Clinical Legal Education: Benefitting From the Banaras Experience

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ABSTRACT

While imparting technical and medical education, institutions teach also practical knowledge to their students. When they are in final year, they have to pursue a project paper based on laboratory-based research. In the same year, engineering students, information technology students, and other students pursuing other technical education have to go for industrial training. Similarly, medical students have to complete at least one year as a junior doctors at hospitals. There was no such practical exposure to law students. It is for this reason that a number of institutions of higher learning around the world started clinical legal education; and some of them, made it a part of their curriculum. In India, Banaras Law School, along with few other such institutions, took the lead in clinical legal education. The paper discusses the Banaras model and offers certain suggestions so that it could be followed by other institutions.

Key words: Clinical Legal Education, Moot, Mock Trial, Lok Adalat.

Introduction

Sometimes in eighties, in the Banaras Law School of the Banaras Hindu University, India, the wisdom of a truth that one can learn more by doing (Berryhill, 1978, p. 69) and that law courses should also be pursued with some kind of practical input were realized. This was perhaps because of the fact that clinical legal education was considered to be one of the most significant and successful developments, for it is an interactive method of teaching law students the legal skills they really need in order to become competent, conscious and ethical and compassionate lawyers. Thus, under the Deanship of Professor Anandji, a scheme of clinical legal education programme (CLEP) (see Don Peters, 1980, p.147; Webb and Maughan, 1996) was designed and brought into practice. Initially, the scheme suffered from some practical difficulties, but after certain modifications done from time to time, it emerged as a model and became popular as the Varanasi model of critical legal education. It is notable that during those days in the United States and in some other countries, clinical legal education had already become part of the curriculum and legal education was pursued through cases and material basis. (see Survey and Directory of Clinical Legal Education, 1975) Cases and materials were prepared by lecturers in all subjects and students were asked to come prepared on the pages assigned by the lecturer of each subject. The class was purely interactive. In the end, if necessary, the lecturer used to give some concluding remarks. Professor Anandji introduced the cases and material method of teaching at the Banaras Law School. So as to train students to be proficient for interactive teaching, courses like, legal method, research methodology and drafting of legal documents were made as compulsory subjects. Legal method was offered in first year because the object of the course was to make students competent to find legal materials from different sources and to be able to analyze cases. The other two courses were offered in final year so that students could efficiently be associated with the Clinical education programme. In addition to these mooting for final year students was also introduced.

There can be various forms of instilling practical skills among students. It can be by offering certain courses that can develop practical expertise among law students. This has to be the first stage. In due course of time this has to be added with mooting, with or without making it a part of the curriculum. This will appropriately be the second stage. The third stage can be the stage of clinical legal education, free legal aid and advice to poor and indigent people who cannot bear the cost of justice, and street law – making the general public known about their rights and duties. The clinical legal education programme at the Banaras Law School now encompasses all of these.

At the Ahmad Ibrahim Kulliyyah of laws, students do get some kind of training that instills among them practical skills of legal drafting, client counseling and mooting. The Department of Shari‘ah of the Kulliyyah is also running a clinic, but strictly restricted to Shari‘ah matters. There is a need to have some kind of properly systematized clinical legal education programme, more appropriately similar to the Varanasi model, at the Kulliyyah, which can suitably be designed to deal with both Shari‘ah and other matters. The Kulliyyah has the
competence and capability to develop such a programme. The second part of this paper will explore this possibility.

The purpose of writing this short paper is to highlight the salient features of the clinical legal education programme as practiced at the Banaras Law School and to offer suggestions for developing some kind of clinical legal education at the Ahamad Ibrahim Kulliyyah of Laws.

