

INSTITUTIONALIZING A SOCIAL JUSTICE MISSION FOR CLINICAL LEGAL EDUCATION: CROSS-NATIONAL CURRENTS FROM INDIA AND THE UNITED STATES

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Clinical law teachers around the world have been debating the future of a social justice mission for clinical legal education at the same time that many clinical programs have increased their emphasis on professional skills training. This article examines a unique opportunity in India today to merge these sometimes competing goals through a set of four "Practical Papers" that the Bar Council of India has mandated for all Indian law schools. These papers require the teaching of a variety of lawyering skills and a certain level of legal aid work, which can serve to institutionalize social justice-based clinical legal education in India. The article also traces certain influences the US clinical movement has had on this development, including the fact that the Law Commission of India recently endorsed the idea of introducing a professional skills curriculum by drawing on the American Bar Association's MacCrate Report. It suggests that professional values appropriate for Indian lawyers and the professional skills needed to secure these values in India may be different from those set out in the MacCrate Report, and offers some examples of current clinical projects in India that demonstrate how the papers mandated by the Bar Council can be used to instill in law students, and thus in new lawyers, those fundamental values and skills needed to transform the legal profession in India.

INTRODUCTION

Clinical legal education is in the midst of an exciting period of growth and development, prompting clinicians around the world to reflect on what clinical education's remarkable successes over the past

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forty years mean for its future.¹ One important item on this agenda that has been on the minds of law teachers in India and the United States, among other countries, is the status of clinical legal education's traditional social justice mission.² There has been a link between social justice and clinical legal education in India and the United States since the late 1960s and early 1970s, when modern clinical legal education was first coming into its own and law schools in both countries introduced the new clinical teaching methodology through the establishment of legal aid clinics. Clinical education has always had a broader goal – to teach law students about what lawyers do and to understand lawyers' professional role in the legal system – but it carried out that goal in its early years almost exclusively in the context of having students provide various forms of legal aid services.³ Over time, the legal aid dimension of clinical education has been replaced to some extent by a more professional skills-oriented focus as the clinical movement has made important and necessary gains in the legal academy, especially in the United States.⁴ Although social justice remains at the heart of many clinical programs, the effort to obtain broad acceptance of clinical legal education by the legal academy and the bar – realized already to a substantial degree in a number of countries around the world – seems often to undercut its traditional social justice mission.

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

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

³ See generally Frank S. Bloch & Iqbal Ishaq, *Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United States*, 12 MICH. J. INT'L L. 96 (1990). See also CLINICAL LEGAL EDUCATION: CONCEPT AND CONCERNS, A HANDBOOK ON CLINICAL LEGAL EDUCATION 17 (N.R. Madhava Menon ed., 1998) [hereinafter HANDBOOK ON CLINICAL LEGAL EDUCATION]. This linkage existed also in earlier efforts to introduce clinical legal education in the United States, but it found special strength at this time. See *infra* text accompanying notes 8-11.

⁴ See Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 332 (2001) ("clinical legal education has tended to emphasize skills training and professional development over social objectives"). But see Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TULANE L. REV. 235, 268 (1999) (describing clinical education's "twin goals" of teaching lawyering skills and professional values and providing legal services to low-income clients as "inextricably intertwined").

This article examines a unique opportunity in India to merge these sometimes conflicting goals by institutionalizing social justice-based clinical legal education at all Indian law schools. Although the circumstances are particular to India, including a long and strong history of linking legal aid with legal education reform and a highly centralized system of oversight of the law school curriculum, the manner in which it is approached can be informed to some extent – as has been the case generally with modern Indian clinical legal education – by looking to the clinical movement in the United States. Thus, Part I presents a brief comparative overview of the social justice mission of clinical legal education in India and the United States. Part II then focuses specifically, and in some detail, on India’s efforts to link legal aid and legal education reform, including recent calls for introducing mandatory clinical courses in the form of four “Practical Papers” – based in part on an American Bar Association task force report on fundamental lawyering skills and values (the MacCrate Report).⁵ Part III examines the relevance of the MacCrate Report’s Statement of Skills and Values to Indian legal education and India’s legal profession, and cautions against an uncritical adoption of the report; instead, it suggests some tentative revisions of the report’s Statement of Skills and Values for Indian lawyers and calls for study by an Indian counterpart to the MacCrate task force. Drawing on aspects of the mandatory Practical Papers and the prospect of a national statement of lawyer values and skills, Part IV offers a proposed blueprint for realizing India’s longstanding efforts to reform legal education through a social justice-based clinical curriculum. It also describes a number of current creative approaches to clinical legal education in India that demonstrate the ability of the clinical methodology to adapt to local circumstances while implementing broadly shared aspirations and goals of the global clinical movement.

I. CLINICAL LEGAL EDUCATION’S SOCIAL JUSTICE MISSION IN INDIA AND THE UNITED STATES

In both India and the United States, the basic model of clinical legal education promotes professional skills training and law school involvement in social justice. Typically, clinic students are engaged in experiential learning through active involvement in some type of social justice activity, such as a legal aid clinic. Until clinical programs entered the scene, skills training and social justice work were, for all

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

intents and purposes, off the legal education agenda. Legal doctrine dominated law school syllabi in both countries, with virtually all instruction offered through classroom courses dominated by “Socratic” dialogue and appellate-court-oriented casebooks in the United States and traditional lectures in India.⁶ This concentration on “the law” pushed consideration of law practice to the background, to the point that any practical training seemed out of place in law school – except when preparing for a moot court appellate argument. Legal education was “law” school, not “lawyer” school.⁷ The idea was that law graduates would learn about being lawyers once they entered practice. At various points, this policy has been implemented through required apprenticeships in many countries. However, the idea took hold even in those countries where apprenticeships never were required (like many states in the United States) and in those where an apprenticeship requirement was abandoned (like India).

Although some law schools in the United States had established legal aid clinics in the early part of the century,⁸ the clinical movement began to gain momentum in the United States only after the Civil Rights Movement and President Lyndon Johnson’s War on Poverty (and later, the continuing war in Viet-Nam) had raised the national social conscience in the mid 1960s. Law students joined a greater movement demanding more “relevance” in university studies and a more active role by universities in public affairs.⁹ This prompted some changes in the traditional law school curriculum, as new classroom courses on law and poverty were offered at a number of schools in the late 1960s and early 1970s. The clinical legal education movement was able to profit from increasing national funding for legal services for the poor through the War on Poverty, and as a result virtually all of the early clinical programs in the United States operated out of legal aid offices. Interest in the new traditional law courses began to

⁶ Apart from clinical education, recent legal education “reform” in India has consisted mainly of efforts to replace one-way lectures with more effective, US-style teaching methods. See *infra* note 58 and accompanying text.

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

⁸ Among the few schools with clinical programs in place before World War II were the University of Denver, the University of Southern California, and Duke. See John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929); John S. Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469 (1934); Alan Merson, *Denver Law Students in Court: The First Sixty-Five Years*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 138 (Edmund W. Kitch ed., 1970).

⁹ See Barry, Dubin, & Joy, *supra* note 1, at 12-13. See generally Todd Gitlin, *Evolution of the Student Movement of the Sixties and its Effects*, 22 WM. MITCHELL L. REV. 461(1996).

wane after a few years.¹⁰ The poverty law and social justice focus of clinical legal education, by contrast, has had a far more lasting influence. Although the legal aid dimension has receded somewhat as clinical legal education has become more integrated into the law school curriculum,¹¹ social justice and professional responsibility remain at the heart of the clinical movement in the United States.

Legal aid and social justice gained prominence in Indian legal education at about the same time as they did in the United States.¹² Through exchanges funded by the Ford Foundation in the late 1960s and early 1970s, American and Indian law teachers shared recent developments in the law-and-poverty curriculum, including the emerging clinical methodology.¹³ Also in the early 1970s, an expert committee appointed by the Ministry of Law proposed a model for legal aid programs that anticipated significant involvement by law teachers and law students.¹⁴ To be sure, the idea of linking legal aid and law schools had a practical element; given the extent of the need for legal services for the poor and the limited resources available, this made perfect sense. But there were distinct curricular and professional responsibility aspects as well. As stated by a successor Ministry of Law committee in 1977, involving law students in legal services projects would give the students a “deep appreciation of the importance of [legal aid] activities and also a sense of personal responsibility to see that such activities gather strength.”¹⁵

Thus, the early years of clinical education were shaped in both countries by similar sets of developments: in India, it was a call for law school involvement in a national legal aid effort coupled with efforts at legal education reform that stimulated the legal academy to include legal aid and social justice practice in the curriculum; in the United

¹⁰ Examples of published teaching materials from that time – none of which are currently in print – include GEORGE COOPER, CURTIS J. BERGER, PAUL M. DODYK, MONRAD G. PAULSEN, PHILIP G. SCHRAG & MICHAEL I. SOVERN, *CASES AND MATERIALS ON LAW AND POVERTY* (2d ed. 1973) and A. LAFRANCE, M. SCHROEDER, R. BENNETT & W. BOYD, *LAW OF THE POOR* (1973). A new poverty law text was published in 1997, but has not been updated in seven years. See J. NICE & L. TRUBEK, *CASES AND MATERIALS ON POVERTY LAW* (1997 & Supp. 1999).

¹¹ See *infra* text accompanying note 19.

¹² See generally Bloch & Ishar, *supra* note 3.

¹³ The Ford Foundation was a major early funder of clinical legal education in both the United States and India. Ford has also funded clinical programs in Africa and Latin America and, more recently, in China. See Wilson, *supra* note 2, at 425.

¹⁴ See GOVT. OF INDIA, MINISTRY OF LAW, JUSTICE, AND COMPANY AFFAIRS, *PROCESUAL JUSTICE TO THE PEOPLE: REPORT OF THE EXPERT COMMITTEE ON LEGAL AID (1973)* [hereinafter EXPERT COMMITTEE REPORT].

¹⁵ GOVT. OF INDIA, MINISTRY OF LAW AND JUSTICE, *REPORT OF COMMITTEE ON NATIONAL JURIDICARE: EQUAL JUSTICE, SOCIAL JUSTICE 68 (1977)* [hereinafter JURIDICARE COMMITTEE REPORT].

States, it was the combination of calls by students for greater social relevance in the law school curriculum and the emergence of a federally funded legal services program aimed at addressing national social concerns. There were also parallel general demands in both countries for improved training in skills and ethics in law school. This was prompted in part in the United States by a post-Watergate reassessment of the legal profession's role in that scandal, led by then Chief Justice Warren E. Burger.¹⁶ Teaching ethical practice was an integral part of the mission of the main private source of funding for early clinical programs, the Council on Legal Education for Professional Responsibility (CLEPR).¹⁷ In India, concerns arose about maintaining the quality of law practice when apprenticeship requirements were eliminated in the early 1960s.¹⁸

Clinical legal education's primary focus on legal aid, social justice, and professional responsibility began to lose some ground in the United States in the 1980s, with a fading of student interest in public interest work.¹⁹ Clinical programs could appeal to a broader constituency by emphasizing general skills training rather than the opportunity for students to be involved in solving legal problems for the poor. Many students hoping to gain a foundation in lawyering skills came into legal clinics looking for practical experience relevant to the "real

¹⁶ Deborah L. Rhode, *Ethics by the Pervasive method*, 42 J. LEGAL EDUC. 31, 39 (1992) (noting that "the primary impetus for ethics instruction was Watergate"). See generally Warren E. Burger, *The Role of the Law Schools in the Teaching of Legal Ethics and Professional Responsibility*, 29 Clev. St. L. Rev. 361 (1981); Kathleen Clark, *Legacy of Watergate for Legal Ethics Instruction*, 51 HASTINGS L.J. 673 (2000).

