

THE IMPORTANCE OF CLINICAL LEGAL EDUCATION IN NEPAL

****MITSU PARIKH AND HARSH MAHASETH**

1. INTRODUCTION

Clinical Legal Education is a progressive education ideology and pedagogy which promotes learning by doing. It is a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised.¹ It provides an effective and sustainable solution to the marginalized and disadvantaged groups who often lack the legal knowledge and also helps the students who have limited knowledge due to the traditional method of teaching law which is more theory-based.

Historically clinical legal education developed in the United States as part of an explicit social justice agenda and primarily in response to a lack of legal services for the poor.² Clinical legal education educates people on their legal rights, fosters professional ethics as it teaches the students practical skills. It also provides pro bono services, helps build a socially responsible legal profession and furthers access to justice.

The principles of CLE are:

- i. **Experiential learning:** The students take on real legal work for a client in collaboration with a supervisor.
- ii. **Bridging the gap between theory and practice:** Clinical legal education links the theoretical world and the practical reality. The core is of learning, not teaching. Externships and internships help students learn in the real setting of practical reality.
- iii. **Service to community:** Legal aid clinics help in fulfilling responsibility towards the society and the law students are engaged to keep them in the real situation to serve the poor and marginalized population.
- iv. **Professional development:** There is a need for experience before anyone would want to hire/work with a person. If they are not a professional then they may ruin the life of society. So there is a need for the skills and practical experience.

¹ Richard Lewis, "Clinical Legal Education Revisited" Professor of Law, Cardiff University, Wales, United Kingdom, Pg.5, <http://www.law.cf.ac.uk/research/pubs/repository/21>

² About Clinical Legal Education, BABSEACLE, Available at <https://www.babseacle.org/clinical-legal-education/>

A study shows that over 50% of criminal trials still go unrepresented by legal counsel.³ Representation of the poor in the judicial process in civil cases is out-balanced.⁴ In Nepal lawyers are less inclined to pro-bono legal aid.⁵

Through this research study, the author intends to look into the situation of clinical legal education in Nepal and identify the reasons for the lack of proper clinical legal education in Nepal. In doing so the author intends to identify all the actors and current practices and recommend a step towards a progressive implementation and effective and efficient use of clinical legal education.

2. LEGAL EDUCATION IN SOUTH ASIA

Legal education in the South Asian Region suffers from a myriad of problems related to goals, contents, methods, and approaches. This coupled with the SAARC legal education system modelled around countries socially, economically and culturally different to this region, describes the congenital defect with the legal education system. What is also equally important to note is that the legal education in this region is primarily controlled by the elites of the society regressively reaffirming the status quo.⁶ The traditional system of legal education treated law as an independent discipline with very little attention to the social, political, economic, aspects, the impact of rules in society or the lives of the general public. This led to several flaws being developed.

The legal education system of the South Asian region does not reflect the contextual perspective of the given region. The curriculum should take into account the several deprivations, culture, arts, and tradition of the region.⁷ Unfortunately, the legal education system does not in any way resemble or delve into the problems of the poorest population that constitute nearly half of the population of the region.

The legal institutions have not been able to fully equip the students with the tools to protect human rights, harmony and reconciliation. They are not equipped with knowledge of complexities of the region. Most of the law schools do not impart the students with the skills

³ CeLRRd, "Reform and Analysis of Criminal Justice System of Nepal", 1999. p. 90.

⁴ Nepal Law Society, "The Judiciary in Nepal: A National Survey of Public Opinion". November 2002.

⁵ Dr. Yubaraj Sangroula, Holistic Approach to Delivery of Legal Aid Services: Beginning from Community Responsive Legal Education and Professionalism, NJA Law Journal 2007, Available at <http://nkcs.org.np/nja/elibrary/pages/download.php?ref=18&size=&ext=pdf&k=&alternative=-1&usage=-1&usagecomment=>

⁶ *Id.*

⁷ *Id.*

to deal with the changes in the internationalization of human rights, privileges of a few and deprivation of the common public.

Clinical legal education can help by creating and contributing to the world, or at least the nation, through research and discourse. Modern legal education should also focus on the socio-economic and political contexts in which they were framed, and they are also needs to be an integrated approach combining legal education with development studies.

