one section engaged in Community Legal Education activities (Street Law) and the other working as a live-client legal services clinic, where students collaborated with a local non-governmental organisation (NGO) to provide legal aid to indigent accused.

In November 2005, the first Southeast Asia Clinical Legal Education Conference was held in Phnom Penh, Cambodia.Using the PUC Legal Clinic as a model, the conference provided a platform to address the benefits and challenges of establishing clinical programmes at Southeast Asian universities, as well as the role of clinical legal education in fostering access to justice and a pro bono culture. Later, the First Southeast Asia Clinical Legal Education Training of Trainers Workshop, was conducted at the

40. Bruce A. Lasky and Norbani Mohamed Nazeri, The Development and Expansion of University-Based Community/Clinical Legal Education Programs in Malaysia, available at https://www.babseacle.org/wp-content/uploads/2012/01/The-Development-Expansion-of-University-based-CLE-Programs-in-Malaysia.pdf

Ateneo de Manila Law School in Manila in 2007.

As a result, in 2008, the University of Malaya established the first accredited clinical programme in Malaysia; in 2009, Chiang Mai University approved and implemented a two-section, fully accredited clinical programme consisting of both an in-house consultation clinic and a parallel Community Legal Education section, and in 2009, the National University of Laos Faculty of Law and Political Science approved and implemented a two-section, fully accredited clinical programme.

CLINICAL LEGAL EDUCATION IN EUROPE

In the European context, as written by some scholars, clinical teaching has emerged as an effective teaching method which primarily has two aspects: its efficiency for the student to gain comprehensive legal skills in a very short period of time, and the social education part, which occurs when the student assists people of modest means. A clinical programme shapes the social awareness of lawyers, thus humanising the legal profession, by accomplishing the above aim.

Poland

In 1364, Jaigellonian University in Krakow became the first Polish law school. Professor CzesawZnamierowski published the first discussion of clinics in a law journal article in 1936. With financing from the Organization for Security and Cooperation in Europe (OSCE), JU sponsored a symposium on clinical legal education in 1996. JU established three in-house clinics in civil, criminal, and human rights and refugee law in 1997. After the JU clinics began in 1997, Warsaw University quickly followed in 1998, and Bia?ystok University began a tax clinic in 1997 .

Hungary

In February 1997, the Eotvos Lorand University (ELTE) Faculty of Law hosted Hungary's first clinical programme. The Refugee Legal Clinic, a collaboration between the Hungarian Helsinki Committee and ELTE, was established as part of COLPI's regional drive to establish multiple clinics in Hungary. The curriculum largely focused on teaching law students about refugee and asylum law, as well as legal counselling skills, human rights, and Street Law methodology. Students gain academic credit for participating in the legal clinic, which is an elective course.

The Legal Clinics and Street Law Foundation (the Clinics Foundation) was founded as a distinct legal organisation with the ELTE law school in 1999. Divisions on criminal law ,labour law, After-Care law, children's rights, NGO law (civil society support), nondiscrimination, Street Law, and refugee law are all run by the foundation.

Bulgaria

In 1999-2000, the first legal clinics were created at universities in Plovdiv, Sofia, and Rousse. In 2002, the clinic at Sofia's University of National and World Economy was established. By modifying the Legal Education Ordinance in 2005, the Council of

Ministers formally introduced clinical training into the Bulgarian legal education system.

Ukraine

The local Soros Foundation, the International Renaissance Foundation (IRF-Kiev), with technical assistance from COLPI and its 2003 successor, the Justice Initiative, were significant participants in promoting and funding legal clinics in Ukraine. Beginning in the year 2000, clinical legal education developed in Ukraine over a period of several years. Over thirty-seven law clinics across the country received grants from 2001 to 2007. A national Association for Legal Clinics was founded in 2005 to meet the growing demand for accreditation, support, and standardisation of these programmes' operations. In 2006, a new clinic focused on health and patient rights opened in Kyiv Mohyla Academy.

