

Innovative Clinical Curriculum for Enabling Law Graduates to become Practice-Ready¹

PADMASHREE PROF. N.R. MADHAVA MENON²

INTRODUCTION

The object of the clinical component in the LL.B curriculum is to impart the necessary skills, attitudes and ethics among law graduates who want to take a career in the field of law and administration of justice.

In the beginning of the Republic, the legal career was largely confined to litigation in courts and tribunals as well as in civil and judicial services. With economic liberalisation, opportunities for legally trained people have opened up in a variety of jobs including corporate law firms doing transaction practice, in-house counsels in companies and industry, dispute settlement outside litigation including mediation, conciliation and arbitration, law reporting and publishing sectors and legal process outsourcing work. Furthermore, in rule of law countries, teaching and research have generated demand in a big way for academic lawyers with necessary skills. Simultaneously, legal education has become more rigorous under five-year Integrated LL.B programme which started attracting talented and motivated higher secondary school students looking for a career in expanding areas of legal practice.

Unfortunately, the law colleges operating the Five-Year LL.B programme were not ready to impart the requisite skill sets for the different types of jobs the legal services market was throwing up in the changing economic scenario. They did not recognize the importance of clinical teaching and

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² Hony. Professor and IBA Chair on Continuing Legal Education, NLSIU, Bangalore Chancellor, Guru Ghasidas Central University, Chhattisgarh Chairman, Menon Institute of Legal Advocacy Training, Trivandrum

introduced moot court practice and internship in law offices during vacations, largely as a co-curricular activity. Some of them involved students in Para-legal work in legal aid clinics and legal literacy programmes in Communities. However, in the absence of trained clinicians in the Faculty and lack of financial resources, law schools were managing so-called clinical activities without proper design and preparation to suit the aspirations of students, without necessary protocols on procedure, supervision and assessment and without attempting to integrate the scheme with the rest of the curriculum to achieve the object of turning graduates practice-ready. The object of the present proposal is to address this gap to benefit future law students aspiring to become legal professionals.

ROLE OF LAW SCHOOL MANAGEMENT AND CLINICAL TEACHERS

It is critical for the success of this innovative venture in skilling of law graduates for management to have full understanding, accommodation, funding and organisational support on a continuing basis. Unlike in America and elsewhere, management of law colleges is either the government or private educational bureaucracy or the bureaucracy of universities to which the colleges are affiliated. In their traditional wisdom, these bureaucracies believe that law colleges are money making enterprises which require no investment excepting class rooms, library and few advocate-teachers who may come to give lectures. In the changed scenario, law colleges which want to produce practice ready graduates, rather than mere LL.B. degree holders, their managements need an understanding of what practice-ready involves and should have willingness to provide the resources accessory and extend the freedom to experiment and administer the project by the teachers themselves as per the protocols and procedures evolved.

A second critical element of this innovative project is the Project Director, the Clinical teachers and the faculty as a whole. The project and its procedures should be fully understood and supported by the entire faculty of the college, whether they are involved in the actual execution of the project or not. The Project Director who is to be a senior teacher of the status of a Professor has to be assisted by two project co-ordinators of the status of Assistant Professors. All three of them should have some legal practice experience and should be teaching the Practical Training courses

beside other subjects of their interest. They should be willing to work during vacations for which they may be given compensatory leave. They should be designated as clinical teachers (clinicians) with extra allowances to cover their travel expenses in field visits to supervise students performance. They should be in charge of the Lawyer Incubation Clinic (LIC) and have the responsibility not only to design and supervise the clinical programme for each and every student but also to maintain their performance records updated from time to time. They are also responsible to update the protocols and Standard Operating Procedures (SOPs) to be followed by students, teachers and the supervising officials in the firms and offices to which the students are sent for field training.