3. THE NEPALESE LEGAL EDUCATION

Nepal's legal education lacks experiential learning as the students are taught theories and principles while the practice and procedures are not taught.⁸ A survey conducted shows that there are over 15,000 Nepal Bar License holders in Nepal with over 500 people passing the bar every year, but merely 70 to 80 people passing the recruitment of the Judicial Services.⁹ The newly admitted lawyers rarely engage in practice due to their lack of experience.¹⁰

Law schools have failed in teaching professionalism adequately. They need to equip students with the fundamentals of professionalism. Not only the fundamental concepts and principles, but this also does not help in the development of the students' legal analysis, reasoning or oral advocacy. Due to this graduated students find it difficult to shift from the law school environment to the legal professional environment.¹¹

The students absorb the behaviours and notions of the professors. In Nepal there are certain common misconceptions and stereotypes which get indoctrinated into the students as well.¹² The classroom-insulated traditional legal education can lead to a pervasive anti-access to justice culture.¹³ In Nepal, there is no link between the legal education and the development need and rights of the people. Students hardly get the opportunity within law schools to learn more than what the professor teaches. That too is coupled with the fact that most of the teachers only come to law schools to collect their salary as they are engaged in full-time legal practice.¹⁴ The process of the development of the curriculum is governed by the ideologies of

⁸ Understanding the quintessence of Clinical Legal Education: Nepalese Experience, 5 Kathmandu Sch. L. Rev. 178 (2017).

⁹ Nepal BAR Council, Yearly Report, 2070/71 Nepal Bar Council Available at <http://www.nepalbarcouncil.org.np/documents/pragai%20bibran%202071.pdf>.

¹⁰ *Supra* 8.

¹¹ *Supra* 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Supra* 8.

the professors about society rather than the social needs established by empirical lists.¹⁵ As such legal education in Nepal is controlled by the professor's ideologies instead of social requirements. This way the "learning by experience in real or actual work" is deceptively discarded.¹⁶

While clinical courses have been developed by a few law schools in Nepal, this has not been institutionalized at a University level or accepted by the Bar Council or Bar Association. This concept of clinical legal education is new for the Nepalese legal fraternity with a vast scope. However, there is a need to look at the clinical programs of different foreign universities and take them as a base to implement it in the Nepalese Universities.¹⁷

Weaknesses of law schools in delivering clinical legal education include requiring a small number of students per faculty and finances. clinical legal education requires a smaller number of students who work under faculty supervision; however, in Nepal, there are over 500 students who enrol every year which makes the task harder.¹⁸ A financial constraint for Nepalese law schools as the government has not shown any enthusiasm to promote legal education.¹⁹

Clinical legal education is required to help in the development of professional skills and also help students understand the substantive, procedural, tactical and ethical issues presented by a particular area of practice. Clinics serve as an essential bridge between the student and professional life. Helps with several skills such as drafting, counselling, advising clients, interviewing, surveying, legal writing and researching, analysing data, negotiation skills, etc.²⁰

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Supra* 8.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

4. THE OTHER ACTORS

Law firms and organizations have started taking interns to assist them and teach them practical skills. This will inevitably the students in their professional development.

The Nepal Bar Council, established by the Nepal Bar Council Act, 1993, has the objective to promote, protect and regulate the activities of the law practitioners in a more professional manner. Endowed with the responsibility to develop the curriculum for the examination and conduct of the licensing examinations. The clinical courses taught by the different universities do not have monitoring or evaluation. There is no uniformity in the curriculum as well. Though the Bar Council has a legal education committee²¹ which has been formally established, there still is no focus or enhancement on the clinical legal education in Nepal.²²

The Nepal Bar Association was registered as a professional organization under the National Guidance Act, 1961. It is not only a professional organization but also a statutorily recognized institution having the responsibility of performing some legally specific duties. Some units of the Bar Association provide Bar examinations preparation classes to law students; however, there has been no significant role of this body in the professional development of the law students. The American Bar Association has the ABA Model Rules of professional conduct Mandatory Clinical legal Education Regulations²³ which recognizes clinical legal education in the USA. The Nepal Bar Council has introduced similar rules of professional conduct in the name of Code and conduct of the law professionals of Nepal, 2051 but this does not even mention clinical legal education.

The government has sponsored various legal aid activities; however, these have been proven ineffective due to lack of human resources. There is this new realization of the need for legal aid clinics throughout the world; however, this has not yet been realized by the Nepal Bar Association and the Nepal Bar Council.²⁴

²¹ Legal Education Committee; Nepal Bar Council, Available at <http://www.nepalbarcouncil.org.np/?url=content&id=7>.

²² *Supra* 8.

²³ Mandatory Clinical legal Education Regulations, American Bar Association Official Website, Available at http://www.americanbar.org/cle/mandatory_cle.html

²⁴ *Supra* 8.