All Ukrainian clinics provide free legal aid and human rights education to poor and disadvantaged populations in their particular towns and regions, as well as training students in lawyering skills or human rights education methods. They also try to raise legal awareness among the general public by creating and participating in television and radio shows, as well as teaching law in public high schools.

Russia

Legal education reforms in Russia has been documented over four distinct phases by Mariana Berbec-Rostas.[41]

From 1995 to 1998:

The United States Information Agency supported a collaboration programme that brought together five law schools in the United States and five law schools in Russia's northwest to deliver the first clinical materials. For clinical students, the Ford Foundation financed "training of trainers" and a "Academy of Human Rights." Small institutional funds for legal clinics were provided by the Open Society Institute, and Street Law projects were funded. In 1995, Petrozavodsk State University established the first legal clinic as a result of all of these efforts.

From 1998 to 2002

The Clinical LegalEducation Center, established in 1998 at the St. Petersburg

41. Clinical Legal Education in Central and Eastern Europe: Selected Case Studies in The Global Clinical Movement: Educating Lawyers for Social Justice (Frank S. Bloch ed., 2011).

Institute of Law, hosted groups of clinicians from Belarus,Caucasus, and Central Asia for training and internships. In 1999, the Ministryof Education identified St. Petersburg State University as a center for the developmentof clinical legal education and its law department started an officiallyaccredited 72-hour program of in-service training for clinical supervisors.By 2002, there were more than 100 legal clinics in Russia.

From 2002-2006

The vast majority of Russian clinics remainedmerely "supplementary" to traditional law courses in which law students weretaught how to serve the existing legal system - rather than how to think criticallyabout ways to improve the system and how to employ legal mechanisms toachieve much-needed social change.

2006 onwards

The Ministry of Justice has recognized legal clinics as providers in theframework of the system of legal aid. Legal clinic is anoptional course at most Russian universities; however, there are some exceptionssuch as St. Petersburg State University where the clinic is compulsory for allstudents.

CHAPTER - VI

GOOD PRACTICES AND SUGGESTIONS – NEED FOR JUSTICE EDUCATION

According to the McCrate Report which was drafted with a view to narrow the gap between academic instructions and the requirements of the profession, the list of ten lawyering skills were formulated:

- solving problems;
- legal analysis and legal reasoning;
- to identify and research legal issues;
- factual investigation;
- communicating (the ability to communicate);
- to advise;
- to negotiate;
- knowledge of litigation procedures and alternative dispute resolution;
- organizing and managing practice work;
- identifying and solving ethical problems

With a little modification, the above mentioned skills are also valuable for future judges which can be best achieved by imparting them experiential education. The Best Practices Report,[42] enumerates the best practices for experiential education as:

- Provide students with clear and explicit statements about learning objectives and assessment criteria
- Focus on educational objectives that can be achieved most effectively and efficiently through experiential education
- Meet the needs and interests of students
- Grant appropriate credit
- Record student performances
- Train those who give feedback to employ best practices.

42. Roy Stuckey and others, Best Practices for Legal Education : A Vision and a Road Map, 1st Ed, 2007, University of South Carolina.

- Train students to receive feedback
- Help students identify and plan how to achieve individually important learning goals
- Give students repeated opportunities to perform tasks, if achieving proficiency is an objective
- Enhance the effectiveness of faculty in experiential courses.

If law professionals are to become more devoted to attaining justice, legal educators must instill in them a two-fold commitment: a personal commitment to justice, demonstrated through ethical behaviour, and a broader commitment to achieving justice at the systemic level.[43] The notion that legal educators should consider their mission as something more than helping law students become skilled practitioners of the law is at the basis of the term "justice education," as opposed to traditional legal education. Legal educators should foster in law students a sense of justice and legal ethics, as well as a dedication to them. This can be achieved through the incorporation of the Clinical component of law in the law school curriculum.