¹⁷ According to William Pincus, the president of CLEPR, clinical programs and law students who participate in those programs help "society provide more and better legal services to those who need them." William Pincus, *A Small Proposal for a Big Change in Legal Education*, 1970 U. TOL. L. REV. 913, 916.

¹⁸ The Bar Council of India reintroduced a one-year training requirement after graduation from law school in 1994, based on recommendations of the Ahmadi Committee. See *infra* text accompanying notes 58-59. Every law graduate would have had to undergo one year of training under a senior lawyer; they would work for three months in a trial civil court, three months in a Magistrate's Court, and at least six months in a District Court. See Bar Council of India Training Rules, 1995, Rules 2-15. However, the BCI received a setback when this rule was struck down in the Supreme Court as *ultra vires* to the Advocates Act. The Court shared the BCI's concern for developing suitable methods to improve the standards of legal education and the legal profession, but noted that the Bar Council was not competent to pass such a rule and that it could be introduced only by the legislature. See *V. Sudheer v. Bar Council of India* 1999 (3) SCC 176. In 2002, the Law Commission suggested the necessary amendments to the Advocates Act; however, no effort has been made by the government of India to implement those recommendations.

¹⁹ One commentator has noted "a shift in emphasis" in clinical legal education in the United States from client and community service to a focus on teaching skills. Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1466-67 (1998). But see Barry, Dubin, & Joy, *supra* note 1, at 16-17 (pointing out that "law school clinics continue to play an important role in making access to justice a reality for many low-income people").

world” of law practice and demanded a skills-based clinical curriculum. To a significant extent, these goals could be achieved more directly and less expensively by avoiding “live client” work and moving to classroom courses using simulation-based problems – while still profiting from the experiential learning methodology championed by clinical education. Students motivated by social justice continued to be drawn to clinical education as a vehicle for social action, but they were less invested in the educational program as such. As their numbers diminished, pressures to increase the level and scope of services provided through clinical programs were reduced.

Such a shift was less apparent in India, where links between legal education reform and on-going efforts at implementing legal aid projects were more direct. However, as discussed in more detail in Part II below, a similar trend can be seen in current efforts to mandate practical training in the curriculum through clinical courses that may, but need not, have a substantial social justice component.²⁰ Thus, Bar Council of India rules that allow (and, more recently, require) credit for clinical work seem to contemplate some measure of specific skills training.²¹ As in the United States, many practical training courses are being taught through the use of simulations.

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

²⁰ See *infra* text accompanying notes 119-21.

²¹ See HANDBOOK ON CLINICAL LEGAL EDUCATION, *supra* note 3, at v.

prove lawyer competence generally and obligates them to engage as students in supervised high-quality public service.²²

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

II. LEGAL EDUCATION REFORM AND LAW SCHOOL-BASED LEGAL AID CLINICS IN INDIA: LAYING THE GROUNDWORK FOR SOCIAL JUSTICE-BASED CLINICAL LEGAL EDUCATION

During British rule, legal education in India followed the general colonial model of producing clerks, not managers or advocates. Its primary goal was to support the existing financial interests of England, certainly not to reform the local legal profession.²³ After independence, legal education was expected to bring the legal system in tune with the social, economic, and political desires of the country.²⁴ With 500 law schools and 40,000 law students graduating every year,²⁵ law schools could play a pivotal role in promoting and providing justice, particularly through the field of legal aid.

²² For an example of one such curriculum in India, see N.R. Madhava Menon & V. Nagaraj, *Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training*, in HANDBOOK ON CLINICAL LEGAL EDUCATION, *supra* note 3, at 238.

²³ INTERIM REPORT OF AUXILIARY COMMITTEE OF THE INDIAN STATUTORY COMMISSION ON REVIEW OF THE GROWTH OF EDUCATION IN BRITISH INDIA, 11 (Government of India, Calcutta 1930).

²⁴ A. S. Anand, *H.L. Sarin Memorial Lecture: Legal Education in India – Past, Present and Future*, (1998) 3 SCC (JOUR) 1, 2.

²⁵ N. L. Mitra, *Legal Education in India*, Conference of International Legal Educators, Florence, Italy (2000) available at <http://www.aals.org/2000international/english/India.htm> (last visited on Aug. 20, 2006). Currently there are 193 law schools accredited by the American Bar Association. <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Sept. 16, 2006). Just over 40,000 students graduated from ABA-accredited law schools in 2004. See <http://www.abanet.org/legaled/statistics/jd.html> (last visited Sept. 16, 2006).

As noted earlier, the contemporary legal aid movement began in independent India in the early 1960s, at about the same time as legal services programs expanded considerably in the United States. Unlike in the United States, however, the focus of the legal aid movement in India has not been on individual client representation but rather on providing legal aid to indigent people at large.²⁶ Thus, in conjunction with the 42nd Amendment to Indian Constitution – giving free legal aid constitutional status under art. 39A – Parliament passed the Legal Services Authority Act, 1987, which aims at both providing free legal aid and organizing *lok adalats* (people's courts) to secure quick justice at low cost. More recently, the Central Government proposed establishing Gram Nyaalayas (informal courts) to provide justice in rural areas at a grass root level.²⁷

Early on, a consensus developed within the Indian legal community that law schools should play an active role in the legal aid movement. Although some schools were receptive, early responses to this call were less than satisfactory. There is now a renewed effort to reform legal education that offers the legal academy, the bench, and the bar the opportunity to realize the shared goals of meeting service needs and education reform through social justice-based clinical legal education.

A. *Early Efforts to Link Legal Aid and Legal Education Reform*

The first major report on legal aid came in 1973 from the Expert Committee on Legal Aid of the Ministry of Law and Justice, chaired by Justice V. R. Krishna Iyer.²⁸ The Expert Committee was appointed in the Silver Jubilee year of Independence to make recommendations for the creation and implementation of a comprehensive program of legal aid to the weaker sections of Indian society, including persons of limited means and socially and educationally backward classes. In stressing the need for a statutory basis for legal aid, the Committee

²⁶ Bloch & Ishar, *supra* note 3, at 96. This has begun to change in India; for example, the Delhi Legal Services Authority is now running twenty-eight legal aid centers and a 24-hour hotline at permanent legal services clinics to provide legal aid to individual clients. See <http://dlsa.gov.in> (last visited Aug. 23, 2006).

²⁷ See The Gram Nyaalayas Bill, 2005. *Nyaalays* are *panchayat*-level (county level) courts that serve low-population jurisdictions. They are, in effect, the lowest court of the State judiciary and operate as traditional courts but at the grass-roots level. *Lok Adalats*, on the other hand, are designed to help settle disputes between the parties that may be pending before any court, as well as matters at the pre-litigation stage. *Lok adalats* are discussed also *infra* at text accompanying notes 135-38.

²⁸ See EXPERT COMMITTEE REPORT, *supra* note 14. Justice Krishna Iyer, known as a pioneer in protecting prisoners' constitutional rights, held various legislative and ministerial posts, was a judge of the High Court of Kerala, and served on the Law Commission of India before being elevated to the Supreme Court of India in 1973.

said that “legal aid is an integral part of the legal system – not a matter of charity or confined to the four walls of the court building.”²⁹ The Committee’s report advocated creating networks of legal aid groups in various places such as court houses, bar associations, law schools, community organizations, private and public agencies, and organs of local government.³⁰ Recommendations ranged from establishing an autonomous national legal aid authority, to compulsory public service as a part of law school curricula, to giving priority to candidates’ social sympathies in filling judicial and police posts.³¹ The Committee’s report also stressed the need to modify the law school curriculum in order to focus on the needs of citizens and to provide actual legal aid services.³² The Committee recommended introducing clinical legal education in law schools with a focus on socio-economic poverty. It opined that student exposure to real legal problems would benefit the students, the legal aid scheme, and the legal system as a whole. It also observed that students’ encounters with the problems of poverty and exploitation would change their outlook when they become lawyers, and as a result they would not treat clients simply as facts but as living neighbors.³³

On the benefits of involving law schools in legal aid programs, the Committee pointed out that law students would become an inexpensive and enthusiastic resource for providing meaningful legal aid to India’s vast population.³⁴ It recommended using law students to provide legal aid in two stages: first, in preparing a case at the preliminary stages, including interviewing clients and drafting documents; then, by appearing in court in petty cases, including examining witnesses and presenting arguments.³⁵ Thus, the central idea of involving the law schools was not only to provide practical skills but also to secure adequate legal aid for the needy.

In 1977, the Committee on National Juridicare submitted its report.³⁶ The Juridicare Committee was intended to revise, update, re-evaluate, and supplement the report of Expert Committee, and its report concentrated more on the viability and working conditions of legal aid programs.³⁷ The Juridicare Committee recognized the value

²⁹ *Id.* at 6.

³⁰ *Id.* at 15.

³¹ *Id.* at 21-22, 34, 35, 44, 79, 90-91, 163, 234.

³² *Id.* at 15.

³³ *Id.* at 26.

³⁴ *Id.* at 56.

³⁵ *Id.* at 26. At the time, and still today, there was no student practice rule in India. See *infra* note 45 and accompanying text.

³⁶ JURIDICARE COMMITTEE REPORT, *supra* note 15.

³⁷ Members of the Committee met with members of government, Bar associations, the Judiciary, and actual beneficiaries of legal aid schemes, and examined various experiments

of lawyers' services in seeking remedies or asserting rights, and placed comprehensive legal aid projects as a high priority in the State's responsibility. The main thrust of the report was the recognition that a legal services program that reflected western attitudes and ideals cannot work successfully in India because only a few of the problems of the poor are true legal problems. The Committee believed that a legal aid program should aim at radical transformation of the socio-economic structure, and concluded that the legal profession must recognize law as a potential instrument to eradicate poverty by securing equal distribution of material resources of the country.³⁸

The Juridicare Committee expected law schools to play a pivotal role in providing legal aid and urged them to establish legal aid clinics. It observed that student participation in legal aid would not only be helpful in acquiring the skills necessary in the legal market place, but would also provide an opportunity for the students to develop a humanistic perspective and a social orientation. Students would realize the social role of the law, and their participation in clinical projects would reduce the burden of legal services institutions.³⁹ For the first time, this report expressed the need to develop clinical law teachers, to introduce subjects such as law and poverty and law and society, and to give academic support to law school clinics.

In 1981, the government of India appointed the Committee for Implementing Legal Aid Schemes. The Committee was headed by Justice P.N. Bhagwati, then Chief Justice of the Supreme Court of India. Like the earlier Juridicare Committee, the Committee for Implementing Legal Aid Schemes insisted that court- or litigation-oriented legal aid programs cannot provide social justice in India. The Committee concentrated more on the promotion of legal literacy, the organization of legal aid camps to carry legal services to the doorsteps of people, training of paralegals to support legal aid programs, establishing legal aid clinics in law schools and universities, and bringing class actions by way of public interest litigation.⁴⁰ Further, Justice Bhagwati acknowledged the significance of the educational process in its task: "Education efforts must become a significant factor contributing to the social development of the poor."⁴¹

in legal aid at the village and municipal levels in order to devise a comprehensive free legal service program.

³⁸ JURIDICARE COMMITTEE REPORT, *supra* note 15, at 25.

³⁹ *Id.* at 66.

⁴⁰ REPORT OF COMMITTEE FOR IMPLEMENTING LEGAL AID SCHEMES (1981).

⁴¹ *From the Chairman*, LEGAL AID NEWSLETTER 2 (Feb. 1983) *cited in* Jagat Narain, *Legal Aid – Litigational or Educational: An Indian Experiment*, 28 J.I.L.I. 72, 76 (1986).