The Modus Operendi of the CLEP at the Banaras:

Law School:

A senior lecturer at the Banaras Law School is nominated by the Dean to be the coordinator of the CLEP. In addition to the coordinator, lecturers are also nominated by him. They together along with other members stated below constitute the Clinical Legal Education Programme Committee (CLEPC). So as to discuss various aspects of the CLEP, the Committee usually meets every fortnight. If need be, the Dean is also invited. This happens when important policy or financial decisions are to be taken. At a later stage, it was decided that the participating students, who have offered CLEP and currently pursuing, should also nominate two student representatives from among themselves. In addition to these members, there are 6 Panel Lawyers. Initially, the task to get 6 panel lawyers was grueling because lawyers were not fully aware of the useful aspects of the CLEP and free legal aid program. But when these programs became popular and the Government of India also stressed through district officers on free legal aid to poor people, this difficulty did not exist. Lawyers were readily available to be panel lawyers (PL). Panel lawyers are paid honorarium according to the schedule of payment prepared by the committee, which is nominal. Thus, panel lawyers are getting minimum amount as honorarium but they are happy to be associated with these programs. This is because in addition to the honorarium that they are getting the honour to be attached with the CLEP/Legal Aid Program, they get satisfaction of being a part of the educational institutions and serving the poor section of the society. The author is of the opinion that efforts should be made to pursue leading lawyers - who have personal interest in giving some time for the cause of the indigent mass of the society who are unable to bear the cost of justice – to be panel layers so that people have confidence in the free legal aid program and students get opportunity to learn from them. (Joy, 2004)

The Program has been made operative at the final year. Every student has to offer the CLEP in any one of the two semesters. In each semester, students are divided into 6 groups. Each group has 8 to 10 students, depending on the number of total students. One lecturer becomes supervisor for each group. Students are involved in the following activities:

1. To be part of the Legal Aid Clinic (LAC) – Initially, the Legal Aid Clinic was held at the Law School every evening 5 to 7. Now, there are two clinics. Each day one group sits in the clinic. (see McQuid-Mason, 2002; Akinsye-George, 2004) This way, one lecturer supervisor along with his group of students has to sit in the clinic and entertain all incoming clients. The job of the students is to prepare briefs of the problems stated by them or to study the files of their cases if they already have any. The briefs with the signature of the supervisor lecturer are submitted to the coordinator of the CLEP. They are then discussed in the committee, and decisions are taken. Some cases are selected for compromise; and some others that are considered to be fit for free legal aid, are referred to the panel lawyers. In the whole process, to achieve an amicable compromise among the parties is the priority.

It is notable here that when the legal clinic became popular, the Law School opened another clinic in Ram Nagar, which is a small town about 10 kilometers away from the University. At this clinic, groups have to go rotation wise. This is also performing well. Rather, this is more successful than the clinic at the campus because it is easily approachable by poor people of that locality.

For both the clinics, regular advertisements are given in Urdu and Hindi local daily newspapers. Newspapers are considerate. They are charging one-fourth of the normal advertisement charges. Some newspapers are kind enough to publish advertisements without any charge. The author is of the opinion that this is one of the most important aspects of any CLEP and legal aid program because it disseminates information about the free legal aid program and helps in confidence building among those who really need free legal aid. The author also feels that when any significant case is won, it should also be publicized.

Free legal advice is given to each and every client. But free legal aid is provided to only poor people. For this purpose, their financial conditions are ascertained from independent sources. Genuine cases are approved for free legal aid. These cases are referred to panel lawyers. Contrary to this, free legal advise is available to all.

2. Court Visit - Since each group of students is attached with one of the panel lawyers, one group has one day in the court with his panel lawyer. The group members have to make a report separately of all the activities that the lawyer did in the court and reports have to be signed by the supervisor lecturer. This way, students have the opportunity to have firsthand knowledge of the practical aspects of learning law. It is notable that the supervisor lecturer has to encourage the students under him to learn as much possible as they can by
themselves. This is because the lawyer may not have enough time to explain everything to the students. Students have to be keen to learn the practical aspects of the law profession. (Wilson, 1998)