Suggestion 1: Courses in the Law Schools for sensitiziting the future law professionals particularly the aspirants for judicial services

The Hon'ble Supreme Court has, on several occasions, highlighted the importance of sensitizing the courts on important and sensitive issues, Recently, in Patan Jamal Vali v. State of Andhra Pradesh, reported in 2021 SCC OnLine SC 343, the Hon'ble Supreme Court while dealing with a case of sexual violence highlighted the issue of making the criminal justice system more disabled-friendly and conducive for the survivors of sexual assault. In this regard, the Hon'ble Court inter alia observed as follows :-

> ***44.*** *Certain concerns have also been highlighted by the Committee on the Rights of Persons with Disabilities in its concluding observations on the initial report on India. These include lack of measures to identify, prevent and combat all forms of violence against persons with disabilities; lack of disaggregated statistical data in National Crime Records Bureau on cases of gender-based violence against women and girls with disabilities, including violence inflicted by intimate partners; limited availability of accessible shelters for women with disabilities who are victims of*

43. Les Mccrimmon and Edward Santow, Justice Education, Law Reform, And the Clinical Method, in The Global Clinical Movement: Educating Lawyers for Social Justice (Frank S. Bloch ed., 2011).

violence; and lack of effective remedies for persons with disabilities facing violence, including rehabilitation and compensation.39

45. *While changes in the law on the books mark a significant step forward, much work still needs to be done in order to ensure that their fruits are realized by those for whose benefit they were brought. In this regard, we set out below some guidelines to make our criminal justice system more disabled-friendly.*

(i) The National Judicial Academy and state judicial academies are requested to sensitize trial and appellate judges to deal with cases involving survivors of sexual abuse. This training should acquaint judges with the special provisions, concerning such survivors, such as those outlined above. It should also cover guidance on the legal weight to be attached to the testimony of such witnesses/survivors, consistent with our holding above. Public prosecutors and standing counsel should also undergo similar training in this regard. The Bar Council of India can consider introducing courses in the LL.B program that cover these topics and the intersectional nature of violence more generally;

(ii) Trained special educators and interpreters must be appointed to ensure the effective realization of the reasonable accommodations embodied in the Criminal Law Amendment Act, 2013. All police stations should maintain a database of such educators, interpreters and legal aid providers, in order to facilitate easy access and coordination;

(iii) The National Crimes Record Bureau should seriously consider the possibility of maintaining disaggregated data on gender-based violence. Disability must be one of the variables on the basis of which such data must be maintained so that the scale of the problem can be mapped out and tailored remedial action can be taken;

(iv) Police officers should be provided sensitization, on a regular basis, to deal with cases of sexual violence against women with disabilities, in an appropriate way. The training should cover the full life cycle of a case involving a disabled survivor, from enabling them to register complaints, obtain necessary accommodations, medical attention and suitable legal representation. This training should emphasize the importance of interacting directly with the disabled person concerned, as opposed to their care-taker or helper, in recognition of their agency; and

(v) Awareness-raising campaigns must be conducted, in accessible formats, to inform women and girls with disabilities, about their rights when they are at the receiving end of any form of sexual abuse.

Similarly, in ***Aparna Bhat and Ors. v. State of Madhya Pradesh and Anr.,*** reported in 2021 SCC OnLine SC 230, the Hon'ble Supreme Court discussed the importance of gender sensitization and observed as follows :-

46. *As far as the training and sensitization of judges and lawyers, including public prosecutors goes, this court hereby mandates that a module on gender sensitization be included, as part of the foundational training of every judge. This module must aim at imparting techniques for judges to be more sensitive in hearing and deciding cases of sexual assault, and eliminating entrenched social bias, especially misogyny. The module should also emphasize the prominent role that judges are expected to play in society, as role models and thought leaders, in promoting equality and ensuring fairness, safety and security to all women who allege the perpetration of sexual offences against them. Equally, the use of language and appropriate words and phrases should be emphasized as part of this training.*