B. Dashed Expectations: Legal Education's Limited Response

In spite of these high expectations, only limited efforts were made to transform legal education in India to meet the challenges of the profession. The momentum gathered by the legal aid movement was confined at most law schools to student extracurricular activity, with a few exceptions. Delhi University, for example, established a legal aid clinic in the late 1960s. Faculty participation was purely voluntary and no attempts were made to integrate clinics into the curriculum.⁴² Nonetheless, and in spite of the fact that the students were offered no credit, the legal aid clinic attracted many students.⁴³

Banaras Hindu University was the first law school in India to introduce a clinical course, in the early 1970s. It was an optional course with academic credit, offered to a limited group of thirty students in the final LL.B. year. The course included court visits, participation in a legal aid clinic, and an internship in chambers of lawyers. It was clear, however, that the legal aid clinic, which was located at the school and supervised by a retired judge on a token honorarium, was at the center of the law school's conception of clinical legal education.⁴⁴

Aligarh Muslim University organized a few legal aid camps in the mid-1980s and also introduced a course on advocacy that exposed students to such topics as factual investigation, legal research and writing, and litigation strategies. But no steps were taken to incorporate clinical legal education into the curriculum and participation in the legal aid camps was voluntary.⁴⁵

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

First and foremost, most law teachers have no practical knowledge in conducting legal aid because the Advocates Act prohibits full-time teachers from practicing law. There is also no provision for li-

⁴² HANDBOOK ON CLINICAL LEGAL EDUCATION, *supra* note 3, at 18-19.

⁴³ *Id.* at 19.

⁴⁴ *Id.* at 19-20.

⁴⁵ *Id.* at 20.

censing law students to practice.⁴⁶ Moreover, no efforts have been made to provide financial assistance to law schools in order to meet the expenses of providing legal aid and there are no incentives – such as reducing teaching hours – for teachers to engage in legal aid activities.

Another fundamental problem comes from the fact that for some time there has been a general feeling that legal education in India is not “meaningful” or “relevant.”⁴⁷ In its 1958 report, the Law Commission of India painted the following bleak picture of the standards of legal education:

The portals of our law teaching institutions manned by part-time teachers open even wider and are accessible to any graduate of mediocre ability and indifferent merits . . . there is hardly a pretence at teaching . . . this character is followed by law examinations . . . which the students manage to pass by cramming short summaries published by enterprising publishers . . . the result, a plethora of LL.B., half-baked lawyers, who do not know even the elements of law and who are let loose upon society as drones and parasites in different parts of the country.⁴⁸

The curriculum was neither helpful in shaping aspiring lawyers in their traditional role of problem solver nor in their expanded roles of arbitrator, counselor, negotiator, or administrator. The dominant teaching approach was lecture, with little or no attention paid to underlying principles or social intricacies that resulted in shaping the particular rule. Students had no exposure to the policy underlying the law, the function of the law, or the needs of the nation and the expectations of the people.⁴⁹ No effort was made to understand the law in a social context. In the words of Professor Mohammad Ghouse, law students “were not alive to the dynamic role of law in the development of the country.”⁵⁰

Perhaps in response to this phenomenon, there followed a prolonged neglect of legal education during which a large number of sub-standard institutions and “teaching shops” grew up around the country with large numbers of students. As a result, admission to law school became disorganized and the quality of students admitted dete-

⁴⁶ See Advocates Act, 1961 §§ 29, 33 (providing that only enrolled advocates are entitled to practice law).

⁴⁷ I.P.Massey, *Quest For ‘Relevance’ in Legal Education*, 2 SCC (JOUR) 17 (1971).

⁴⁸ See THE LAW COMMISSION OF INDIA, REPORT ON REFORM OF JUDICIAL ADMINISTRATION 523 (1958). These remarks were made by the Commission when there were only forty-three law institutes training 20,159 students.

⁴⁹ Mohammad Ghouse, *Legal Education in India: Problems and Perspective*, 19 J.I.L.I. 337, 337-48 (1977) (reviewing LEGAL EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES (S.K. Agarwala ed., 1973)).

⁵⁰ *Id.* at 337.

riorated.⁵¹ Although there were exceptions, most law schools failed to attract highly qualified students to the legal profession.⁵² The situation was exacerbated by meager salaries paid to law teachers; because of low salaries, the teaching profession did not attract many brilliant persons to law teaching. Further, the teaching faculty was overburdened by heavy teaching loads.⁵³ Many colleges had large numbers of part-time teachers, which resulted in overloading the full-time teachers with additional administrative and committee duties.⁵⁴

C. *A New Opportunity for Reform: The Ahmadi Report and the Bar Council's Mandatory Practical Papers*

This bleak experience perhaps finally taught the Indian legal community that involving law schools in providing legal aid or other assistance to society needs careful planning and, most importantly, that legal education needs a facelift to cope with society's expectation. Thus, several important initiatives have been undertaken in India recently to refocus attention on improving legal education – most notably those by the University Grants Commission (UGC), the Bar Council of India (BCI), and the Law Commission of India.⁵⁵

The UGC is the prime body in India for regulating and maintaining the standards of higher education. In 1988, the UGC appointed a Curriculum Development Committee (CDC) with Professor Upendra Baxi as chairman. The Baxi Committee tried to improve law school syllabi to make them socially relevant: “Human resource development in law is perceived by the CDC not just in terms of production of efficient professionals. While this is important, it is so only if the underlying model of professionalism is linked with struggles for social justice, the maintenance of the rule of law and of democratic development”⁵⁶ According to a second Curriculum Development Committee, appointed in 2000, the first committee's recommendations were ambitious in nature, substantive in content (some new subjects were introduced with an interdisciplinary approach, including Law and Poverty and Law and Rural Development), and had a rich vision

⁵¹ *See id.*

⁵² Taylor Von Mehren, *Law and Legal Education in India: Some Observations*, 78 HARV. L. REV. 1180, 1186 (1965).

⁵³ A full-time teacher is required to take eighteen lectures a week.

⁵⁴ Taylor Von Mehren, *supra* note 52, at 1186.

⁵⁵ *See* LAW COMMISSION OF INDIA, 14TH REPORT (1958); EXPERT COMMITTEE REPORT, *supra* note 14; JURIDICARE COMMITTEE REPORT, *supra* note 15; REPORT OF COMMITTEE FOR IMPLEMENTING LEGAL AID SCHEMES (1981); REPORT OF CURRICULUM DEVELOPMENT CENTRE (1988-90) (known popularly as the Baxi Committee); REPORT OF JUSTICE AHMADI COMMITTEE (1994) [hereinafter AHMADI COMMITTEE REPORT]; LAW COMMISSION OF INDIA, 184TH REPORT (2002).

⁵⁶ REPORT OF THE CURRICULUM DEVELOPMENT CENTRE, *supra* note 55, at 9-10.

for the future.⁵⁷ There is also a standing panel at the UGC to guide and standardize legal education in India, presided over by the retired Chief Justice of the Supreme Court of India. In spite of these efforts, no significant improvement in the standards of law schools was achieved; lack of faculty expertise in the new subjects, unavailability of textbooks, and lack of flexibility in teaching and assessing in subjects like poverty and rural development made these socially relevant courses ineffective.⁵⁸

In 1994, a Committee chaired by Justice Ahmadi dealt elaborately with law school teaching methods. The Ahmadi Committee Report recommended inclusion of the problem method, moot courts, and mock trials in law school curricula. It also suggested supplementing the lecture method with the case method, tutorials, and other modern techniques for imparting legal education.⁵⁹ Further, it recommended that all these new methods be made mandatory.⁶⁰ The Committee also suggested the establishment of premier law schools to improve legal education along the lines of the National Law School of India University in Bangalore. As a result, several additional national law schools were established all over India.⁶¹ Although these national law schools tend to improve legal education, they could not affect a significant improvement as a far larger number of students graduate from other law schools.⁶²

In 1997, following the Ahmadi Committee's recommendations about practical training and the filing of cases in several high courts

⁵⁷ See REPORT OF THE CURRICULUM DEVELOPMENT COMMITTEE 1 (2000). The new CDC prepared a fresh "UGC Model Curriculum" in 2001. See LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 55, at 8.

⁵⁸ Mitra, *supra* note 25.

⁵⁹ It referred to the "case method" introduced by Professor Langdell and to the "problem method" pioneered by Professor Carl Llewellyn and Judge Jerome Frank. LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 55, at 52 (citing Ahmadi Committee Report (1994)).

⁶⁰ *Id.*

⁶¹ The new schools created around that time were West Bengal National University of Juridical Science, Calcutta; NALSAR University of Law, Hyderabad; National Law Institute University, Bhopal; National Law University, Jodhpur; Hidayatulla National Law University, Raipur. Since then, two additional national law schools have been established: Gujarat National Law University in Gandhi Nagar, Gujarat, and the National Institute for Advanced Legal Studies in Kochi, Kerala.

⁶² The Law Commission of India also stressed the need to improve legal education in other colleges which form 99 percent of the law colleges in India: "It is the desire of the Law Commission that the Bar Council of India and the academic community must coordinate and take steps which can result in upgrading the standards of legal education in these colleges which are spread over length and breadth of the country. A few bright-star colleges with limited number of student-intake based on all-India selection is not the end and may not result in an overall change in the level of legal education." LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 55, at 103.

challenging its new rule reviving a one-year training requirement under senior advocates,⁶³ the BCI issued a circular directing all universities and law schools to revise their curricula and directed them to incorporate four Practical Papers.⁶⁴ Until these papers were introduced in the curriculum, very little effort had been made by law schools to train students in advocacy skills. Law schools felt that training law students to work in the legal profession was not the job of the schools but of the Bar. The Bar Council's action was viewed as a big step toward introducing clinical legal education formally into the curriculum and law schools have been required to introduce the four papers since academic year 1998-99.

On their face, the papers focus mainly on practical training. Paper I addresses instruction in litigation skills, including pre-trial preparation and trial practice. Paper II takes up various drafting skills, including pleading and conveyancing. Paper III covers professional matters, such as ethics and bar-bench relations. The exception is Paper IV, which includes legal aid work and other aspects of public interest lawyering. As shown later in this article, the four papers can be read together more broadly to support social justice-based curriculum reform.⁶⁵ So far, however, most legal educators see them as providing only limited support for including instruction in social justice lawyering in the new curriculum or for providing social justice to indigent clients.

Further, the Bar Council did not assume any responsibility for implementing its new directive. The responsibility for training law students in practical matters was simply passed on to the law schools. Because Bar Council directives are mandatory, law schools made half-hearted attempts to fulfill their obligations – despite having neither the expertise in skills training nor the infrastructure and financial resources needed to implement these papers. Even to the extent that some meager resources were made available, law schools failed to execute these directives because they were viewed as an additional burden on the faculty. Simply put, law faculty neither had a vision for, nor properly understood, the value of these papers.

Finally, in 2002 – and after considering the Ahmadi Committee Report – the Law Commission of India took up legal education reform in its 184th Report. Noting that legal education is fundamental

⁶³ Cases challenging the training rules were filed at the High Court of Maharashtra and Goa, and the High Court of Punjab and Haryana. Ultimately, the rule was struck down by the Supreme Court. *See supra* note 18.

⁶⁴ Bar Council of India, Circular No. 4/1997. The term “papers” in this context amounts to a course in the curriculum. The papers are reproduced at Appendix 1.