ROLE AND RESPONSIBILITIES OF LAW STUDENTS

Clinical programme is intended for students seeking a career as a legal practitioner. As such, it is to be offered only to those who are clear about their career options, who have the capacity to undertake the strenuous activities involved, and the willingness to sacrifice little pleasures like vacations and holidays to maximise experiential learning according to the plans set out for them by the Clinical teacher. It is the joint responsibility of students and clinical staff to identify the career choice of students in the third year of their study under the Five-Year LL.B programme. Broadly speaking these choices will be around litigation, corporate practice, mediation/arbitration, judicial/civil services, teaching/ research and others.

Once the third year students are grouped according to their career choice, students have to select their optional courses of study in later semesters from among the cluster of subjects recommended to them by the clinical teachers. This is to familiarise them with the domain knowledge which they have to have in order to acquire the related skill-sets to address the problems in actual practise.

Under the project, students will have completed all the compulsory and optional courses, excepting the Practical Training courses, they are required to study under the Bar Council of India Rules when they finish the 8th semester at the law school, leaving the ninth and tenth semesters exclusively for Practical Training. Training is different from acquisition of knowledge as it is about skills and attitudes, which are best learnt by actual practice or learning by doing. Law schools will expand the number of Practical Training courses from four to eight, increase the marks from

400 to 800 and design the activities in each of those courses for guidance of students and their supervisors. They will also provide the evaluation scheme and the protocols to be followed during experiential learning. In evolving these steps the students will also be consulted to achieve perfect co-ordination and for effective time management.

SALIENT FEATURES OF CLINICAL CURRICULUM

‘Clinic’ means “a gathering at a hospital bedside for medical teaching”. Transferred to legal education; it refers to teaching or learning while dealing with a client and his problem. Naturally, it is learning by doing in association with expert legal practitioners with live clients and their real time problems. The problem may relate to starting a business, entering into contracts, getting compliance with laws and regulations, resolving conflicts in the course of business, conducting litigation in unresolvable conflicts, seeking remedies for violation of rights etc. The legal knowledge bearing on the problem, can be learnt by reading the law and consulting earlier judicial decisions precedents on the issues involved. Applying that knowledge to the problem in hand involves a bundle of skills of drafting, negotiating conveyancing, gathering evidence to prove facts, determining strategies, choice of remedies, assessment of risks and making decisions on the best way to proceed to get the desired results. There is no doubt, bodies of knowledge (theory) behind each of these skill sets can also be studied along with its practice. To some extent, simulation exercises in college can help to practise skills. Moot court practice is one such exercise. Legal research and writing is another example of class-room based practice learning.

Looked at from the above perspective, introduction to clinical teaching/ learning can begin from semester one with legal research and writing exercises. While teaching contracts, for example, students can be asked to negotiate and write simple contracts. In fact, every subject in the curriculum can partly be taught through clinical activities building up the strength and confidence of students in dealing with live clients. The Legal Aid Clinic can provide opportunities to test some of these skills under supervision of clinical teachers. Let every teacher suggest what portion of his/her course is proposed to be taught through clinical methods so that the project co-ordinator can organize, co-ordinate and integrate diverse strands of skill learning into the total learning outcome of the students at the end of the final year of the course.

The innovative part of the proposed Clinical Curriculum is the experiential learning units/modules organized under eight different semester-long courses in the final two semesters for eight hundred marks (32 credits). The content of the eight clinical courses or the activities to be included in them will vary according to the career choice of students. However, there can be some clinical courses common to all specialisations. For example, trial court practice, negotiation and mediation, arbitration law practice and community/development lawyering can be four mandatory clinical subjects for all students in the ninth semester. Given the importance ADR is assuming in legal practice, it is imperative that all future legal practitioners are proficient in alternative system of dispute resolution. More importantly, future lawyers and judges have to have an understanding of the legal services relevant to the vast masses of India's rural and tribal population who are yet not in a position to access the formal legal system. Therefore, the present writer would strongly recommend to every professional college to make community/development lawyering (described elsewhere in this note) compulsory for all graduating students.