47. *The National Judicial Academy is hereby requested to devise, speedily, the necessary inputs which have to be made part of the training of young judges, as well as form part of judges' continuing education with respect to gender sensitization, with adequate awareness programs regarding stereotyping and unconscious biases that can creep into judicial reasoning. The syllabi and content of such courses shall be framed after necessary consultation with sociologists and teachers in psychology, gender studies or other relevant fields, preferably within three months. The course should emphasize upon the relevant factors to be considered, and importantly, what should be avoided during court hearings and never enter judicial reasoning. Public Prosecutors and Standing Counsel too should undergo mandatory training in this regard. The training program, its content and duration shall be developed by the National Judicial Academy, in consultation with State academies. The course should contain topics such as appropriate court-examination and conduct and what is to be avoided.*

48. *Likewise, the Bar Council of India (BCI) should also consult subject experts and circulate a paper for discussion with law faculties and colleges/universities in regard to courses that should be taught at the undergraduate level, in the LL.B*

program. The BCI shall also require topics on sexual offences and gender sensitization to be mandatorily included in the syllabus for the All India Bar Examination.

***50.** Each High Court should, with the help of relevant experts, formulate a module on judicial sensitivity to sexual offences, to be tested in the Judicial Services Examination.*

Suggestion 2: Establishment of Legal Aid Clinics to be made mandatory at every law school requiring participation of Law students in a compulsory manner

Report of Expert Committee on Legal Aid : Processual Justice to The People (1973) has listed the several advantages of law students participation in legal aid. One of them states- "The Legal Aid Clinic is an excellent medium to teach professional responsibility and a greater sense of public service. Faced with real challenging problems and conflicting value choices the student develops necessary perspective, a sense of relevancy and skill to articulate and apply rules of professional ethics in concrete situations." It was also mentioned that a variety of skills not otherwise available to students[44] in a traditional law school curriculum will be provided by legal aid clinic.

According to the Access to Justice for Marginalized People: A Study of Law School Based Legal Services Clinics published by UNDP India:

> *Law School based Legal Aid Clinics in addition to providing law students with real-life work experience and aid in developing legal awareness and skills, also helps in promoting and protecting legal and Constitutional rights, and has a potential of transforming the society. These Clinics instil the spirit of social justice and public service in law students and in turn are able to reach the unreached. Students working in the Clinics if properly supervised by a law faculty, have a dual benefit of learning lawyering skills and appreciating professional responsibility and on the other hand securing access to justice to the marginalized and disadvantaged groups. Students in Law Clinics would be exposed to poverty lawyering and in the process they would be able to understand* the root causes of poverty which will enable them to innovate both legal and non-legal remedies.

The National Legal Services Authority (Legal Services Clinics) Regulations,2011 applies to the legal aid clinics established by the law students.

44. https://indianculture.gov.in/flipbook/3250

Significant provisions are being reproduced below:

22. *Legal services clinics run by the law students.-*

The above regulations shall mutatis mutandis be applicable to the student legal services clinics set up by the law colleges and law universities:

Provided that students of law colleges and law universities also may make use of the legal services clinics established under these regulations with the permission of the District Legal Services Authority.

23. *Law students may adopt a village for legal aid camps.-*

(1) Law students of the law colleges or law universities may adopt a village, especially in the remote rural areas and organise legal aid camps in association with the legal services clinic or Village Legal Care and Support System Centre established under these regulations.

(2) The law students may, with the assistance of the para-legal volunteers engaged in the legal services clinics, conduct surveys for identifying the legal problems of the local people.

(3) The surveys referred to in sub-regulation (2) may include gathering information relating to the existing litigations and unresolved pre-litigation disputes also.

(4) The surveys referred to sub-regulation (2) may also focus on the grievances of the local people which would enable the National Legal Services Authority to take necessary steps by way of social justice litigation as provided in clause (d) of section 4.