3. Efforts to Reach Compromises - Before a case is referred to the panel lawyer, efforts are made to reach a compromise between the parties. In matrimonial cases and succession matters, the clinics achieved a noteworthy success in forging compromises. For this purpose, possibly all concerned persons are requested to come forward and play their roles; and compromises are reached due to joint efforts of all. Generally, there are more than one sitting separately; and when the parties are agreeable for a compromise, a joint sitting of them is organized. Compromises are easily reached where parties have some kind of misunderstanding or obsessed with ego. Compromises can be well considered as mediations. Among the cases that have successfully been resolved, matrimonial cases are significant to be mentioned. The roles of religious experts in matrimonial cases and cases of family violence are significantly notable. These cases could be resolved amicably due to involvement of relatives, religious people, Ulama and Hindu priests. However, in land matters the success story is gloomy. These cases can hardly be resolved.

4. Assessment – In the end of the semester students are assessed on the basis of their attendance in the clinic and in the court and reports submitted by them. (Haupt, 2002; Barnes 1991; Brandy 1998; Brandy, 1994)

Financial Problem:

Initially, the CLEP faced financial problem, as the programme needed a vehicle, money has to be spent on the case and on paying to the panel lawyers. But the problem was short-lived, as the Law School received money from the Central Government and from an allocation by the university. By the end of the fifth year, there was surplus money. Now the financial position is even better. The author is of the opinion that in a country like Malaysia money should not be a problem. It can be easily be mobilized from different sources.

Moot Court:

There is compulsory mooting in third year and fourth year. This is in addition to the courses like research methodology, judicial process and legal drafting. Legal drafting has two parts: legal writing and drafting of statutes. Each student has to offer moot court in one semester. (Kennedy, 1998) For mouts, lecturers teaching interesting subjects like, family law, commercial law, and law of torts are requested to prepare moot propositions. For each section, a lecturer is assigned. Lecturers give the moot problems to various groups made by them. Students have to prepare their part of the case and have to argue before that lecturer. Based on their performance, the lecturer gives marks and submits the mark-sheet to the Moot coordinator. The moot coordinator tabulates the marks and finally submits them to the office of the Controller of Examination.

In the whole process, one thing is notable that for providing guidance to students, twice a year demonstration moots are organized. For this, sitting High Court judges and lawyers are involved. In addition to these, moot competitions are also organized. At inter-university moot competitions, students are required to sit. Students go to participate in mooting competitions outside the university. When they come back, they are required to demonstrate that before the students. This is notable that at the Banars Law School, mooting is a co-curricular activity. The author is of the opinion that it has to be a part of the curriculum as a compulsory subject.

Interviewing Clients:

The most important in the clinical approach to practical skill development, which is there in the CLEP, is interviewing clients coming to the clinic(s). For the lawyer in building the hypothesis, on which further actions depend, to know the total facts pertaining to the case from the client is truly a difficult task. It is, therefore, rightly said that the lawyer should question his client aggressively and extensively. In order to know the total facts, the lawyer has to earn the confidence of the client. In other words, the client must trust the lawyer and must have the faith that the lawyer will truly and dedicatedly fight the case. In view of this, it is said that interviewing the client in an arduous task and warrants a competent skill. Special skill is also required in counseling, negotiating and witness examination. The experience at the Banaras Law School reveals the truth that students learn this skill by involving themselves in such activities for quite some time; and it is an ongoing process, as only practice makes a man perfect. One year that students spend at the clinic is not sufficient for them, but they at least learn the art of interviewing, counseling and witness examination, which immensely help them their professional lives.

Confidentiality Issue:

Since a large number of students and a limited number of lecturers and panel lawyers are involved, the job to maintain confidentiality of cases is really tedious and challenging. We cannot have one hundred percent
infallible system, but we can make efforts to mitigate the chances of leakage of facts to the possible extent. Towards this end, the CLEP has adopted the following means:

1. In one case, the group of students limited to 6-8 in number, one lecturer and one panel lawyer are involved.
2. Students have to fill up a secrecy form. It in expressly written in the form that in case the student divulges any facts to any other person and with result of that the case becomes weak, appropriate disciplinary action may be taken against the student.

