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TABLE OF CONTENTS

S. No.	Title of the Paper/ Author	Page No.
1.	Negative' And 'Positive' Obligations of The State – The Journey Thus Far *J. Ravindran*	1
2.	Clinical Legal Education and The Role of Legal Aid Clinics In India *Navjeet Sidhu Kundal*	24
3.	Section 115 Of Mental Healthcare Act, 2017: A Lifeline to Suicide Attempters *Deepa Kaushik*	35
4.	Convention On the Status of Refugees 1951: More Eurocentric Than Universal *Aroup Raton Shaha*	45
5.	Principal-to-principal relationship with respect to Automobile manufacturer and dealer in consumer dispute cases *Hansie Singh Nagpal*	59
6.	Domestic Violence During Pandemic: A Socio-Legal Analysis *Nivedita Chaudhary*	70

STUDENTS SECTION

7.	From Rio to Paris: What Have Developing Countries Really Achieved? *Niranjan E.V. & R. Divya Meenakshi*	87
8.	Intellectual Property Right: The Asset of New India *Prarthna R. Markod*	100
9.	The Concept of Judicial Review as A Process – An Analytical Study *Riya Jacob*	119
10.	Third-Party Funding in International Arbitration: The Need for India to Step It Up? *Arushi Anand*	128
11.	Explication On the Concept of Crowdfunding in The Indian Legal System *Saket Agarwal and Charu Agarwal*	139

12. Need For Formalisation of Gig Workers: Towards A Paradigm Shift in Working Model
Kinjal Keya and Aditya Pratap Singh 151

13. The Competition Commission of India's Attitude Towards Cross Border Mergers
Ahan Gadkari 166

14. Rising religious majoritarianism in India - the impediment to minorities rights and representation
Divyanshu Dubey 184

15. Racial discrimination in sports activity
Yuvraj Sharma 201

16. Evolving Interpretations of Legal Provisions Of 'Intestate Succession' In Light of Judicial Precedents
Samrat Bandopadhyay 214

CASE COMMENTS

17. Married women: Less than Humans? RIT Foundation v. Union of India
Yashvi Aswani 222

Clinical Legal Education and The Role of Legal Aid Clinics in India

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Abstract

Clinical Legal Education is a key strategy not only to strengthen the professional capacities of students but also fulfils the wider task of maintaining and promoting the rule of law in the country. The idea to involve law school clinics in the legal aid movement in India was considered to foster democratic governance by developing competent legal minds and provide inexpensive and speedy legal services to underprivileged and marginalised groups. Most if not all of the law schools have been playing an instrumental role and furthering the cause for which they were set up. However, there is much that is found wanting, law schools are not able to impart basic skills to students and get them engaged with the realities of litigation. Legal aid clinic can be used as a law laboratory to enable students to experiment with different approaches to studying and practicing law. If legal aid clinics are run effectively by providing proper training to the members spearheading the clinic it can bring a transformative change in the society. The paper aims to evaluate the orientation of legal aid clinics in achieving the idea of social justice as envisioned in the Indian Constitution. The paper will also look into the transformative capacities of the legal aid programme with respect to the two constituencies that they cater to: the students and the poor and the marginalised

Keywords: *Legal education, Legal aid clinic, Marginalised groups, legal services.*

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I. Introduction

Legal education is of unique importance in the justice delivery of any country. The success of democracy and rule of law in any society hinges on how well law is marshalled by lawyers for protecting the rights of the vulnerable and the marginalised. Legal education helps create not only professionals but also law-abiding citizens. The training and education provided to a law student plays an instrumental role in shaping the discourse on justice in any country.[1] Legal Education doesn't merely touch law alone but extends its arms to social, political, historical and economic aspects of life. Law as dynamic instrument can therefore be used for progress and betterment of the society.[2]

II. Clinical Legal Education

Clinical legal education is firmly rooted in the practice of learning by doing. "Life of law is not logic but experience"[3] emphasises the importance of bringing in experience to the practice and understanding of Law. Clinical legal education bridges the gap between theory and practice and builds deeper interactions between law schools and local communities. It engages the law students in clinical practice of law under the supervision of trained law professors. "Professional skills training, learning through experience, and imparting professional values of providing access to social justice are the three core components of the pedagogy of clinical education. Promoting social justice while preparing competent lawyers is inherent to most legal programmes".[4] Clinical programmes increase access to justice by providing access to a wide range of otherwise unavailable services. Early exposure of law students to clinical programmes not only introduces them to the practical component of law but also lays down the intellectual foundation for long-term engagement with social justice.[5]