⁶⁵ *See infra* text accompanying notes 122-25.

to the judicial system, the Commission suggested that clinical legal education should be made compulsory and opined that clinical legal education will be an excellent supplement to the legal aid system.⁶⁶

D. The Practical Papers as a Framework for the Future

This history of efforts at reform leads to the inescapable conclusion that a central social justice goal for legal education in India should be to establish a fair, effective, competent, and accessible legal system. At the same time, any attempt to transform the Indian legal profession must wrestle with several problems, such as delays in the justice delivery system, corruption and lack of professional responsibility, failure to adopt modern methods of grievance settlement, failure to provide legal services at affordable cost, and limited opportunities for law graduates. Legal education reform that focuses merely on lawyering skills does not advance a legal profession that is on the verge of breaking down because there is no capacity to meet the day-to-day needs of society. Moreover, many students enter law schools not by choice but by chance; as a result, very few law graduates actually enter into the profession.⁶⁷ Thus, many legal educators feel that there is little social benefit in continuing to spend time and energy on students who will not contribute to the profession.

Something more is needed if legal education is to help lead the profession toward a fair, effective, competent, and accessible legal system. The legal academy and the profession should look to clinical legal education to lead this effort, since clinical education is in a unique position in India to realize these goals. More specifically, the Practical Papers can provide the framework for uniting the shared interests of the legal academy, the bench, and the bar by creating a curriculum that can stimulate a dedicated faculty to train its students to become skillful and socially responsible lawyers.⁶⁸ They can do so, however, only if they are supported by a solid conceptual and theoretical foun-

⁶⁶ See LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 55, at 95.

⁶⁷ Thus, a study in the 1970s showed that only about eight percent of the students who appear for the first year LL.B. examination register as advocates. See M. B. Mehre, *Reconstruction of Legal Education*, 20 J.I.L.I. 281, 283 (1978) (86 percent of students that register and appear for the first year LL.B. examination are not interested in taking the degree in law and leave the law colleges without completing their legal education; 42 percent of students that complete legal education are not interested in a professional career at the Bar, preferring outside employment). According to more recent data, only about one-third of law school graduates in India enter the profession. See Jamshed B. Pardiwala, *Legal Education: Objectives, Problems, and Perspectives*, 25(2) INDIAN BAR REV. 79, 87 (1998).

⁶⁸ Anand, *supra* note 24, at 9 (noting that combined action on the part of “the Bar, the Bench and the law teachers is called for to improve the deteriorating standards of legal education”).

dation and can be implemented in a practical and realistic way. The next Part examines the American Bar Association report that has been cited as support for the Practical Papers requirement and its applicability in the Indian context. The final Part shows how the papers can be implemented through a social justice-based clinical curriculum.

III. CURRENT EFFORTS IN INDIA TO REFORM LEGAL EDUCATION AND THE LEGAL PROFESSION: ADAPTING THE MACCRATE REPORT TO MEET INDIA'S NEEDS

As noted above, a number of committees, commissions, and seminars have called for reforming both the legal profession and legal education since India gained independence from the British.⁶⁹ The legal system introduced by the British was created essentially to serve British commercial interests; very little concern was shown for social justice, such as protecting the rights of children, women, workers, and other disadvantaged members of society. In the words of Justice Krishna Iyer: "British legal culture fertilized the Indian legal elite and sterilized the spirit of the people."⁷⁰ By contrast, the Indian Constitution aims to secure social, economic and political justice, but the Indian legal profession, the legislative process, and the administration of justice remain restrained by feudalistic and pro-British colonial laws.⁷¹ Therefore, many legal luminaries in India felt the need to move away from this model and to reform the legal profession. A common theme was that reforms in legal education should aim at providing competent and socially sensitive lawyers.

The Bar Council of India's directive on Practical Papers in 1997 and the 2002 report of the Law Commission of India (together with the Ahmadi Report that preceded it), discussed earlier in Part II,⁷² are particularly important because they addressed specifically various changes needed to update teaching methods and to reform the law school curriculum – all with a view to improving the legal profession. Although the Law Commission mentioned several studies about improving legal education in its 2002 report, one report was given special prominence: *Legal Education and Professional Development – An Educational Continuum*, a 1992 American Bar Association (ABA) task

⁶⁹ See *supra* text accompanying notes 27-38, 55-66. See also All India Seminar on Legal Education at Poona (1972); All India Law Teachers Conference at Delhi (1972); National seminar on legal Aid and Advice (1975); All India seminar at Bombay attended by Universities and State Bar Councils (1977) (the deliberations in this seminar resulted in establishing an integrated 5-year curriculum).

⁷⁰ Justice V. R. Krishna Iyer, INAUGURAL ADDRESS AT THE SECOND STATE LAWYERS' CONFERENCE, ANDRA PRSDESH AT RAJAHMUNDRY, 2 SCC 1, 3 (JOUR) (1976).

⁷¹ *Id.*

⁷² See *supra* text accompanying notes 60-66.

force report on professional skills and values popularly know as the MacCrate Report.⁷³ The Law Commission felt that the members of the Legal Education Committee of the Bar Council of India and the University Grants Commission needed to study the MacCrate Report closely. This nod to the MacCrate Report was doubly significant, since the four papers mandated by the Bar Council in 1997 (also mentioned by the Law Commission in its report) focus on skills similar to those identified as fundamental in the MacCrate Report.⁷⁴ Further, the National Law School of India University in Bangalore, established by the Bar Council in 1987 as a model for legal education reform, prepared a new curriculum in 2001 that included skills training based in part on the MacCrate Report, with modifications suited for Indian conditions.⁷⁵

Although prominent, the references to the MacCrate Report in the Law Commission's report did not discuss the report's conceptual basis or its central content, a statement of fundamental skills and values. Nor did they include any sort of critical analysis that would support its relevance in the Indian context. Although well received generally, the report has had its critics in the United States – particularly among those who would believe that a wider set of skills and values are needed to serve today's legal needs. Similar questions arise if the report is to serve as a model for legal education reform in India. Both of these topics – the MacCrate report as a model for legal education reform and its relevance to India – are taken up below.

A. *The MacCrate Report as a Conceptual Basis for Legal Education Reform*

The MacCrate task force was formed by the ABA in 1989, following the publication of a number of studies stressing the need to improve lawyer competence.⁷⁶ With those goals in mind, the MacCrate

⁷³ See LAW COMMISSION OF INDIA, 184TH REPORT, *supra* note 55, at 53, 54. In addition to the MacCrate Report, the Law Commission cited the following, among others: Resolution of the ABA House of Delegates (1994), REPORT ON LEARNING PROFESSIONALISM (1996), Law Society of England and Wales on 'PREPARATORY SKILLS: REVIEW OF THE INSTITUTE OF PROFESSIONAL STUDIES (1990), CRAMPTON REPORT ON LAWYER COMPETENCY (1979), CARRINGTON REPORT ON TRAINING FOR PUBLIC PROFESSIONS OF THE LAW (1971).

⁷⁴ See *infra* text accompanying notes 122-25; Appendix 1.

⁷⁵ The National Law School's new curriculum also includes clinical courses that cover the subjects included in the practical papers mandated by the Bar Council. See http://www.nls.ac.in/academic_programmes_undergraduate_courses.html (last visited Aug. 20, 2006).

⁷⁶ See, e.g., AM. BAR ASS'N, CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, LEGAL SERVICES FOR THE AVERAGE CITIZEN (1977); AM. BAR ASS'N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS ON THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979) (known

Report put forward certain guidelines for satisfying the demand for producing skilled and competent lawyers – and called for law schools and the legal profession to play a greater role in improving the competence of incoming lawyers and the overall professional fitness of the practicing bar. The MacCrate Report thus redefined the scope of the modern debate on what and how law schools should teach, including which skills and values legal education should emphasize.⁷⁷ The skills and values identified in the MacCrate Report constitute a noble vision of professionalism toward which all lawyers should aspire.⁷⁸ Perhaps most fundamentally, the MacCrate Report affirms that acquiring lawyering skills and professional values aimed at providing competent lawyers is essential to the task of preparing lawyers to represent clients.⁷⁹

Specifically, the MacCrate Report set forth a Statement of Fundamental Lawyering Skills and Professional Values that recognizes a “compendium of skills and values” fundamental to the practice of law.⁸⁰ The Statement first identifies ten skills that are required of competent lawyers. These skills are categorized into five groups: problem solving and legal analysis, which are the basic abstract skills for legal practice; legal research, factual investigation, communication, counseling and negotiation, which are specific skills required to carry out a legal practice; knowledge about trial and appellate litigation and about alternative dispute resolution (ADR), in order to be able to provide ADR or to advise clients about the various options available to resolve disputes under ADR; the ability to organize and manage legal work effectively; and the ability to identify and resolve ethical dilemmas.⁸¹ The Report then identified four fundamental values of

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

⁷⁷ Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education into the Twenty-First Century*, 30 WAKE FOREST L. REV. 293, 293 (1995).

⁷⁸ Laflin, *supra* note 76, at 57.

⁷⁹ MACCRATE REPORT, *supra* note 5, at 135.

⁸⁰ *Id.* at 123.

⁸¹ *Id.* at 138-40.

the profession: provision of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development.⁸²

The MacCrate task force viewed the Statement of Skills and Values as “a work in progress”⁸³ and recognized that several of the suggestions put forward would require designing new modes of teaching and the development of new teaching materials.⁸⁴ The MacCrate Report was thus intended to serve as a stimulus – a starting point – for profession-oriented legal education reform. The task force hoped that these skills and values would be revised from time to time to fulfill its intended purpose of preparing new lawyers for practice.⁸⁵ Finally, the MacCrate Report emphasized that “the statement is not, and should not be taken to be, a standard for a law school curriculum. The Statement of Skills and Values is concerned with the limited goal of ensuring practice at a minimum level of competency.”⁸⁶ Therefore, the skills and values mentioned in the MacCrate Report are not comprehensive, but rather express the specific goal of narrowing the professional gap between law schools and the practice of law.

The MacCrate Report also made an effort to draft a new agreement between law schools and the legal profession. The foundation of this new agreement is that “legal educators and practicing lawyers should stop viewing themselves as separated by a ‘gap’ and recognize that they are engaged in a common enterprise – the education and professional development of the members of a great profession.”⁸⁷ The MacCrate Report also introduced the concept of an “educational continuum” and called for an unending exchange within the profession about the skills and values that a legal practitioner should acquire and about the kind of education and training that prospective lawyers should receive at different stages of their careers.⁸⁸ The Report thus points out rightly that the Bar, law school teaching faculty, and the judiciary ought to share the responsibility for providing skills- and value-oriented legal education to new lawyers entering into the profession.

As noted above, although the MacCrate Report was well received generally in the United States its Statement of Skills and Values was not free from criticism. The more substantial criticisms

⁸² *Id.* at 140-41.

⁸³ *Id.* at 131.

⁸⁴ *Id.* at 130.

⁸⁵ *Id.* at 131.

⁸⁶ *Id.* at 132.

⁸⁷ *Id.* at 3. See also Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385, 391 (1996).

⁸⁸ MACCRATE REPORT, *supra* note 5, at 3. See also Laflin, *supra* note 76, at 5

include missing the humane element of lawyering, overemphasizing the traditional lawyer role of problem solver, overemphasizing skills with relatively little attention paid to social justice, failing to recognize the importance of subject matter to the study of law, a lack of attention to community based advocacy, and ignoring the importance of the alternative role of lawyers and changes in the relationship between lawyer and client due to the economics of law practice.⁸⁹

Carrie Menkel-Meadow has observed, for example, that the MacCrate Report's declaration on lawyering skills visualizes the lawyer largely as a litigator, a "means-ends" thinker who can accomplish a client's goals. She notes that in the 21st century, lawyers will have to solve problems synthetically as well as analytically and argues that the legal profession also needs a basic understanding of socio-economic concepts and statistics to analyze the empirical effects of lawmaking and enforcing the law.⁹⁰ This observation applies equally to India today; mere analytical skills of problem solving will not be sufficient to solve broader socio-legal problems.⁹¹ Members of the legal profession need to play the role of educator, planner, and counselor.⁹² Therefore, lawyers must be trained in skills that provide for a broader understanding of various facets of legal problems. Fundamental lawyering skills are important to provide social justice; however, any set of skills confined only to traditional methods of problem solving would be manifestly insufficient.