   It is notable that students kept confidentiality and there was hardly any case of which any disciplinary action was warranted.

_Organization and Facilities:_

As stated above, the functional head is the coordinator of the CLEP. His duty is to select lecturers to be associated with the programme. These lecturers may or may not necessarily have practical experience at the bar, but they should have sufficient skill to conduct client counseling, making briefs of cases and taking moot classes. The coordinator also selects panel layers. This is really a tedious job because he has to persuade competent layers who are truly competent to fight the case by taking sufficient interest. (Wilson, 2005; Scharg, 1996) On the contrary, clients will have no confidence in the clinic.

Since due to inherent limitations CLEP cannot be offered to all students, the coordinator selects a batch of students by organizing a written test followed by interview. The basis of selecting students is their interest and potential. Once the selection process is over, no new student can be taken; but students who have offered the CLEP, can withdraw from it. The logic behind allowing students to drop out is that students who really have interest should pursue it. Depending on the number students, groups are made.

The coordinator maintains an office with all necessary logistic facilities. It has a clerk and a support staff appointed by the university. Their salaries are paid by the university. The office opens during stipulated hours. The main office is at the Faculty premises and the other office is in Ram Nagar. For both the offices, lecturers and students are assigned.

The vehicle that takes students to the court is also in charge of the coordinator. Driver’s salary and maintenance of the vehicle is also the responsibility of the coordinator.

All activities are carried out under the supervision and authority of the Dean of the faculty. He is the authority to approve the selection of lecturers and panel lawyers. He also approves the list of the selected students. In case of any dispute, his decision is final.

_Lok Adalat:_

The concept of Lok Adalat (public court) already existed in the country. But it received impetus when Justice A. M. Ahmadi augmented it with full zeal and fervor. He instigated and supervised a large number of Lok Adalats in India. In fact, Lok Adalats are public courts. It works as an alternative dispute resolution.

The Banaras Law School has been actively involved in holding Lok Adalats. For this, 2 to 3 villages are adopted. Students attached with the CLEP are taken to those villages. They do an intensive homework to find out all cases that are pending before the District Courts. These cases are classified. One day is fixed for holding Lok Adalats. All parties and elderly people of the villages are invited to come. Members of the CLEP and other lecturer along with students, who have offered CLEP, are taken to the place. Depending on number of cases, courts are constituted. This is notable here that along with sitting judges, lecturers and elderly people of the villages are also there in each court. Efforts are made to reach compromises. These compromises are immediately handed over to the judges who hearing the cases.

Lok Adalats have been very successful in matrimonial cases, succession matters, and cases under the motor vehicle law. So far land matters are concerned, it has utterly failed. This is because land is the most precious thing for villagers. Their livelihood depends on lands. Thus, they all want that the regular courts resolve their cases. It is notable here that the presence of elderly people has worked as a catalyst because in Indian village system, they command high degree of respect. It is notable here that in the village panchyats they play a constructive role.

When the first author was there, two Lok Adalats were organized, on in the Gangapur Block and the other one at the Ramnagar Block. They proved to be successful. The authors are of the opinion that the idea of Lok Adalat has the potential to reduce the burden on the courts. They are of the opinion that this has to be under the auspices of institutions involved in teaching law.