"CLE is essentially a multi-discipline, multipurpose education which can develop human resources and idealism needed to strengthen the legal system… a lawyer, a product of such

1 D'Amato, Anthony, "On the Connection Between Law and Justice" (2011). Faculty Working Papers. Paper 2. http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/2. (Last visited Jan. 2, 2021)

2 B.C Nirmal, Rajesh Kumar Singh, *Contemporary Issues in International Law: Environment, International Trade, Information Technology and Legal education* (Springer 2014).

3 O.W. Holmes, *The Common Law* (M. Howe ed. 1963).

4 Frank S. Bloch, 'New Directions in Clinical Legal Education: Access to Justice and the Global Clinical Movement', 28 WASH. U. J.L. & POL'y 111, 121 (2000)

5 'The Relationship Between Social Justice and Clinical Legal Education: A Case Study of The Women's Law Clinic' Faculty of Law, University of Ibadan,) Nigeria (2014) International Journal of Clinical Legal education (2014) 20, 564.

education, would be able to contribute to national development and social change in a much more constructive manner."[6]

III. Social Justice

Access to justice is the hallmark of all civilised societies. Laws, legal institutions, social processes need to be responsive to the needs of the marginalised and the vulnerable. Social justice is a multifaceted concept and involves both social, economic and political dimensions. "The terms 'justice' and 'socialism' are mentioned in the Preamble of the Indian Constitution. In addition to social, economic, and political justice that the Preamble refers to, equal justice through equality before law is guaranteed as a fundamental right under Article 14. The Directive Principles of State Policy as outlined in the Constitution of India further support state action through running welfare programme to create a social order that is just (Article 38A)".[7] In order to fulfil this constitutional mandate of access to justice legal education must orient itself to socially oriented goals. [8]

Indian Society is neither equitable nor just. Access to justice is often denied to those in need, underlying the undeniable need for social justice. The concept of social justice represents a commitment to work on behalf of those who are marginalized, subordinated, and underrepresented.[9] Since most of the poor and marginalised don't have access to justice because of ignorance of law and legal provisions the first step in giving power to people can be achieved by providing legal empowerment to the poorest. This can be done by imparting basic legal literacy and legal awareness to the general population. Teaching social justice also gives opportunities to law students to improve their conceptual thinking which in turn improves the non- analytical skills like empathy, considered important for success as a lawyer.[10]Knowledge commission has highlighted in its report that the purpose of legal education is to create professional lawyers as well as to provide justice-oriented education

6 S.P Sathe, *Access to legal education and profession in India* in R Dhawan, N Kibble, W Twinning (ed) Access to legal education and legal profession 165 (Butterworths 1989).

7 Saurabh Sood, Convergence in the practice of legal Aid to improve access to Justice, 6(1–2) Asian Journal of Legal Education 18–28 (2019).

8 Asha Bajpai, *Learning by doing -Promoting access to Justice to the Marginalised and Vulnerable groups in India* 3(2) Asian Journal of Legal Education 201–208 (2016).

9 Julie D. Lawton, *The Imposition of Social Justice Morality in Legal Education* 4(1) Indiana Journal of Law and Social Equality, 57 (2016).

10 Paula A. Franzese, *Law Teaching for the Conceptual Age*, 44 SETON HALL L. REV. 967, 973–74 (2014).

for upholding constitutional values.[11] Inaccessible legal procedures lead to widening socio-economic disparities. Lack of well- deserved legal aid not only leads to unjust outcomes but also results in removed opportunities to access welfare oriented schemes of the government.[12] In many cases, access to such welfare schemes gives opportunities to the marginalised to become part of the mainstream socio-economic life.[13] Legal education therefore becomes important to ensure access to justice as it trains students to become skilled lawyers and competent judges , who are in the long run responsible for applying just legal procedures to ensure meaningful existence of law and justice in the society.