The courses for the tenth semester will vary according to the career choice of students. These are to be decided in consultation with the domain experts and the officials in whose offices students are supposed to go for training. Thus, for those seeking corporate legal careers, the modules would include drafting contracts, transactions involved in mergers and acquisition, advocacy before regulatory bodies, competition law practice, bankruptcy law practice, tax law practice, IPR practice, labour law practice, energy law practice etc. For those seeking litigation careers, the modules may include pre-trial preparation, litigation strategies, drafting petition, written statement, and affidavits, leading evidence, opening and closing statements in advocacy, time and stress management etc. In all these practise exercises, an over-riding consideration is the learning of resolving ethical dilemmas and maintaining professionalism in dealings with stakeholders all the time.

LAWYER INCUBATION CLINIC

Every law college adopting the innovative clinical curriculum has to have a separate organizational structure to be called a Lawyer Incubation Clinic (LIC) which is functional and adaptable to the changes required to be made according to the needs of students and demands of the profession.

LIC has to have a Director who is a Senior Professor experienced in legal practice and clinical training. He is to be assisted by two Clinical teachers of the Assistant Professor rank who may also teach other courses of their interests. LIC is the project office and placement centre of the college having full responsibility of turning out graduates who are practice-ready through its activities in association with a network of field stations. LIC will have a separate budget sanctioned by the college and a secretariat to support its activities including administration, accounting and record keeping.

LIC will also run a Legal Aid Clinic in the campus to give experiential learning opportunities to the students even before their full-time placement in the fifth year. In the beginning of each academic year, LIC will put forward the action plans for implementing the clinical curriculum for the full year to inform the students and teachers in advance of their respective roles in programme implementation. Integrating the class room teaching with the training curriculum for the benefit of students is another important function of LIC.

When fully operational, it is expected that one-fourth of the time and resources to be spent on the five-year LL.B programme will be devoted to the clinical curriculum. In other words, college wanting to prepare practice-ready law graduate will have to budget an year and a half of study under the Five Year LL.B course for clinical teaching or learning by doing. This will be a challenge to both law teachers and law school managements.

COMMUNITY/DEVELOPMENT LAWYERING

Law education is both a private and public good. The public good dimension of professional legal education which gives the profession its social relevance and public esteem is its capacity to extend the scope of access to justice to all sections of society, and more importantly, to the marginalised people. It also gets its social relevance from its potential in shaping legal developments for the welfare of all, directing governance according to rule of law and protecting human rights under all circumstances. This is what the Preamble to the Constitution suggest when it talks of "Securing to all citizens JUSTICE, social, economic and political.

From the constitutional perspective, it is the social responsibility of the law school not only to inculcate the values of the Constitution on its graduate, but also to do whatever possible through its programmes to reach justice to the unreached. Community/Development Lawyering, understood to mean sensitivity to injustices in society and willingness to respond as a professional with or without monetary benefits, is to be the social responsibility of the legal community. Every legal practitioner has to have an understanding of the legal services needs of marginalised sections and the public interest dimensions of legal practice. It is therefore important that community/development lawyering should be a compulsory module of clinical curriculum. It must prepare him for legal aid services, pro bono work, public interest litigation, land, water and forest rights of rural/tribal people, welfare and development rights of minorities, women, children, disabled, elderly and others.

Apart from a compulsory general module on community/ development lawyering for all students irrespective of be their career choices, the LIC should design for those seeking to take up community lawyering a semester long Practical Training Course for not less than four hundred marks around justice and legal services needs of the rural/tribal/ marginalised groups. For this to happen LIC has to network Gram Sabhas, Gram Nyayalayas, Consumer Forum, Welfare Officials, Revenue officials, Forest Department, Irrigation authorities, Media, NGOs and Legal Aid Communities. Surveys on selected regions for field work may be done to ascertain the needs of people and to audit the disbursement of benefits and entitlements offered by Governments. The students motivated to work for justice to the poor in their respective communities should be assisted in setting up offices in the community, establishing networks and developing capabilities to redress the common man's problems relating to their livelihood. The type of practice they develop as final year LL.B students can include advocacy before Government authorities (administrative advocacy), advocacy before Consumer Forum and Gram Nyayalaya, pre-litigation research and data gathering for PIL on common injustices, legal aid and para-legal services as well as legal mobilisation for collective action for development. They have a role in development planning and good governance under rule of law at the village and block levels. In fact, they act as social engineers advancing the Constitutional agenda of Justice, social, economic and political for all citizens.