Lok Adalats can work nicely only when people where they are being held have the basic knowledge of law, they are conversant of the fact that to fight cases unnecessarily consume precious time and money, and the community is committed to bring the litigants to negotiations and to persuade them to agree to amicable compromises. (Seielstad, 2002)
Role of Non-Governmental Organization:

Non-Governmental Organizations (NGOs) that have one of their missions to permeate legal consciousness among poor city dwellers, who are engaged in petty jobs, and villagers, who are generally not aware of their rights, can play a significant role in clinical legal education also. Their role in Public Interest Litigations, where courts relax the requirement of *locus standi* in matters adversely affecting people, who cannot bear the cost of justice, and helping out them by all means, where *locus standi* is strictly followed, is commonly known. Some NGOs are also keen in extending all kinds of possible help in developing some kind of clinical legal education programme and setting up clinics for free legal aid and advice to poor people at law faculties. In addition to NGOs, World Bank, International Development Bank, Ford Foundation and UN High Commissioner for Refugees (UNHCR) are also keen to extend financial help for establishing and pursuing clinical legal education in any part of the world. In most of the countries, American Bar Associations and Central European and Eurasian Law Initiative have affiliated with such programmes growing in Asia, Africa and Latin America. Efforts of NGOs and International financial institutions can conspicuously be seen in some African, Latin American and south-East Asian countries. Their financial help and expertise could have been of immense use, but the Banaras Law School established the whole thing its own and successfully carrying it forward. It takes financial help by the government and has some kind of association with the free legal aid programme run under the auspices of the District Authorities.

The Banaras model of CLEP gives sufficient insight of practical aspects of legal education. It brings the Bar and the Institutions engaged in teaching law together. This can be practiced elsewhere also. For an efficient CLEP, commitment of the institution and dedication of the lecturers is imperatively demanded. Moot should be part of the curriculum. In addition to that, demonstration moot is very necessary to be held from time to time, as it generates interest among the students.

Legal aid clinics have to be a part of the CLEP of the institutions engaged in teaching law, and they should hold clinic(s) possibly every day. It has to be separate and independent from the similar clinics held by the Bar Association or any government agencies. On the basis of the Varanasi model, we can say with utmost confidence that regular publicity for the general public to come to the clinic is necessary.

This is notable that efforts of free legal aid are being made through state agencies also. In India, due to bad beurocracy, the state agencies have not been able to deliver fruits in all parts of the country. It got some impetus from the judges like Justice Ahmadi at some places. Under their guidance many Lok Adalats were also held and they proved to be successful. The authors are optimistic and hope that CLEP will successfully be operative in other parts of the world, including Malaysia.

Learning Practical Skills at Ahmad Ibrahim:

*Kulliyyah of Laws:*

Although Kulliyyah of Laws of the International Islamic University, Malaysia, does not presently have any formal clinical legal education programme. It has a legal clinic, which is being run under the auspices of the Islamic Law Department, focusing only on shari‘ah matters. It, thus, involves only some of the lecturers of that department.

Client counseling is limited only to an inadequate number of students who are interested in it. The whole idea of this is to train some students of the Kulliyyah to participate at client counseling competitions held locally and internationally. The training as and when is required is given by some lecturers who have expertise in this area. Performance of these students has been commendable.

So is the case of mooting. For mooting also, a group of interested students are involved. The motivating factor for this has been the Jessup International Moot Competition. In this case also, interested students are trained by some of the competent lecturers, depending on the moot proposition. At international mooting competitions, students of the Kulliyyah have had incredible performance. They have once won even the most prestigious Jessup International Moot Competition, and several times have got second and third placing. The Kulliyyah is going to introduce mooting as a compulsory subject from the first semester of the session 2007-2008. This is a welcome move.

From the first semester of the session 2007-2008, first year students of the Kulliyyah will have to offer legal method as a compulsory subject. It will instill among the students to develop skill to find relevant materials from the library and to analyze cases. This course will not have final exam. Marks will be given only based on the assignments students will do. This course will certainly provide one of the foundation stone for clinical legal education.