IV. Clinical Legal Education in India

Clinical education uses simulation and experiences as a primary teaching tool. According to Professor N.R. Madhava Menon, clinical legal education does not aim at creating future lawyers who are craftsmen and adept at manipulating advocacy skills in the traditional role of conflict resolution in courts. "It is rather a pedagogic technique which focuses on the learners and the process of learning."[14] When one brings actual experience and complexities of the real world in the teaching of law it not only enriches the learning experience of the student but also shapes the legal system of the country. Experiential learning of law not only brings practical aspects of advocacy in the teaching and learning of law but also involves teaching values like public service and social justice to legal education. [15]

An active legal education programme impacts not only the society but the practice of law and legal profession.[16]Clinical legal education in many parts of the world began as an offshoot of legal aid projects. Through the legal aid clinics set up under the projects. Whatever is learnt in the law school is put to practice in these clinics by meeting, helping real people with real problems. This not only deepens the understanding of law but also brings a realisation of social responsibility to the students. Indian legal education system has been subject to various reforms since independence. Most of the reform efforts were geared towards addressing issues pertaining to curriculum, attendance, teaching pedagogy,

11 National Knowledge Commission, Report to the Nation 2007 http://www.dauniv.ac.in/ downloads/NKC_ Report07.pdf (Last visited June 8, 2022)

12 Sood,*supra* note 7 at 18.

13 *Ibid*

14 N.R. Madhav Menon(Ed) , *Handbook On Clinical Legal Education* (EBC 1998)

15 Frank S. Bloch, *Access to Justice and the Global Clinical Movement,* 28 WASH. U. J. L. & POL'Y 111 (2008), https://openscholarship.wustl.edu/law_journal_law_policy/vol28/iss1/6 (Last visited June 8, 2022)

16 *Ibid*

quality of instructions and student assessment. Clinical legal education came on its own in India in the 1960's and 70's when clinical teaching was introduced in Legal education through the setting up of legal aid clinics.[17]

The first major effort was made in 1970s when Ministry of Law appointed an expert committee which proposed a model for legal aid programs that anticipated considerable involvement by law teachers and law students.[18] Emphasising the need for a statutory basis for legal aid, the committee noted 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."[19]Further, the report has also recognized the need of providing legal aid services to the poor to deal with the nexus between law and poverty. 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.

Further a committee was appointed in 1976 with Justice P.N. Bhagwati and Justice VR Krishna Iyer as its chairman to recommend ways and means of implementing the report on legal aid. In 1977, committee submitted a report to the then Law Minister Sen., titled "National Juridicare Equal Justice and Social justice" This committee was to work on the viability and working conditions of legal aid programmes. The committee emphasised that legal education must be used as a potential instrument to eradicate poverty by distributing material sources of the country. The committee submitted that a legal aid program must 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.[20] Law ministry proposed model for legal aid in 1970's required considerable involvement of law teachers and students. Thus, the initial years of clinical legal education in India saw the involvement of law schools in legal aid reform movement. Legal academia joined this effort by including legal aid and social justice in their curriculum involvement of law students in the legal aid reform movement was anticipated to inculcate deep appreciation of legal aid in them coupled with

17 Frank S. Bloch & M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States*, 13 CLINICAL L. REV 165 (2006)

18 Govt. of India, Ministry of Law, Justice, and Company affairs, PROCESSUAL JUSTICE TO THE PEOPLE report of the expert committee on legal aid 16 (1973) http://reports.mca.gov.in/Reports/15-Iyer%20committee%20report%20of%20the%20expert%20committee%20in%20legal%20aid,%201973.pdf .

19 *Ibid*

20 P.N Bhagwati, REPORT ON NATIONAL JURIDICARE: EQUAL JUSTICE- SOCIAL JUSTICE, GOVERNMENT OF INDIA, (33-34) 1977.

sense of personal responsibility to ensure that the activities undertaken by them under the programme gather strength. In 1980's Committee was constituted under Justice PN Bhagwati to supervise legal aid programmes throughout the country. The committee came to be known as Committee for implementing legal aid services and started monitoring legal aid activities in the entire country. The Legal Services Authority Act, 1987 was enacted in to provide a statutory basis to legal aid programmes. There is a link between clinical legal education and social justice. In the 1970's many law schools introduced the clinical method of legal education by setting up legal aid clinics. Although the law Schools got involved in the clinical programmes in the initial years but their programmes were fairly small and they struggled with limited financial resources.[21] There was lack of trained faculty members who could provide supervision to the clinics. Initial efforts therefore laid emphasis on serving the poor without adequate upgradation of skills. "Nevertheless, the efforts in developing and employing clinical legal education programs in a voluntary manner in infrastructurally deficient conditions at least resulted in sensitizing student in socio-economic issues hitherto alien to class room discussions in the teaching of law."[22]