(5) The law students conducting such surveys shall send reports to the State Legal Services Authorities with copies to the legal services institutions having territorial jurisdiction and also to the District Legal Services Authority.

24. *Legal services clinics attached to the law colleges, law universities and other institutions.-*

(1) The law colleges, law universities and other institutions may set up legal services clinics, as envisaged in clause (k) of section 4 attached to their institutions as a part of the clinical legal education.

(2) The law colleges, law universities and other institutions establishing such legal services clinic shall inform the State Legal Services Authority about the establishing of such legal services clinic.

(3) The State Legal Services Authority shall render the required technical assistance for the operation of such legal services clinics and shall take measures to promote the activities of such legal services clinics.

(4) The law students in the final year classes may render legal services in such legal services clinics under the supervision of the faculty member of their institution.

(5) The State Legal Services Authority may organise alternative dispute resolution camps, including Lok Adalats, to resolve the problems of the people who seek legal aid in such legal services clinics.

(6) The District Legal Services Authority may issue certificates to the students who complete their assignment in such legal services clinics.

Dr. Abhishek Manu Singhvi writes that the 2009 Bar Council resolution requiring all law schools to establish a legal aid centre in order to provide inexpensive and efficient advice to needy sections of society has not been followed.[45]

Suggestion 3: Courses with specific focus on adjudication skills to be introduced as core subjects or as a specialization

The various law schools across the world have formulated courses specifically dealing with the practical components of law. Some of the examples may be enumerated as follows:

Harvard Law School

According to the Harvard Course catalog available for the term 2021-2022, the following courses are being offered:

1. **Appellate Courts and Advocacy Workshop**

   The course considers each stage of the appellate litigation process beginning with a general overview, moving to the various bases for appellate jurisdiction in the federal courts, then discussing standards of

45. Dr. Abhishek Manu Singhvi, A New Vision for Legal Education in India, The Times of India, January 18, 2021, available at https://timesofindia.indiatimes.com/blogs/straight-candid/a-new-vision-for-legal-education-in-india/

review, and concluding with an intense review of the anatomy of an appellate brief.

2. **Criminal Municipal Courts: A Policy and Advocacy Simulation**

   Students will study the law, scholarship, and policy practices surrounding the modern municipal court phenomenon. Teams of students will design and draft materials aimed at supporting and improving criminal municipal court practices, including educational materials for municipal court judges, a Best Practices Handbook, and a Citizen's Guide to Municipal Courts.

3. **Criminal Procedure: Adjudication**

   The subject of this course is the criminal process "from bail to jail." It addresses some of the main constitutional and policy issues that arise about the structure of this process, including the right to counsel, the influence of prosecutorial discretion, the institution of plea bargaining, the role of the jury, and the choice of sentencing procedures.

4. **Framing, Narrative, and Supreme Court Jurisprudence**

   By Analysing opinions, briefs, and oral arguments, as well as legal and social science scholarship, it considers how different approaches to legal storytelling can lead to differing judicial outcomes.

5. **Judicial Process in Trial Courts Clinic**

   Students undertake clinical fieldwork study of judicial performance through clerkship-like clinical placements with individual justices of the District Court, Boston Municipal Court, Juvenile Court, Housing Court, Land Court and Superior Court Departments of the Massachusetts Trial Court, as well as with federal judges in the U.S. District Court and Immigration Court. Clinical students are expected to be available to do research and writing projects for their assigned judge, and are expected to observe and assist their judge.

6. **Judicial Process in Trial Courts Clinical Seminar**

   This weekly seminar examines through participant observation the functioning of the judicial process in trial courts with special attention to different judicial roles in different trial courts. The focus of the class is on

the various roles (adjudicatory, administrative, sentencing, educational and symbolic) that judges play in these courts.