LIC should endeavour to turn out every year few graduates practice-ready to setup their practice in their respective communities. Corporate law firms

maybe approached to support them financially for a couple of years as part of their corporate social responsibility.

ETHICS AND PROFESSIONALISM

Professions are for the people and not for markets alone. Ethical conduct and public service makes lawyering a profession and without them it will lose its privileges and public confidence on its efficacy. It is important for legal educator to make teaching ethics a central component of the clinical curriculum and endeavour to redeem the glory of the profession even while operating in a market environment.

How does one go about this challenging task? There is no established system of teaching ethics in professional schools. Unlike earlier times, there are not many role models in the profession to learn from. The existing code of ethics only list the standards around litigation and that too in conventional setting which is no more the realty today. Even the profession got diversified and specialised, warranting different strategies and norms of behaviour. Corruption has made the system work at cross purposes, defeating efforts employed by the honest among the professionals. Success is determined in terms of the wealth one commands, in whatever way accumulated. In such circumstances, teaching ethics in a manner to influence professional behaviour is indeed a challenge. At the same time, without injecting professionalism and integrity, education for professionals remain incomplete and hollow.

In the given situation, ethics education is best given in the activities of the Clinical curriculum where the student lawyer is exposed to ethical dilemmas and called upon to take decisions with responsibility for the consequences. In doing so, one learns through trial and error and through reflections on alternative courses of action.

LIC has therefore the responsibility to select such activities where ethical issues are involved for the students to learn by doing. They are not to be confined to the Bar Council Code of Professional Ethics and Etiquette only; rather it must spread to public morals, personality traits and matters relating to equality and equity. There is scope for borrowing technique employed by the other professional schools in the matter of ethics training. Innovation on the basis of experience gained while implementing the scheme will be another strategy.

FUNDING, ACCOUNTING AND REPORTING

As suggested earlier, a separate budget is required to administer efficiently the Clinical Curriculum. The estimates depend on number of students involved, the career choices they make, the professional networks to be established, the supervision and monitoring processes and the record keeping to be maintained. In the beginning of the academic year or towards the end of previous academic year, LIC can propose the budget demands to the college management which can decide the matter appropriately.

It is possible for the management to fix a separate fee for Practical Training from final year students. The fee can be exempted for those who do not desire to take practical training and instead opt for taught courses in the class room. The fee collected should be proportional to the expense involved which should be substantiated through proper accounting. In other words, it shall be clear to the students that the entire money collected is utilised for making them practise ready and not to make additional profit for the law school.

Maintaining documentation of the work assigned and performance by each and every student involved in the programme is an important task of the LIC. It must be transparent and accessible to the students. An advisory committee of representatives of the field officers to which students are to be sent for training will help design activities and the protocols to be followed for maximising the learning potential of the entire programme

INTEGRATING CLINICAL PROGRAMME WITH THE REST OF CURRICULUM

The degree of success of the clinical exercises depends on how best the college and the faculty manage to integrate it with the total curriculum and educational goal of the institution. There is no set pattern in this regard. Each institution should innovate strategies and techniques at the level of syllabus preparation, teaching plans, study material, pedagogy, research projects, co-curricular activities etc, for finding windows to integrate the learning processes. There is plenty of scope for innovation, creativity and experimentation. From the learner's point of view, integrated approach

towards knowledge, skills, attitudes and ethics is critical in his shaping up as true professional.

Co-operative teaching is one such method found useful for integrated learning. Projects which require multi-disciplinary approaches for execution is another strategy to give holistic view of legal methods. Co-operation between institutions and exchange of experiences help to build perspectives in the some cases.

THE WAY FORWARD

According to the author of this note, some law schools which have the will and the resources to undertake the project must do so instead of waiting for change to happen across the country. As it does not disturb the Bar Council Rules, it is not necessary to seek approval of the council to introduce the programme. In fact, it is in essence implementing the BCI mandate to give practical training to students in a meaningful way.