V. The Formal Inclusion of Legal Aid in Legal Education

In 1994, a three-member Committee comprising of Justice A.M. Ahmadi, Justice B.N. Kirpal and Justice Jaganaddha Rao dealt in detail with law school teaching methods. The Committee, made important suggestions relating to practical methods to be adopted for teaching law. It was because of the committee's efforts that the Bar Council of India introduced four practical papers into the curriculum, which was viewed at the time 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'.[23] The following papers were introduced emphasising on the legal skills of the students:

i) Paper I - Moot-court, Pre-trial preparations and Participation in Trial Proceedings.

ii) Paper II: Drafting, Pleading and Conveyancing.

21 Nigel Duncan, *Ethical practice and clinical legal education* 7 NORTHUMBRIA JOURNALS INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION 15 (2005). See Nidhi Sharma, *Clinical Legal Education in India: A Contemporary Legal Pedagogy*, 8 INDIAN J.L. & JUST. 165 (2017).

22 *Ibid*

23 LAW COMMISSION OF INDIA ONE HUNDRED AND EIGHTY FOURTH REPORT ON LEGAL EDUCATION AND PROFESSIONAL TRAINING AND PROPOSAL FOR AMENDMENTS TO THE ADVOCATES ACT, 1961 AND THE UNIVERSITY GRANTS COMMISSION ACT,1956, Law Commission of India (2002) https://lawcommissionofindia.nic.in/reports/184threport-parti.pdf .

iii) Paper III: Professional Ethics, Accountancy for Lawyers and Bar-bench relations.

iv) Paper IV: Public Interest Lawyering, Legal aid and Para-legal Services.

Till the introduction of these four papers hardly much efforts were made by law schools to train law students in litigation skills. It was felt that training them for legal practice was the job of the legal professionals and not law school. Introduction of these four papers was considered as a huge step towards formal inclusion of clinical legal education in law schools. These four papers can be seen as an attempt to introduce social-justice based reform in legal education. [24]

Despite this it needs to be seen that the mandatory directive of the Bar Council was not received very well by legal educators as law schools neither had the expertise in skills training nor the infrastructure and financial resources needed to implement these papers. Most of the law Schools failed to execute these directives because they were viewed as an additional burden on the faculty.[25] Finally based on the recommendation of the Ahmadi Committee. Law commission took up legal education reform in its 184th report and opined that clinical legal education should be made compulsory and should be seen as an excellent supplement to the legal aid system.[26] The Bar Council of India subsequent to the recommendations of the Supreme Court's three-member committee, adopted a resolution to set up legal aid clinics in every law school to provide inexpensive and speedy service to underprivileged groups in society.[27] A look at the reform efforts in India leads us to believe that social justice goal should remain central to the idea of legal education in India. This will help in establishing a fair, just and effective and competent legal system for all.[28]

VI. Challenges in Inclusion of Social Justice in Clinical Programmes in India

Legal aid therefore is a contact point between people in need of justice and those who want to facilitate access to justice. According to a UNDP lead study of Law School based legal aid Clinics in India in 2011. A look at the Indian experience with clinical legal education shows that nearly 82 percent of college have assigned faculty members to conduct legal aid

24 Frank S Bloch *supra* note 17 at 13 corroborated by UNDP Study on Law School based Legal aid clinics, 2011.

25 *Vijendra Kumar, Clinical Legal Education during Covid-19: Issues and perspectives*, ILI Law review Special Issue, *246* (2020).