Typically, both law students and new practitioners are rewarded almost exclusively on the basis of skills. Although extremely negative values may be grounds for disqualification, an individual's values – excellent or mediocre – play virtually no role in academic or professional incentives.⁹³ Despite the MacCrate Report's stated aim to improve both skills and values, it focuses mainly on skills. Moreover, it

⁸⁹ See Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying the Gap We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Joy, *supra* note 87; Frank J. Macchiarola, *Teaching in Law school: What are We doing and What More Has to be Done?*, 71 U. DET. MERCY L. REV. 531 (1994); Robert MacCrate, *Yesterday, Today and Tomorrow: Building the continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805 (2004); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What 's Missing From the MacCrate Report – Of Skills, Legal Science and Being A Human Being*, 69 WASH. L. REV. 593 (1994); Russell G. Pearce, *MacCrate's Missed Opportunity: the MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. REV. 575 (2003).

⁹⁰ Menkel-Meadow, *supra* note 89, at 616.

⁹¹ There are several situations in which a social problem may become a legal problem. Examples in India include sati (immolation of a widow on her husband's funeral pyre), dowry, and bonded labor.

⁹² Dinesh Kshosla, *Making Law Effective: Pre-paid Group Legal Services as a Strategy*, 18 J.I.L.I. 587, 604 (1976).

⁹³ Pearce, *supra* note 89, at 587

indicates indirectly that professional values are subordinate to skills by listing the four fundamental values after the ten fundamental skills.⁹⁴ To achieve the MacCrate Report's aim, goals should be identified first and then the skills needed to achieve those goals. If "the values are the goals"⁹⁵ and the values are not identified, it is pointless to talk first about skills. Professional values and skills should be promoted as the two wheels of social justice. If they are to complement each other, then skills must be developed according to identified values.

B. MacCrate as a Model for Reform in India: The Need for a Statement of Fundamental Values and Skills for Indian Lawyers

Not only have these critiques of the MacCrate report not been noted by Indian commentators, the report has not been questioned as an appropriate model for legal education reform in India. Perhaps this is because many reforms in Indian legal education over the past decades have been influenced by developments in the United States, as India has undergone a shift since the late 1960s and early 1970s from the British model of legal education to the US model.⁹⁶ This United States focus has been the case particularly with respect to clinical legal education, since – as noted earlier in Part I of this article – many of the goals for (and the challenges faced by) clinical education in India and the United States are, to a large extent, similar.⁹⁷ It may indeed be helpful for Indian legal education reformers to present a set of fundamental professional skills and values along the lines of those set out in the MacCrate Report as part of the effort to implement both the Bar Council's mandated Practical Papers and the Law Commission's renewed push for clinical legal education. However, in that case a more critical look at the MacCrate Report and its relevance to Indian legal education is needed.

First of all, and consistent with much of the criticism of the MacCrate Report in the United States, before reforming legal education in India the values sought to be supported by such reforms and the skills needed to achieve them must be identified. The skills and values enunciated in the MacCrate Report should be analyzed carefully as part of this process; however, they should be followed only to the ex-

⁹⁴ See *id.* at 585, 586 (stating that the MacCrate Report makes values less important than skills.).

⁹⁵ *Id.* at 586.

⁹⁶ This shift is due in part to substantial funding by the Ford Foundation and frequent exchanges of legal educators through the Fulbright programs and Council for the International Exchange of Scholars.

⁹⁷ See *supra* text accompanying notes 8-21.

tent that they are in keeping with the local needs in India. Members of the Indian legal profession have an obligation to assess the strengths and weaknesses of the Report before using it as a guide to reform. At the same time, the report's Statement of Skills and Values may be useful in identifying the goals of legal education in India and in other countries as well. The important thing is to create appropriate goals for the local legal profession; only then can one decide which values and skills should be taught – and how they should be taught – in order to improve the profession.

India's status as a developing country makes promoting social welfare a major aim of the law. The constitutional goals of equality and justice will be accomplished only by enacting a number of "socially oriented legislations."⁹⁸ As noted earlier, this challenge cannot be met by focusing legal education on lawyering skills confined to traditional problem solving. India needs not only technically skilled lawyers, but also lawyers who are socially sensitive and have socially relevant lawyering skills.⁹⁹ Legal education must, therefore, focus not only on what lawyers actually do but on what lawyers ought to do. In this regard, the first task is to identify the values that legal education must foment. Indian society needs socially sensitive and community-oriented lawyers and a legal education system with a social justice agenda. Justice, fairness, and morality can be taught in the classroom;¹⁰⁰ however, this requires a curriculum that exposes students not only to law and legal process, but also to the many factors that influence clients and their lawyers.¹⁰¹

One option would be to appoint an Indian counterpart to the MacCrate task force that would identify the professional values and skills required for the legal profession in India. Indeed, this idea was endorsed in principle during the inaugural meeting of the South Asia Clinical Teachers Association in December, 2006.¹⁰² Properly constructed, a set of values and skills along the MacCrate model, but adapted for modern India's needs, can serve to support the current

⁹⁸ Kshosla, *supra* note 92, at 588.

⁹⁹ See Mitra, *supra* note 25.

¹⁰⁰ Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 4, 9 (1997).

¹⁰¹ For example, victims of crimes in India tend to settle with the accused for monetary benefits even though this practice is illegal. In order to understand why their clients may be more interested in settlement than in pressing for punishment to the accused, students must be exposed to the combined elements of poverty and a legal system that provides private compensation for only a few crimes, such as defamation, public nuisance, and rash and negligent driving.

¹⁰² The discussion on this point was prompted by the authors' paper for the UCLA/University of London International Clinical Conference on which this article is based. See *supra* note 1.

movement toward legal education reform. They can also provide an underlying substantive basis for institutionalizing a social justice-based clinical curriculum that is missing from the Bar Council's Practical Papers mandate and the Law Commission's general call for meaningful and effective educational reform. And they can help set India's long-standing quest for socially relevant legal education finally on the right track.

It may be helpful in the meantime to suggest a set of fundamental professional values and skills to guide legal education reform in India. Four professional values, conceptualized specifically for the Indian context, and a five professional skills intended to supplement skills set out in the MacCrate Report are proposed below.

1. Fundamental Professional Values

Value 1: Provision of fair and effective resolution of disputes. Article 14 of the Indian Constitution is a positive affirmation of equal access to the justice system in India.¹⁰³ Thus, providing free legal aid to an indigent person is not only a statutory obligation,¹⁰⁴ but a constitutional obligation on the part of the State. "State obligation" does not mean that only the State has an obligation to provide free legal aid; this professional and legal obligation extends to every member of the legal profession.¹⁰⁵

It is equally important to provide a fair, effective, quick, and inex-

¹⁰³ See INDIA CONST. art. 14 ("The state shall not deny to any person equality before the law or equal protection of laws within the territory of India").

¹⁰⁴ Various Acts make it mandatory to provide legal aid to indigent persons. See, e.g., Civil Procedure Code, 1908 Order XXXIII; Criminal Procedure Code, 1973 § 304; Legal Services Authority Act, 1987 § 12.

¹⁰⁵ Bar Council of India Training Rules, 1995, Section VI Rule 46 imposes a duty on every lawyer to render legal aid:

Every advocate shall in the practice of the profession of law bear in mind that anyone genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an Advocate owes to society.

Moreover, the Legal Services Authorities Act, 1987 Section 4 (e) imposes an obligation on the National Legal Services Authority to "organize legal aid camps, especially in rural areas, slums or labor colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats." This obligation has to be carried by the Chief Justice of the Supreme Court at the national level. In addition, Section 7 (c) imposes an obligation on the State Legal Services Authority to "undertake preventive and strategic legal aid programs." This obligation has to be carried by the Chief Justice of the High Court in every state. Finally, Section 10 imposes a similar obligation on District Judges at each district, and Section 11(b) on Senior Civil Judges at the Taluka (County) level. As far as law faculty members are concerned, they are under a mandatory obligation to extend legal aid services as part of the law school curriculum under Practical Paper IV: Public Interest Lawyering, Legal Aid and Para-legal Services. See *infra* text accompanying note 124; Appendix 1.

pensive system for dispensing justice. Easy access to justice is meaningless unless there is a guarantee to fair and effective justice. Lawyers should also take responsibility for quick disposal of disputes, especially given the chronically high volume of cases pending in Indian courts.¹⁰⁶ Thus, the provision of effective resolution of disputes involves two interrelated fundamental values for the profession: providing fair, effective, and accessible legal system; and providing quick and inexpensive resolution of disputes.

Value 2: Striving for social justice. India is a country with many of its resources concentrated in the hands of few, and with a large number of poor people. As noted earlier, the immediate concern of the nation after independence was to provide social welfare and to bring social order.¹⁰⁷ The main objective behind the Directive Principles of State Policy in the Indian Constitution, setting out fundamental principles for state governance, is to establish a welfare state and to provide socio-economic justice. Free India expected the law to play a vital role in bringing social order.¹⁰⁸

In many countries, social welfare cannot be implemented through constitutional provisions.¹⁰⁹ The Supreme Court of India has, by contrast, a rich history of judicially enforcing socio-economic rights by liberal interpretation of fundamental rights.¹¹⁰ The Court has extended to scope of fundamental rights to include certain directive principles, particularly in the area of social welfare. Thus, in a number of decisions it recognized directive principles – such as equal pay for equal work, protection of children from exploitation, free and compulsory education for children, prevention of sexual harassment, free le-

¹⁰⁶ For example in 1997, 3.18 million cases were pending at High Courts and 20 million cases were at subordinate courts; in 1998, 19,806 cases were pending at the Supreme Court. Government of India, Ministry of Home Affairs, *available at* <http://mha.nic.in/justi.htm> (last visited Aug. 20, 2006).

¹⁰⁷ This concern was well expressed in the Preamble and the Directive Principles of State Policy in the Indian Constitution. *See* INDIA CONST. Part IV, arts. 38, 39, 39A, 42, 43, 46.

¹⁰⁸ Thus, various enactments that followed after independence – in the field of land ceilings, agricultural tenancy, rent control, minimum wages etc. – were aimed at securing social order. *See, e.g.,* Minimum Wages Act, 1948 (national legislation setting provisions on minimum wages applicable throughout the territory of India). Different Indian states have legislated in the areas of land ceilings, agricultural tenancy, and rent control.

¹⁰⁹ *See generally* Mark Tushnet, *Social Welfare Rights and the Forms of Judicial Review*, 82 TEX. L. REV. 1895 (2004); Peter E. Quint, *The Constitutional Guarantees of Social Welfare in the Process of German Unification*, 47 AM. J. COMP. L. 303 (1999).