5. A FEW EFFORTS

The Nepal Bar Association and the Norwegian Bar Association have agreed on a program titled the Access to Justice Project with the goal “to enable the Government of Nepal in order to provide free legal aid to its indigent and poor citizens with intending to sustainability of legal aid in Nepal and secure right to free legal aid of the indigent people.”²⁵ Activities would include Litigation and Counselling Support, Legal Literacy Program, a Mobile Legal Aid Clinic, Human Resource Development Training, Prison & Custody Reform Program, etc.²⁶

Kathmandu University School of Law has integrated clinical teaching and extended its methods into the legal education program. Kathmandu University School of Law's legal clinics and centres provide substantive legal training and allow students to build strong professional networks while serving the underserved communities of the Kavre - Palanchok District. Clinics provide senior students with rich opportunities to receive practical training and gain valuable experience. Working under attorneys, students provide access to justice through serving clients from underserved populations. Students will earn academic credit while working under the supervision of a full-time faculty member and a practising attorney.²⁷

The International Legal Foundation-Nepal and Nepal's National Law College have launched a joint clinical legal education program, combining National Law College's existing clinical framework with ILF's experience and expertise in providing clinical education. The aim of the joint clinical legal education program is to provide the students of National Law College with an opportunity to get hands-on experience at the grassroots level while also having an impact on the Nepalese justice system. All the students who were a part of the program have learned a lot from it and say that it complements the theories learned in class.²⁸

The Kathmandu School of Law has a Clinical Law Department which dispenses clinical legal education and clinical activities. The Department has a Human Rights and Criminal Justice Clinic which offers free legal aid to the poverty-stricken and also vulnerable population. The aim of this clinic is to increase access to justice. Apart from this the Clinical Law Department

²⁵ Access to Justice Project, Nepal Bar Association, Available at <http://www.nepalbar.org/projects/NEBA-AJP.php>

²⁶ *Id.*

²⁷ Clinic and Center, Kathmandu University School of Law, Available at <http://www.ku.edu.np/kusl/?page=clinic-and-center>

²⁸ The International Legal Foundation, Facebook, Available at <https://www.facebook.com/theilf/photos/a.424878713340/10152631827203341/?type=1&theater>

also holds a number of practical subjects throughout the course of the five years to be held along with the academic curriculum.²⁹

The United Nations Development Programme (UNDP) had initiated a programme to strengthen the rule of law and human rights protection system in Nepal.³⁰ This programme has supported the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs (MoLJCAPA) to establish an integrated legal aid system that is aimed at supporting women and the vulnerable groups to access the rule of law institutions to assert and equip their human rights. This includes support in the form of development of a national legal aid policy, clinical legal education, etc. UNDP along with the MoLJCAPA works together with the non-formal justice sector to reinforce the formal efforts made by the government agencies to improve the administration of justice.

6. CONCLUSION

It is seen that the development of a social legal aid scheme depends upon the teachers and their teachings in the law school. It is these teachings of legal professionalism that determine the success or failure of clinical legal education. The Nepalese Government's reluctance towards investing in legal aid programs has been quite evident. Most of the current programs are funded by foreign donors, which have the risk of collapse upon the funding being stopped. Such reliance on foreign aid makes the entire clinical legal education reliant as well as contingent upon the foreign donors.

Law schools have not been able to fully understand the instrumentality of clinical legal education and its furtherance towards access to justice. There needs to be a preparation of the students to take up socially responsive legal professionalism. The students need to be trained in a way that they understand the approach of legal aid as a basic human right related to access to justice.

There is an impending need for multiple collaborations between the Nepalese Law Schools and the Bar Associations to help in transforming the existing traditional legal education into an idealized legal professional community-responsive one. The Nepalese law schools need to

²⁹ Clinical Departments, Kathmandu School of Law, Available at <https://www.ksl.edu.np/clinical-departments>

³⁰ Strengthening the Rule of Law and Human Rights Protection System in Nepal (RoLHR), UNDP Nepal, Available at <http://www.np.undp.org/content/nepal/en/home/projects/rolhr.html>

review their policies to make them more socially accessible to the larger population in order to achieve more widespread participation from various backgrounds.

In Nepal, under the 3 universities, there are around 11 law schools each with a varying understanding and application of clinical legal education. The Nepal Bar Council and Nepal Bar Association are the actors responsible for the promotion and enhancement of legal education and professional development in Nepal. While this is in spirit, this has yet to be implemented and also monitored to see a successful application.

There is also a need for the recognition of the right to legal aid and access to justice as an indispensable right, a provision for access for deprived or marginalized groups of students to legal education. The Kathmandu School of Law Prospectus shows full scholarships with over a dozen students undertaken such a scholarship.³¹ As an agreement between the school and these students, they are to work at least five years in their home towns or districts. This assists the mission of widening the scope of delivering legal aid while also increase legal awareness and representation.³² Other similar approaches need to be developed to increase community outreach.

There is a need to look at other country practices and institutionalize clinical legal education. The government along with agencies need to consider the merits of clinical legal education and make it mandatory, while also monitor, evaluate and supervise and provide guardianship to all the Nepalese law schools.

³¹ *Supra* 5.

³² *Id.*