26 The Law Commission of India, *supra* note 23.

27 Bar Council of India, three Member Committee Report on Reform of Legal Education (2009).

28 Processual justice to the people *supra* note 18 at 181.

activities in the law schools, however legal aid activity is still not an effective tool to redress injustices and provide experiential learning to all students. The study revealed that legal aid continues to be a non-credit, extra-curricular activity in law School and most law schools start legal aid programmes only to satisfy the mandatory requirements of the Bar Council of India [29] Law schools also struggle in collaborating with NGO's and local authorities. Promotion of ADR and other law reform activities is also absent in most colleges. Most of the colleges struggle with inadequacy of sources, lack of trained faculty, non-availability of information and overall absence of initiative and enthusiasm.[30]Recent findings show that the clinical legal aid is firmly entrenched in the legal education in India and there are great models to be followed within the country. However, there is much that is found wanting and in need of improvement.[31]

VII. Conclusion

Clinical legal education is an effective way to provide access to justice to the marginalised and weaker sections of the society. However, the experience of Clinical legal education in India so far shows that it is still at a developing stage. Skills necessary for imparting practical training and exposure to students is missing in most of the law schools. The Bar can also play a proactive role in these effort by providing appropriate training and resources to faculty members. For the Success of Clinical legal programme in India it is critical that BCI and NALSA should play a proactive role in implementation and strengthening of legal Aid programmes. One of the strongest critiques of legal aid programmes in India is that while most law schools have legal aid clinics but most of them lack direction and preparation. Law teachers must develop pedagogical tools and train students to develop partnerships with rural communities in pursuit of justice. A strategic mix of legal empowerment and social accountability would increase the grassroot efforts to advance social justice. The aim of clinical legal education can only be achieved if clinical legal education is institutionalised and students make strategic efforts to make legal aid accessible to the poor.

29 Department of Justice, Ministry of Law and Justice, Government of India and United Nations Development Fund project on Access to justice for marginalized people, A Study of Law School based legal Aid Service Clinics, 2011 http://www.undp.org/content/dam/india/docs/a_study_of_law_school_based_legal_services_clinics.pdf.

30 *Ibid*

31 Tushaus, David & Gupta, Shailendra & Kapoor, Sumit. *India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice*. Asian Journal of Legal Education. 2. 100-118. (2015).

VIII.Suggestions

If law is to be democratised and it has to reflect real societal concerns then legal curriculum should be structured in such a way that clinical legal education can be used as a powerful tool to chip away the massive pursuit of ruthless power. Limited focus on legal aid activities in law schools is not able to translate the constitutional mission of social justice into reality. The following suggestions can be instrumental in achieving the desired results:

1. Technology and Legal Aid

With the emergence of new concepts like artificial intelligence, block chain technologies, education 4.0 law schools must aim at upgrading the digital skills of the students. Law can no longer be taught in isolation. Legal education must inculcate intellectual, ethical and entrepreneurial capacities in students. As the knowledge commission states that legal education must prepare students to meet the challenges of internationalization, digitalization. The pandemic has proved that online legal education is here to stay. Law Schools should come with ideas to develop clinical programmes in online mode.

"Aside from influencing the place of clinical education in the new millennium, technological advances will affect the forms of clinical education by making possible new and different teaching and service opportunities and clinical models."[32] As technology becomes ubiquitous and impacts the lives of teachers and students alike. We must embrace the potential of online learning to enhance the quality of teaching and prepare students for the challenges of lawyering in the twenty first century.[33]

Virtual simulation exercises can play an instrumental role in bringing clinical legal education online. In the aftermath of Covid-19 as case load of the Supreme Court and High Courts are set to increase legal aid clinics can play a vital role in sharing the burden of the courts. Resort must be had to ADR and Mediation methods in clinical settings [34]

2. A Case for giving opportunity to Law Students and Faculty Members to Practice in Courts

For Access to justice in a country with adversarial litigation, access to bar is a sine qua

32 M Martin Barry, J Dubin, P Joy, *Clinical Education for this Millennium: The Third Wave* 7 Clinical L Rev 1, 53 (2001).