¹¹⁰ *See, e.g.,* Olga Tellis v. Bombay Municipal Corporation A.I.R. 1986 S.C. 180; Unni Krishnan v. State of A.P. A.I.R. 1993 S.C. 2178; PUDR v. Union of India A.I.R. 1982 S.C. 1437; Sodan Singh v. New Delhi Municipal Corporation A.I.R. 1989 S.C. 1988; Chameli Singh v. State of U.P. A.I.R. 1996 S.C. 1051; P.B. Khet Mazdoor Samity v. State of West Bengal A.I.R. 1996 S.C. 2426; Jolly George Varghese v. Bank of Cochin A.I.R. 1980 S.C. 470.

gal aid to the poor, medical assistance to workers, the right to health, the right to shelter, the right to livelihood, the right to live with human dignity, and the right to minimum wage – as fundamental rights.¹¹¹ All these judgments impose a positive constitutional obligation on the state to implement social welfare programs to guarantee these judicially recognized rights. It is now a well established principle that free legal aid is a state's duty and not government charity.¹¹²

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

Value 3: Promotion of alternative lawyer roles. Lawyers need to play a vital role in dispensing justice. They cannot be mere spectators of the judicial process; they must be an integral part the process of providing justice. The present Indian system of adversarial justice is largely influenced by the British model. The complexities and technicalities imposed by the British model need to be simplified. In its place, modern India needs a system that provides non-judicial forums and various types of informal proceedings to satisfy natural justice, involving little cost and speedy disposal.¹¹³ Alternative dispute resolution (ADR) is considered to be an outstanding development in 20th century law. In fact, various forms of ADR, such as negotiation, mediation, arbitration, and conciliation, were the traditional methods of dispute resolution in ancient India.¹¹⁴

¹¹¹ See *Dhirendra Chamoli v. State of U.P.* 1986 1 SCC 637; *M. C. Mehta v. State of Tamil Nadu* AIR 1997 SC 699; *Unni Krishnan v. State of A.P.* AIR 1997 SC 449; *Visaka v. State of Rajasthan*, AIR 1997 SC 3014; *Hussainara Khatoon v. Home Secretary, Bihar*, AIR 1979 SC 1369; *Consumer Research Centre v. Union of India* 1995 3 SCC 42; *Paschim Bang Khet Mazdoor Samiti v. State of W.B.* 1996 4 SCC 37; *Chameli Singh v. State of U.P.* 1996 2 SCC 549; *Olga Tellis v. Bombay Municipal Corporation* A.I.R. 1986 S.C. 180; *Francis Coralie v. Union of India*, AIR 1978 SC 597; *PUDR v. Union of India* A.I.R. 1982 S.C. 1437.

¹¹² See *M. H. Hoskat v. State of Maharashtra* AIR 1978 SC 1548; *Hussainara Khatoon v. Home Secretary, Bihar*, AIR 1979 SC 1369; *Khatri v. State of Bihar*, AIR 1981 SC 928; *Veena Sethi v. State of Bihar* AIR 1983 SC 339; *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378; *Suk Das v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 991.

¹¹³ Krishna Iyer, *supra* note 70, at 10.

¹¹⁴ During the Vedic period, disputes were tried and settled generally by the elders of the family; however, if this failed the disputants approached a *Sabha*, or village council, consisting of elders of the community or village heads. Three kinds of popular bodies

Recognizing this need, ADR was given statutory status in India in the form of *lok adalats*.¹¹⁵ Although not without controversy,¹¹⁶ *lok adalats* have proved to be cost effective, simple, and easy – and, more importantly, they provide speedy justice.¹¹⁷ Socio-economic conditions in India necessitate more ADR programs. India's ancient culture and philosophy of simple living require lawyers to shift their traditional role of problem solving to the roles of negotiator, mediator, counselor and public policy maker. The legal profession must change its purpose from providing client-centered legal services to securing the social justice mission of providing fair justice. The legal profession should recognize that lawyers must be loyal to justice rather than just to their clients.

Apart from promoting ADR, it is also necessary for lawyers to make citizens aware of their legal rights and duties. Legal literacy is a condition precedent to making the law relevant and meaningful. With the national literacy rate at 68.4 percent,¹¹⁸ disseminating basic legal knowledge is as important as any other function of the legal profession. All members of the profession have a moral and professional responsibility to impart legal literacy by way of simplifying legal rules that one may encounter in day-to-day life. This may include translating laws into vernacular languages, as laws are written customarily in English.

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

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

¹¹⁵ The Legal Services Authorities Act, 1987 §§ 19-22.

¹¹⁶ See, e.g., Dr. P. B. Shanker Rao, *Establishment of Permanent Lok Adalats – A Boon or Bane?* 26(1) INDIAN BAR REV. 49 (1999); Natwarlal S. Bhatt, *Lok Adalats*, 21 (1) INDIAN BAR REV. 181 (1994); D. K. Sharma, *Lawyers and Lok Adalats*, 91 AIR 2004 (JOUR) 251. For a recent scholarly critique, see Marc Galanter & Jayanth K. Krishnan, "Bread for the Poor": *Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789 (2004).

¹¹⁷ Justice Jitendra N. Bhatt, *A Round Table Justice Through Lok-Adalat (Peoples' Court) – A Vibrant ADR In India*, 1 SCC (JOUR) 11 (2002). *Lok adalats* are discussed also *infra* at text accompanying notes 135-38.

¹¹⁸ Census of India 2001, T 00-006, available at http://www.censusindia.net/t_00_006.html (last visited Aug. 20, 2006).

Value 4: Protecting judicial independence and accountability. India is ranked as low as 88th out of 159 countries in the Corruption Perceptions Index.¹¹⁹ By contrast, the Indian judiciary, particularly in the higher courts, has emerged in the recent past as a powerful institution that enjoys the faith and esteem of the people due to a low level of corruption among its members. When the two other organs of the modern state are held in low esteem, the judiciary has a special duty to protect the common person's interests and to join in fighting against corruption. Therefore, it is very important to protect the judiciary's independence from the influence of the legislature and the executive.

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

2. *Fundamental Professional Skills*

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

For securing the first value, effective resolution of disputes, the following skills enumerated in the MacCrate Report are helpful: legal research (Skill # 3), communication (Skill # 5), litigation and alternative dispute resolution procedures (Skill # 8), and organization and management of legal work (Skill # 9). For securing the second value, striving for social justice, the following skills are important: generating alternative solutions and strategies (Skill # 1.2), elaborating legal theory (Skill # 2.3), evaluating legal theory (Skill # 2.4), and identifying and evaluating other possible legal theories (Skill # 2.5.c). For securing the third value, alternative role of lawyer, the following skills may play a significant role: methods of effectively tailoring the nature, form, or content of the written or oral communication (Skill # 5.2.c),

¹¹⁹ Transparency International's 2005 Corruption Perceptions Index, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2005 (last visited Sept. 16, 2006).

counseling (Skill # 6), negotiation (Skill # 7), and knowledge of the fundamentals of proceedings in other dispute-resolution forums (Skill # 8.4).

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

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

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

Skill 3: Mass communication skills. Lawyers need the skill to communicate not only with judges and clients, but also with the society as a whole. Skills in mass communication are necessary to carry out legal literacy projects, which are extremely important in view of India's high rate of illiteracy in general and legal illiteracy in particular. Communication skills are needed also to explain public policy issues and to convince the public to influence public policy by putting pressure on the government.

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

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

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

The burden for providing lawyers these skills lies heavily on law schools, particularly in India. All legal training in India takes place in law schools and once students graduate from law school they can straightaway enter the legal profession. There is no requirement for apprenticeships or to pass a bar exam, as exists in most other countries.¹²⁰ Thus, in highlighting the need for quality legal education, Justice A. S. Anand said that “the quality of education has a direct impact on the prestige of the legal profession. We must therefore identify the areas of default and initiate corrective action to repair the damage.”¹²¹

IV. *CARPE DIEM*: IMPLEMENTING THE BAR COUNCIL’S MANDATORY PRACTICAL PAPERS THROUGH A SOCIAL JUSTICE-BASED CLINICAL CURRICULUM

As noted earlier, three of the four mandatory Practical Papers introduced by the Bar Council of India (and also mentioned in the Law Commission’s recent report) focus on general skills and professionalism, while the fourth paper addresses legal aid and public interest law. Their direct connection to a social-justice based clinical curriculum is, therefore, not that clear. Nor was the Bar Council’s original expectation for the papers. Some additional direction for implementing the papers can come from a recognized set of fundamental values and skills for Indian lawyers, such as those described in the preceding part of this article.¹²² The papers do, however, offer a unique opportunity for significant reform – even as presently written and understood.

¹²⁰ Thus, in *State of Maharashtra v. Manubhai Pragji Vashi and Others*, A.I.R. 1996 S.C. 1, the Supreme Court of India held that the state government, in concurrence with the concerned university, the Bar Council of India, and the State Bar Council and other competent bodies or persons, should take the necessary steps to ensure high standards to achieve excellence in legal education. An effort to revive a one-year apprenticeship in the mid-1990s failed. See *supra* note 18.

¹²¹ Dr. Justice A. S. ANAND, INAUGURAL ADDRESS AT THE SECOND ANNUAL MEETING OF THE STATE LEGAL SERVICES AUTHORITY, HELD AT HYDERABAD (1999), available at <http://causelists.nic.in/nalsa/17.htm> (last visited Sept. 16, 2006).

¹²² See *supra* text accompanying notes 99-116.

A. *The Practical Papers on Paper*

A closer look at the four papers reveals that not only do they focus primarily on general skills, but they also place an overriding emphasis on traditional lawyering skills – with a few exceptions, such as negotiation and mediation.¹²³ Paper I covers moot-court, pre-trial preparations, and participation in trial proceedings. The purpose of making every student participate in moot court is to develop advocacy skills. Students are also required to observe at least two sessions of client interviews in a lawyers office and they must participate in preparing various documents that are required to be filed with the court. Finally, students are expected to observe one civil and one criminal trial in order to become familiar with trial advocacy and court proceedings. Paper II covers drafting, pleading, and conveyancing. This paper aims at developing drafting skills and gives students an opportunity to learn how to draft complaints, written statements, sale deeds, etc. Paper III covers professional ethics, accountancy for lawyers, and bar-bench relations. It focuses on ethical issues formulated by the Bar Council of India under the Advocates Act, including duties toward clients, opponents, colleagues, and the courts.¹²⁴ Students must also undertake a mandatory 30-day internship in a lawyer's office.

At the same time, Paper IV – dealing with public interest lawyering, legal aid, and para-legal services – aims at providing social justice. This paper is flexible, allowing law schools to design course content according to local needs. The aim is to involve students in public service projects that address legal problems faced by people in local communities. These activities involve students in community service so that they can learn the difference between law in books and law in practice. This can be done in many ways, as discussed in detail later in this section.¹²⁵ Paper IV also provides for instruction in various skills necessary to carry out these and other types of public interest projects, such as negotiation, counseling, fact investigation, and legal research.

B. *The Practical Papers in Reality: Their Limited Scope and Effectiveness*

Although the four papers, on their face, appear adequate to provide certain basic skills to law students, in reality they have not met even the limited expectations of the Bar Council – let alone the long term goal of establishing a fair, effective, and competent legal system,

¹²³ For detailed syllabi of these papers, see Appendix 1.

¹²⁴ See Advocates Act, 1961 § 49 (1) (C).

¹²⁵ See *infra* text accompanying notes 135-42. Examples include *lok adalats* and legal aid camps, legal literacy projects, and paralegal training.

accessible to all citizens. As noted earlier, most Indian law schools are not able to implement these papers due to a lack of expertise; they have neither the infrastructure nor the personnel to implement them. Many law schools faculty have no familiarity with the new subjects and, due to the no-practice rule, the majority of faculty members do not have the necessary practical knowledge or experience.