7. **Supreme Court Decision Making**

   This seminar will enable the student to act as a Supreme Court justice, sit in conference, discuss cases, and write opinions (majority, concurring, and dissenting). Some of the cases will be current cases before the U.S. Supreme Court.

8. **The Role of the Article III Judge**

   The course discusses what role a federal judge plays when she exercises "the judicial power of the United States" conferred by Article III of the Constitution.

Berkeley Law, University of California

According to the curriculum for 2019-20, Judicial externships are offered.

Columbia Law School

According to the Course descriptions of the Columbia Law School, the following Courses are offered:

- Criminal Adjudication
- Sentencing
- Trial Practice

Florida State University

According to the Course descriptions of the College of Law, Florida State University, the following Courses are offered:

- Criminal Procedure: Adjudication
- Judicial Power: The Role of a Judge
- Sentencing Law
- Supreme Court Role-Play
- Writing for the Court

University of Hong Kong

According to the list of LLB courses offered in 2014-2018 by the Department of Law of the University of Hong Kong, the course titled "Courts" is offered.

Stanford Law School

The Stanford Law School offers a course on "Judging in the 21st Century".

University of Melbourne

According to the University of Melbourne Handbook, the relevant Course being offered is Criminal Institutions.

University of Chicago Law School

The University of Chicago Law School offers a range of courses under the head, Courts, Jurisdiction, and Procedure Courses such as Criminal Procedure II: From Bail to Jail wherein the criminal process after a case comes into court is studied. Judicial Opinions and Judicial Opinion Writing, Workshop: Judicial Behaviour are other courses.

Yale Law School

Yale Law School offers a course on "Sentencing".

Phoenix School of Law, Arizona

Stephen Gerst and Gerald Hess in their paper Professional Skills and Values in Legal Education: The GPS Model presents a case study of the Phoenix School of Law, Arizona which developed a required third-year course to impart and reinforce the skills and values important to the practice of law.[46]

The General Practice Skills course (GPS) has five learning objectives/ outcomes.

By the end of the course students will have:

(1) practiced many of the skills they will use in the practice of law;

(2) experienced how lawyers solve legal problems, interviewed and counselled clients, investigated facts, negotiated settlements, handled appearances before a court, drafted legal documents, prepared cases for dispute resolution, and advocated on behalf of clients;

46. Stephen Gerst and Gerald Hess, Professional Skills and Values in Legal Education: The GPS Model, 43 Val. U. L. Rev. 513 (2009).

(3) become knowledgeable and sensitive to the professional values deemed important by the bench and bar;

(4) demonstrated a commitment to high ethical standards and professionalism in dealing with clients, opposing counsel, courts, and the community; and

(5) acquired a realistic basis to make decisions about different areas of the law as a career.

There are four aspects of this course delivery: the Student law firms, professional skills instruction, integration of values and professionalism, and an open question period.

India

In India, Maharashtra National Law University, Nagpur has launched B.A.LL.B (Honours in Adjudication and Justicing) in furtherance of the vision to improve the quality of adjudication in the country by attracting best talents and training them for courts. This course comprises of intensive and exhaustive practical training with regular internships and judicial clerkships and six-months of Apprenticeship under the guardianship of High Court Justices and District Judges.

One of the recommendations of the 184th Report of the Law Commission of India is also pertinent for the purposes of making the legal education in India more suitable and adaptable for the changing demands of legal professions including those associated with justice delivery system. According to the report clinical legal education must be made compulsory in all the law colleges and universities.