33 Les McCrimmon, Ros Vickers and Ken Parish, *Online Clinical legal education: Challenging the traditional Mode*, International Journal of Clinical Legal Education 23(5):33, See J Rosenberg, *Confronting Cliches in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills*12 SMU Sci & Tech L Rev 19. 82.(2008-2009)

34 Vijendra Kumar, *Clinical legal education during Covid-19 pandemic: Issues and Perspectives*, 254 ILI Law Review Special Issue (2020).

non. Far too many times because of the heavy fee of the lawyers the poor are priced out of the judicial market. It becomes imperative to have other alternatives to give representation to the poor through faculty members and students serving in law school clinics "Direct representation in courts/tribunals by faculty members and students will not only help low-income clients' with inexpensive representation, it could also help reduce a backlog of cases pending in courts. This will further give students an opportunity to 'learn while doing'. Students participate more actively in such processes when they plan and work on finding a solution to client's problems"[35] However, the main hindrance in this regard is the Bar Council of India regulations that restraints full-time faculties and students of law to appear in courts.[36] . The Advocates Act, 1961, provides that only a person who is enrolled as an advocate can practice in court. Although it does give discretion to courts to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case. It may take place only upon an application made in this regard. The courts have seldom made use of this discretion due to pressure from the bar. Justice Krishna Iyer in his Report, *Processual Justice to the People: Report of the Expert Committee on Legal Aid* 1973, also suggested an amendment to the Advocates Act in this regard to allow for law professor and student representation of indigent clients, clients who could not afford to pay a private attorney any way.[37] The Ministry of Justice, along with Bar Council of India and National Legal Service Authority must draft 'Student Practice Rules' along the lines of what exists in the US. All states and all but one federal court have adopted rules which allow students to practice under supervision in the US. [38]Bar Council of India should also come out with appropriate guidelines which enable faculty members to practice for a limited time.

3. Collaboration between legal Aid Clinics and Legal Service Authorities

Legal Aid service Authorities constituted under the Legal Aid Services Authorities Act 1987 provides free legal aid services to the needy people and ensures access to justice to people who are unable to secure justice on account of economic and social disabilities. Most of these authorities collaborate with legal aid clinics of law schools and provide technical and financial assistance to them. However, in practice very few authorities appreciate the true potential of law school clinics and confined their effort only to organizing legal literacy camps and providing para-legal training to law students.[39]

35 David W. Tushaus, *supra* note 31.

36 Bar Council of India Resolution No. 108 of 1996.

37 V.R. Krishna Iyer, "The Dynamics of Access to Justice", *The Hindu*, 29 May 2007. http://www.thehindu.com/todayspaper/tp-opinion/the-dynamics-of-access-to-justice/ article1848798.ece (Last visited July 12, 2022, 10:35 AM).

38 UNDP, *supra* note 29.

39 UNDP, *supra* note 29, at 112.

A fruitful collaboration between the two will not only provide access to adequate infrastructure but also give the authorities appropriate human resources in the form of students and faculty. The legal aid clinic in turn may stand benefitted from the technical and financial expertise of the Legal Aid services authorities. In addition to this, collaboration with NGO's, government departments and commissions can help improve network and is great for future activities of the clinic. Networking amongst the clinics should also be encouraged so that all emerging clinics benefit from the experience of the established ones. This can be done through clinic exchange programmes at the local, state, national and international level.[40]

4. Course Credits

Making clinical legal education as an elective subject where students get credits for their work in the clinic would be a positive step towards bringing sense of responsibility amongst the students.[41]

5. Establishing Mediation centres at legal Aid Clinic

It must be noted that Bar Council of India has made Mediation as a compulsory paper through a notification in August 2020. Without any additional infrastructure mediation can be made a spart of law school clinics. Law students can motivate people to opt for mediation as a dispute resolution method. The proper implementation of this step can go a long way in clearing backlog of cases and decreasing the burden on courts.

6. Modification of legal Aid clinics in accordance with International best practices

Law schools in India can learn from international best practices and replicate effective approaches adopted across the world in clinical legal education. There are excellent models for law schools to emulate and adopt. The Civil litigation clinic and Environmental law practum at the Boston University which have been one of the oldest running clinical law programmes in the United States help students represent clients with full responsibility and let them work on issues surrounding conservation of environment and cases falling on the intersections of environmental justice and civil rights. The clinical practicums at Boston University guarantee every interested student at least one clinical opportunity to work on cases that have a real-world impact.[42]

40 Les McCrimmon *supra* note 32, at 113.

41 *Ibid*

42 Clinics and Practicums, Boston University School of Law. https:// www.bu.edu/law/experiential-learning/clinics/ (last visited July 24, 2022, 1:30 PM)