Problem based learning (PBL) is one of the methods of teaching, which trains students to work independently and to prepare reports on the given projects. Thus, in one subject, projects on different aspects of the subject are given to certain number of students. They have to investigate independently on them and come
out with project reports; and in the end, they present their project reports. This method of teaching is becoming popular in professional courses, like medicine and engineering; but the problem is that if some of the students in the group are lazy and do not contribute significantly, the burden falls on other students. In such a situation, the lecturer faces difficulty in marking; his marking has to be solely based on students’ presentations. In spite of this weakness, PBL is popular in the Kulliyyah in subjects like equity and trust, criminal procedure and some other subjects. It is notable that PBL has proved to be very successful in the Kulliyyah of Medicine of the International Islamic University. It has tremendous scope in Ahmad Ibrahim Kulliyyah of Laws also. In spite of the fact that BPL has proved to be useful in making students self-dependent, it does not give practical training to law students. It has to be given separate from it.

The most important course that really gives some sort or practical training to law students is professional practice. The course has been designed keeping in mind various practical aspects of legal profession, such as pleading, drafting, interviewing clients, client counseling, etc. The course is taught by those who have sufficient practical experience. It really helps developing practical skills among students. But this is not the end of the practical training of law students. Don Peters, while commenting on the professional practice course being offered at the University of Malaysia, writes that the course does not produce mastery of the complex interpersonal skills that it surveys. Only years of thoughtful and self-critical practice produce mastery. The professional practice course can, however, give students the tools to teach themselves from their experience. The critical approach and critiquing model used in professional practice teaches a process of formulating an explicit theory of action before acting; of becoming aware of actions taken in pursuit of theoretical objectives; and of interpreting the consequences of both. Students learn this process by participating in it when enquiry is liberally used in their critics and also by having specific data review and interpretation modeled by their critiques. However, this course is an exciting and welcome addition to the Kulliyyah curriculum. This course can be considered as the cornerstone for the clinical legal education.

Student attachment programme is also there at the Kulliyyah to facilitate students to see the practical application of law in the courts. Under this programme, students are attached with magistrates and legal firms. Students go to their assigned places and see application of law in various courts. In this process, students generate interest in learning law, and develop aptitude in legal practice. Students, who have attended this programme, are very appreciative of this. But the problem with this is that we should not and cannot offer these at all levels of LL.B. course, because that will involve a lot of funds and trained officials, which is not possible. We can consider it at third and fourth year only. This is also advisable in view of the legal method subject which will be offered from July 2007. If we opt for compulsory mooting and clinical legal education programme, where students are not required to go to the court, student attachment programme will have some relevance. On the contrary, if Banaras model of clinical legal education programme is opted, the attachment programme will have no relevance, because in that case students will have to go to the court and be actively involved in the judicial processes.

Endeavors of Ahmad Ibrahim Kulliyyah of laws towards instilling practical aptitude among its students are not so encouraging. Kulliyyah needs to enhance it. Compulsory mooting and some kind of clinical legal education can be suggested as imperative tools. They should be made part of the curriculum. They can very well be subsumed within the professional practice subject. The present student attachment programme does not seem to be well organized. It needs to be streamlined in such a way that it becomes a relevant tool for imparting practical knowledge among students.

Conclusion:

The Banaras model of the clinical legal education program has proved to be one of the successful programs around the world. It can be said with utmost confidence that some kind of clinical legal education programme, which has a clinic with sufficient facilities for client counseling, free legal aid and advice, and attachment of students with panel lawyers, is a must for imparting legal education. This programme should be in addition to compulsory mooting. Both of them should be made a part of the curriculum. Mooting should be compulsory for all students, but CLEP has to be for a selected group of students, who can be selected on the basis of merit/interview. In case a law faculty cannot afford to have it as it is there at the Banaras Law School, it can start with a legal clinic having a prime object to give practical experience to law students about client counseling, free legal aid and advice to poor and indigent people to whom to fighting cases is next to impossible, as they cannot bear the cost of justice. It is also advised that fat first efforts should be made to achieve some kind of amicable compromise among parties, so that they do not go the courts. It will be a great service to the community and the nation. The clinic can also undertake the task of street law programme by distributing booklets explaining rights and duties and other relevant legal aspects to common mass that are not aware of these and by holding meetings with them. This way, they will be able to tell the basic law to common men, which will educate them and instill among them democratic values.
References