In effect, the Bar Council washed its hands of the matter by simply passing the obligation on to law schools – and the law schools have, in turn, relinquished their responsibility by assigning the four papers to the faculty without providing necessary support. The four papers are, in effect, “paper tigers”; most schools have introduced these papers with only token compliance, passing all students without observing serious standards. And most unfortunate of all, everyone seems to be happy; the Bar Council can claim it made its effort to improve legal education, law schools can claim they have successfully incorporated practical training, the faculty breathe a sigh of relief that the new system does not affect them much, and the students continue to graduate. Nonetheless, the four papers have caused considerable debate in India. This debate must now turn to the future and address seriously the legal academy’s ultimate ambitions for the papers and their potential to guide legal education reform.

C. Creating a New Reality: The Practical Papers as the Basis for a Social-justice Based Clinical Curriculum

Law schools are now in a position to accept responsibility for the practical training called for in the four Practical Papers. What is needed to make these papers meaningful is a combined effort from the law schools, the Bar, and the bench to implement them finally through a model of social justice-based clinical legal education – and to do so keeping in mind the principles behind the fundamental values and skills set out above. The purpose of legal education is not simply to encourage the lawyer’s function as champion of his or her client’s cause; lawyers are also educators, policy makers, and counselors. Lawyers can make people aware of their legal rights and duties and they can bring public opinion to bear on law making, thus helping make the law more responsive to national concerns.¹²⁶ By producing such lawyers, law schools can begin to serve India’s social justice needs.¹²⁷

¹²⁶ See *supra* Part II. See also Kshosla, *supra* note 92, at 604.

¹²⁷ See K. K. Mathew, *Goals of Law Study*, 17 J.I.L.I 8, 11 (1975) (noting the importance of serving the needs of society).

1. *General Considerations and Options*

Clinical legal education must shoulder the burden of preparing law students to meet these expectations for Indian lawyers. As noted earlier, this will not be easy as clinical education in India faces several serious challenges – including the fact that neither full-time faculty nor law students can represent clients.¹²⁸ Further, stringent rules for qualifying as a law teacher discourage many advocates from becoming involved in clinical teaching.¹²⁹ Since India is a vast multilingual and multiethnic country, a single model for clinical teaching is not possible. Particularly in providing legal aid, students are required to have sufficient knowledge about the local culture, living conditions, ethnic problems, and – most importantly – the local language. Further, significant differences between urban and rural lifestyles require different approaches to urban and rural social issues.

In spite of these problems and drawbacks, law schools can implement a social justice curriculum through clinical education without imposing significant changes to the present curriculum. The key to success in this endeavor lies in the implementation of the four Practical Papers mandated by the Bar Council of India. Clinical courses or projects covering the papers can be used to instill in law students, and thus in new lawyers, those fundamental values and skills needed to transform the legal profession in India. Even with the ban on representing clients, students can be placed with an advocate willing to work with them. In addition, students can be encouraged to conduct legal research pertaining to a particular case assigned by the advocate under the supervision of a faculty member. Though students may not be able to acquire advocacy skills in this setting, they can acquire many other important lawyering skills. In addition, they can be encouraged to conduct legal research on issues of public importance. And where their findings are placed before the concerned government officer responsible for the matter involved and the officer does not take appropriate action, students can approach either the state High Court or the Supreme Court of India for redress in the form of Public

¹²⁸ The Advocates Act strictly forbids students from representing clients and BCI rules prohibit full-time faculty from practice as well, even *pro bono* litigation. See *supra* text accompanying note 46.

¹²⁹ To become a law teacher, one is required either to have a Ph.D or M.Phil degree, or to complete a two-year LL.M. course – and then pass the National Eligibility Test conducted by UGC or State Eligibility Test conducted by the states. If a law teacher passes only the State Eligibility Test then he or she is eligible only for teaching in that particular state. See University Grants Commission (minimum qualifications required for the appointment and career Advancement of teachers in Universities and institutions affiliated to it) Regulation, 2000(ii), available at http://education.nic.in/circulars/ugc_career.asp#AN-NEXURE (last visited Sept. 12, 2006).

Interest Litigation. Even though law students cannot appear before a court in ordinary litigation, they may do so in a Public Interest Litigation case.¹³⁰

Law schools can also play a major role in sensitizing the public about their legal rights and duties. In a country like India, where about 225 million people live below the poverty line,¹³¹ focus on legal literacy programs is extremely important. Thus, the National Legal Services Authority recently established the National Legal Literacy Mission 2005-2010 in an attempt to empower economically and socially disadvantaged citizens by making them legally literate. The Mission is also intended to improve access to justice by disseminating legal awareness and knowledge of legal rights and by providing information about the availability of free legal aid. Thus, the Mission will follow a three-pronged approach: education on legal rights, education on fundamental duties, and education on the availability and benefits of legal aid.¹³² Working with these programs can help students in developing important organization, research, public speaking, and translation skills.¹³³

Another option is for students to conduct legal research on welfare benefits provided under various social welfare schemes in order to identify the beneficiaries and to help them in submitting applications. Social welfare legislation can achieve its goals only when the

¹³⁰ Moreover, in suitable cases the Court usually appoints *amicus curie* to assist the court and the students in judicial proceedings. See generally G. L. Peiris, *Public Interest Litigation in the Indian Subcontinent: Current Dimensions*, 40 INT'L & COMP. L.Q. 66 (1991); N.R. Madhava Menon, *Public Interest Litigation: A Major Breakthrough in the Delivery of Social Justice*, 9 J. BAR COUNCIL INDIA 150 (1982); Gobinda Mukhoty, *Public Interest Litigation: A Silent Revolution?*, 1 S.C.C. 1 (1985). For more on clinical education and Public Interest Litigation, see *infra* text accompanying note 146.

¹³¹ Although the percentage of the population living below the poverty line has come down between 1993-94 and 2004-05, the net number of people in that situation remains in the range of 220-230 million. See BUSINESS LINE (June 15, 2006), available at <http://www.thehindubusinessline.com/2006/06/15/stories/2006061504670100.htm> (last visited Sept. 10, 2006).

¹³² The Mission defines legal literacy as "legal education of people's rights; educating the citizens on their fundamental duties and legal obligations; education and awareness on the process of delivery of legal aid to the disadvantaged; provisions of legal aid; and empowering members of judiciary and lawyers community resulting in a holistic legal empowerment of communities and individuals." The Mission has identified its immediate beneficiaries as including children; minority communities; the landless farming community; Dalits (backward communities) and tribal communities; farmers hit by droughts and floods; trafficked girls and sex workers; victims of militancy, crime, disaster, and disease; and persons subject to child and bonded labor. See <http://causelists.nic.in/nalsa/> (last visited on Sept. 19, 2005). See also the Prime Minister of India's address inaugurating the Mission, available at <http://pib.nic.in/release/release.asp?relid=7566> (last visited on Aug. 20, 2006).

¹³³ Most of the laws in India are in English. So students need to translate them in to the local language to disseminate legal information.

people for whom they were advanced take advantage of them.¹³⁴ Assisting in this task is a key factor in carrying out the social justice mission of legal education as it will expose students to the plight of their country's poor and help them develop a sense of professional social responsibility.

Another approach is for law schools to adopt a village and encourage students to conduct a survey to identify the problems that the people in that particular village face. After identifying the problems, students can approach the concerned authorities and arrange a public forum. Often, local authorities are not responsive to local citizens' concerns, especially those from disadvantaged communities. The idea here is to inform villagers about the program and to encourage them to participate in the forum, so that they can meet the concerned officers on that particular day and can settle their grievances. Students can be instrumental in the smooth functioning of the entire program, and they can follow up on particular matters with the concerned officers. Such forums can be very effective, as the officers are put in a position where they must give their assurance in public and thus are less likely to follow the usual practice and not fulfill their promises.

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

As noted earlier, the Bar Council of India's four Practical Papers, particularly Paper IV on legal aid, must be implemented with the goal of imparting the fundamental professional values and skills that the modern Indian lawyer needs in order to fulfill the social and professional responsibilities of the legal profession. They can thus be used to institutionalize clinical education, including its social justice mission of providing a quick and effective, competent, fair, and accessible legal system. A few examples discussed immediately below – the operation of *lok adalats*, the provision of paralegal services at correctional facilities, and the various activities of legal aid cells at V. M. Salgaocar College of Law in the State of Goa – demonstrate how social-justice based clinical education can be institutionalized in India consistent with the implementation of the Bar Council's four papers. These ex-

¹³⁴ See A .S. Anand, *From the Desk of the Executive Chairman*, available at <http://causelists.nic.in/nalsa/index.html> (last visited Sept. 19, 2005).

amples also show that this can be achieved, at least for the time being, without major changes in the present setup of law schools and without significant additional financial support from either government or private organizations.

2. *Implementing the Papers through Lok Adalats*

A *lok adalat* (people's court) is an informal and voluntary dispute settlement process that operates outside the court system.¹³⁵ *Lok adalats* are aimed primarily at settling disputes at the pre-litigation stage, as well as certain matters pending in trial courts where the parties can be motivated to arrive at settlement. They can well be described as a modern, official version of India's ancient method of dispute settlement by *Nyaya Panchayats*.¹³⁶ The *lok adalat* movement was started in 1982 in the State of Gujarat and has become a major source of reducing pending litigation before the courts.¹³⁷ Despite this success, however, they have come under some serious criticism as a form of lesser justice for the poor.¹³⁸

Law schools can take the initiative in organizing *lok adalats* with the help of the local bench and bar, as they are held across the length and breadth of India. As Professor N. R. Madhava Menon has observed, *lok adalats* provide students a variety of educational opportunities and can be incorporated very successfully into law school practical training.¹³⁹ By studying *lok adalats* and participating in

¹³⁵ *Lok adalat* settlement is no longer purely a voluntary concept. With the passage of the Legal Services Authorities (Amendment) Act 1994, *lok adalats* have statutory character and have been legally recognized. See Legal Services Authorities Act, 1987. Thus, the Act creates authorities to organize *lok adalats* at the Central, State and Taluka levels, comprised of a sitting or retired judicial officer and other persons of repute as may be prescribed by the State government in consultation with the Chief Justice of the State High Court (§ 19). Cases can be referred by consent of both parties to the disputes, where the Court is satisfied that the matter is appropriate to be taken cognizance of by the *lok adalat* (§ 20). Settlements shall be guided by the principles of justice, equity, fair play and other legal principles; if agreement is reached by the consent of the parties and passed on by the conciliators, the award is final and the matter need not be referred back to the concerned court for consent decree; if no compromise is reached through conciliation, the matter shall be returned to the concerned court for disposal in accordance with law (§ 21).

¹³⁶ *Nyaya Panchayats* were informal bodies set up in rural areas in ancient India to settle disputes by negotiation, mediation and arbitration. These bodies were headed by the village Elders. See also *supra*, note 114.

¹³⁷ According to National Legal Services Authority (NALSA), 72,038 *Lok Adalats* had been organized throughout the country by the end of June, 2000 and about 12 million cases had been settled. In 1999 alone, 15,198 *Lok Adalats* were organized and nearly 967,000 cases were settled amicably. R.C.Chopra, Member Secretary, National Legal Service Authority, *Legal Aid Movement in India – Its Development and Present Status*, available at <http://causelists.nic.in/nalsa/index.html> (last visited Sept. 9, 2006).

¹³⁸ See *supra* note 116 and accompanying text.

¹³⁹ N. R. MADHAVA MENON, *LOK ADALAT IN DELHI: A REPORT FROM A LEGAL EDUCATION PERSPECTIVE 2* (1985).

them, students gain a critical understanding of the proper role of lawyers in the legal system at the same time that they acquire professional skills.¹⁴⁰ Working with *lok adalats* also affords students the chance to learn most of the important values and skills necessary for modern practice in India, including many of those discussed earlier in this article in the context of the MacCrate Report.¹⁴¹ For example, *lok adalats* are ideal for learning negotiation and counseling skills because students negotiate between parties and help them bring their causes to a conclusion.