Suggestion 4: Course on Artificial Intelligence as required and suited for Courts may be introduced keeping in view the advancement of technology

> *"Joseph Weizenbaum, in his Computer Power and Human Reason tells of a discussion with A.I. pioneer John McCarthy, who had posed the question 'What do judges know that we cannot tell a computer?' McCarthy's answer was 'Nothing' and that the goal of building machines for making judicial decisions was perfectly in order…"*
>
> - Richard Susskind in
> Online Courts and the
> Future of Justice

One of the founders of Artificial intelligence (hereinafter AI) Marvin Minsky said "AI is the science of making machines do things that would require intelligence if done by man."[47] According to Harry Surden the application of computer and mathematical approaches to make law more comprehensible, helpful, accessible, or predictable is referred to as "AI and law."[48] Richard Susskind writes that technology may impact the work of the Courts in two broad ways - automation and transformation. Automation refers to switching to technology for performing traditional ways of functioning that is repetitive and routine work. It enhances efficiency and saves time. Transformation on the other hand is an entire new way of working which would not have been possible in olden days. An example could be the driverless cars.

It was the Boston University in the United States which hosted the inaugural "Artificial Intelligence + Law Science" conference in 1987. The International Association of Artificial Intelligence and Law (IAAIL) was founded in 1991 to advance the interdisciplinary subject of artificial intelligence and law research and application. Rossis the first AI lawyer in history to be aided by Watson (IBM's cognitive computer) who was "hired" by an American law firm in June 2016. DoNotPay is a robot lawyer in the United Kingdom who may assist users in contesting traffic penalties and preparing legal documentation. It now offers government housing applications, refugee applications, and other legal services as well.[49]

There are three categories of AI users with respect to law-the administrators of law i.e., those who create and apply the law, the practitioners of law that is, lawyers, and those who are governed by law.

AI has been used in the administration of Law when a judge is deciding whether to release a criminal defendant on bail pending trial wherein he must make a risk assessment as to the danger of the defendant in terms of flight or reoffending by using software systems that employ AI to provide a score that attempts to quantify a defendant's risk of reoffending.[50] AI has been used in the practise of law to automate the multiple tasks performed by the lawyers. Some examples are - Litigation discovery and

47. Edwina L. Rissland, Artificial Intelligence and Law: Stepping Stones to a Model of Legal Reasoning, The Yale Law Journal, Vol. 99, No. 8 (Jun., 1990), pp. 1957-1981 .

48. Harry Surden, Artificial Intelligence and Law: An Overview, 35 Ga. St. U. L. Rev. 1305 (2019), available at https://scholar.law.colorado.edu/articles/1234.

49. Study on the Influence of Artificial Intelligence on Legal Profession available at https://www.atlantis-press.com/article/125931568.pdf

50. Harry Surden, Artificial Intelligence and Law: An Overview, 35 Ga. St. U. L. Rev. 1305 (2019), available at https://scholar.law.colorado.edu/articles/1234.

document review. The process of gathering evidence for a lawsuit is known as litigation discovery. This sometimes entails obtaining and evaluating vast troves of documents turned over by the opposing counsel in modern corporate litigation. Traditionally, document review was done by attorneys who would swiftly examine each document and mark, often manually, whether it was likely relevant or not to the legal issues at hand, or whether it was covered by privilege. Computable contracts are an example of how users are incorporating AI into the use of law. These are legal contracts that are expressed electronically and have the contract's meaning expressed in a computer-understandable format.

To sum up, it is necessary to constitute and establish a new mechanism with a vision of social and international goal to deal with all aspects of legal education which be beneficial for legal practitioner and also to the newly appointed judges who had not actually have any experience of practice in courts. Hence, there is a need for a path-breaking legal research to create new legal knowledge and ideas which will meet the challenges in manner responsive to the need of the country and the ideals and goals of our adjudication system.

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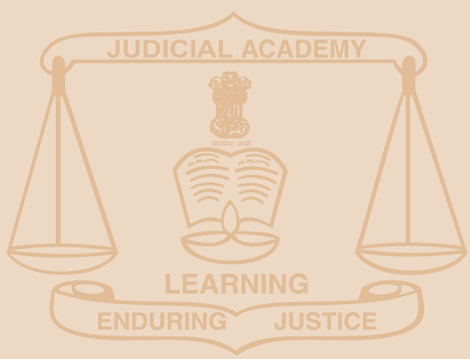
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