In addition to these advantages, early exposure to the *lok adalat* system helps students adjust some of their general attitudes about the legal profession. Many Indian lawyers see *lok adalats* as a threat to their practice because they fear that if clients settle their dispute through *lok adalats*, which are faster than traditional dispute settlement, there will be nothing left for them to do. Students can experience the negative effect of this type of professional ethic through their direct involvement with *lok adalats* and will become more likely to accept alternative methods for settling legal disputes. More importantly, students become involved directly in improving accesses to justice and helping disadvantaged members of society, which opens them up to the wider roles of law in society and also gives them a sense of satisfaction and accomplishment.¹⁴² And, to the extent that students identify ways in which the *lok adalat* movement falls short of its improving-access-to-justice aspirations, they can be directed to address those shortcomings.

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

3. *Implementing the Papers through Paralegal Services in Correctional Homes*

Another way in which law schools can implement social justice-based clinical education is by providing legal aid and other paralegal services to prisoners. Nearly three out of four inmates in India are awaiting trial, with many prisoners languishing in jails due to delays in filing police reports.¹⁴³ Often these prisoners are illiterate and poor,

¹⁴⁰ *Id.* at 21.

¹⁴¹ See *supra* text accompanying notes 99-116.

¹⁴² For the experiences of the students who participated in *lok adalats*, see MENON, *supra* note 139, at 10-13.

¹⁴³ ANAND, *supra* note 121.

and are not able to pay bail bonds. In fact, many prisoners are detained far longer than they would have been had they been found guilty soon after their arrest. Even those willing to confess must wait until their case comes up for a hearing. Law schools can have a significant impact on prison administration in India by providing basic legal help. In fact, the National Legal Services Authority has requested State Legal Services Authorities to set up legal aid cells in jails to provide prompt legal services to prisoners.¹⁴⁴

Through this work law students would be able to acquire and practice skills such as interviewing, drafting, and fact finding techniques. It also provides an excellent opportunity for the students to learn how criminal administration works and what their responsibilities would be as public defenders, prosecutors, or even presiding officers. And by entering into the field in a real-world context, they will gain an understanding of the human side of the criminal process and perhaps even an understanding of the patterns and causes of crime. Finally, as with *lok adalats*, this type of clinical experience can be provided at no significant additional cost to the law schools by working in cooperation with local prison and legal services authorities.

4. *Some Examples of Implementation: Legal Aid Clinics at V. M. Salgaocar College of Law in the State of Goa*

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

The Legal Aid Society works toward achieving its stated objectives in a number of diverse ways, including permanent free legal aid cells, mobile legal aid cells, paralegal services, and public interest litigation. These clinical projects implement directly Practical Paper IV, the paper on public interest lawyering, legal aid, and paralegal services. They also implicate, as is the case with *lok adalats* and prisoner paralegal services discussed above, much of the content of the other

¹⁴⁴ Chopra, *supra* note 137.

three papers – as well as most, if not all, of the values and skills that would be included in an India-modified MacCrate Report. Each of these is described briefly below, as well as some other projects of the college's clinical program.

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

The legal aid cells work not only with individual members of the community but also with the local administration. Thus, every legal aid cell member is required to attend the local *Gram Sabha*.¹⁴⁵ With the association of the *Sarpanch* (elected head of the *Panchayat*) and other *Panch* members, students are required to ensure attendance of the villagers at the *Gram Sabhas*. They also take notes of the proceedings of the *Gram Sabha*, which are kept in their journals and also supplied to the *Sarpanch* in order to ensure that whatever promises that may have been made are fulfilled.

Mobile legal aid cells. The mobile legal aid cells do not have a permanent setup but rather go to different places to educate the people on various legal and social issues. Groups of students regularly and systematically visit other colleges and schools, youth organizations, trade unions, and workers organizations to carry out awareness pro-

¹⁴⁵ *Grama Sabha* is a mandatory meeting of elected member of *Panchayati* and residents of that village. This meeting is very important, as various policies of the village administration are discussed and also it gives residents an opportunity to interact, and discuss their problems, with the *Panchayati* members.

grams on various laws relevant to such groups. The main purpose of these cells is to bring to the attention of various groups those laws that affect them and to explain to them how they can be used to improve their lives. These awareness programs also serve to publicize the permanent legal aid cells.

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

Public Interest Litigation. Student involvement in Public Interest Litigation starts when they become sensitized to social justice issues in the course of regular lectures and at Legal Aid Society meetings. By this process of sensitization to the general social situation and the persistence of injustice in their own immediate society, students are able to identify various areas where they feel that the intervention of the judiciary might be required. The faculty then guides the students as to how they should further investigate or research the issue in order to be sure that there is a real situation of injustice and that a member of the public could genuinely be interested. Thereafter, the students are advised to write to competent authorities who are obliged under law to remedy the injustice. If such authorities do not provide relief, the students – with guidance from members of the profession – file a petition before the High Court together with all of the information that they had gathered concerning the problem. Public Interest Litigation operates in India under special rules that allow any member of the public to present the case. Therefore, if the litigation proceeds the students themselves argue the case before the court.¹⁴⁶

Students at V. M. Salgaocar College of Law have filed successfully eleven Public Interest Litigation cases before the Mumbai High Court (Panaji Bench) on various issues ranging from the use of motorcycle helmets to violations of Coastal Regulation Zones.¹⁴⁷ This work has enabled them to develop sensitivity to social issues and an interest

¹⁴⁶ See *supra* note 130 and accompanying text.

¹⁴⁷ See, e.g., Anjali Salkar and others v. State of Goa & another, Writ Petition (PIL) No: 446/2002 (correcting failure of state government to constitute a juvenile board under Juvenile Justice (Care & Protection of Children Act, 2003)); Dwijpal Patkar & others v. Mapusa Municipal Council & another, Writ Petition (PIL) No: 387/2003 (ensuring sufficient parking spaces in newly constructed housing apartments); Anand S. Kuwelkar & others v. Chief Secretary & others, Writ Petition (PIL) No: 562/2003 (persuading government authorities to take action against illegal shrimp farming); Shane Sapeco & others v. State of Goa & others, Writ Petition (PIL) NO:354/2003 (striking down Goa Motor Vehicles Rules provision weakening mandatory helmet law for motor cyclists).

in researching matters of social importance. And, most importantly, it shows them – as they themselves are providing legal services to advance social justice – how lawyers and the law can and must function through a modern and socially just Indian legal profession.¹⁴⁸

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

The example of the Legal Aid Society at V. M. Salgaocar College of Law – despite all of the current constraints on implementing clinical legal education in India, including prohibitions on representation of clients by students and faculty – demonstrates the viability and effectiveness of using a social justice-centered clinical program to implement the four Practical Papers mandated by the Bar Council of India, but it is not an ideal model. Both faculty and students must work on weekends, and faculty supervise the various projects without any expectation of financial benefit and without compromising their teaching hours. Further, the college has no additional funding for the projects themselves, either from the government or from private organizations. Every student member pays a membership fee to finance all activities of the Legal Aid Society.

¹⁴⁸ Student involvement in public interest litigation has not been welcomed universally by senior lawyers and members of the judiciary. One of the main complaints is that students receive academic credit for their work on public interest litigation, which is seen as an improper external incentive. However, they do not realize that academic credit is only an incidental incentive to the students. Moreover, they fail to recognize the value of having students bring instances of injustice to the notice of the judiciary, which is, ultimately, what lawyers and the judiciary are charged to do.

CONCLUSION

Legal education is both professional and liberal.¹⁴⁹ As professional education, it needs to impart professional skills; as liberal education, it should aim at providing value- and social justice-oriented education. In other words, legal education's ultimate mission is to transform law students into socially sensitive, justice-oriented legal professionals. Although the broad aim of legal education is social justice, its particular aim differs from country to country and society to society. The particular social justice aim of Indian legal education is to provide a fair, effective, competent, and accessible legal system to the citizens.

As discussed in Part II, India's broadly defined concept of legal aid provides Indian law schools a unique opportunity to achieve the social justice mission of legal education. However, this noble mission has remained a distant dream. The euphoria of the 1960s and 1970s about the ideal role of law schools in providing legal aid had withered away by the 1980s. Various efforts to revive this ideal and to reform legal education have not succeeded in arresting the decline of standards in legal education. These developments finally led the Bar Council of India to introduce clinical legal education as a mandatory component in the law school curriculum by way of four mandatory Practical Papers.

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

Preparing an Indian MacCrate-style report will not be a simple task. In the meantime, law schools can use the opportunities created by the Bar Council's four mandatory Practical Papers to enhance clinical legal education and to accomplish legal education's social justice mission to a substantial degree. As demonstrated in Part IV, the opportunities exist in India already to achieve the broadest educational goals of the papers through a social justice-based clinical curriculum. Certain projects already undertaken at law schools, such as introducing *lok adalats* into the curriculum and setting up legal aid cells similar to those operated by the V. M. Salgaocar College of Law,

¹⁴⁹ Mitra, *supra* note 25.

are relatively simple and have the potential of addressing virtually all of the values and skills that are advocated in this article.

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

APPENDIX 1.

DETAILED SYLLABUS AND SCHEME OF EVALUATION OF FOUR
PRACTICAL PAPERS INTRODUCED BY THE BAR COUNCIL
OF INDIA*PRACTICAL PAPER I: Moot Court, Pre-trial Preparations and
Participation in Pre-Trial Proceedings.

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

a) Moot Court (30 marks)

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

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

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

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

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

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

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

PRACTICAL PAPER II: Drafting, Pleading and Conveyancing.

This course will be taught through class instructions and simulation exercises preferably with assistance of practicing lawyers/retired

* Bar Council of India, Circular No: LE (Cir. No. 4/1997) (Oct. 21, 1997).

judges. Apart from teaching the relevant provisions of law, the course will include 15 exercise in drafting carrying a total of 45 marks and 15 exercises in conveyancing carrying another 45 marks (3 marks for each exercise)

a) Drafting:

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

b) Pleadings:

Civil

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

Criminal

- (i) Complaints
- (ii) Criminal Miscellaneous petition
- (iii) Bail Application and
- (iv) Memorandum of Appeal and Revision

c) Conveyancing:

- (i) Sale Deed
- (ii) Mortgage Deeds
- (iii) Lease Deeds
- (iv) Gift Deed
- (v) Promissory Note
- (vi) Power of Attorney
- (vii) Will

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

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

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

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

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

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

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

This course carrying 100 marks will have to be designed and evaluated according to local conditions by the College in consultation with the universities and State Bar Councils. It can be taught partly through class room instruction including simulation exercises and partly through extension programs like Lok Adalat, Legal Aid Camp, Legal Literacy and Para-legal Training. The course should also contain lessons on negotiations and counseling, use of computer in legal work, legal research in support of public interest litigation, writing of case comments, editing of law journals and law office management. The marks may be appropriately divided to the different programs that each University might evolve for introduction in the Colleges under its control. For example at Goa University 50% of the marks will be allotted to Legal Aid and related work done by the students during the first three years. In order to give the students adequate training, the teaching program for the practical papers will be carried out simultaneously along with the teaching program for the theory papers. Students are expected to maintain a journal for each of the practical

paper separately and keep a proper record of their activities, attendance at courts, office of the lawyer, legal aid cells, public interest work undertaken in the respective journals. These journals have to be certified and endorsed from time to time by the faculty member in charge as notified by the College. These journals have to be submitted for assessment and viva before the end of the last semester as per the time schedule notified by the College/University.