



NR Madhava Menon (ed), *Clinical Legal Education*

Eastern Book Company, 1998, 336 pp, ISBN: 978-93-88822-37-4 (PB)

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Accepted: 25 December 2020 / Published online: 23 February 2021
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‘*Clinical Legal Education*’, edited by Dr NR Madhava Menon, is clearly a labour of love. Dr Menon’s ‘lifelong commitment to bringing “socially relevant legal education” to India and the world’¹ is evident in this book. It serves as a comprehensive guide to the methodology of clinical teaching, put together in response to demands from law teachers for a handbook to provide basic materials on introducing clinical programmes in law schools. The book provides an overview of clinical legal education (CLE) through the material that has been produced both in India and in the United States, and through perspectives of clinical teachers in both countries. It systematically (and in great detail) organises different perspectives, rules, and analyses by experienced clinical teachers. While it is largely geared towards law teachers and law schools seeking to implement clinical programmes, students may find certain sections useful.

This book consists of seventeen chapters divided into two sections. The first section presents some reflections on CLE drawn from the experiences of Menon, Frank Bloch, and DK Sampath, as well as excerpts from the American Bar Association’s 1992 ‘Report of the Task Force on Law Schools and the Profession’.² The second section makes up the core content of the book—the thirteen chapters here are written to address the needs of legal education in India and delve into the mechanics of clinical teaching. The chapters offer useful analyses of teaching, interview and negotiation skills, designing role-play simulations, assessing students in clinics, and other topics. Since the book was first published in 1998, computer applications in CLE also merit a chapter.

¹ Frank S Bloch, ‘N. R. Madhava Menon: A Global Justice Educator’s Approach to Training Clinical Law Teachers’ (2020) 7(1) *Asian Journal of Legal Education* 1.

² American Bar Association, *Legal Education and Professional Development – An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992).

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The book weaves together several concepts, narratives and pedagogical practices that cover the fundamentals of CLE. I have focused my review on Chapter 1 from the first section, as well as Chapter 12 from the second section. Chapter 1 by Dr Menon provides an introduction into the basic concepts associated with CLE, including an exploration of the goals of legal education itself, and a historical overview of CLE in India. Chapter 12, by Don Peters, explores the various components of the critique process and the role of effective feedback in contributing to the development of students' self-reflection skills. This chapter is particularly useful in offering guidance to clinical teachers on how they can use critique to further CLE's goal of self-directed learning.

Clinical Legal Education begins by urging us to conceive of CLE in as broad and varied a manner as a law school curriculum can accommodate. The goal of CLE is not merely to train students in advocacy skills but rather to introduce them to the 'hidden curriculum' where they can learn what it means to administer the law in public service and how legal services can be equitably distributed in society. The emphasis on the 'proclaimed and hidden' goals of legal education sets the stage for an inquiry into the role of the Bar Council of India in setting the standards for legal education in the country. Menon does not go so far as to critique the Bar Council for its overzealousness in laying down guidelines for law curricula, leaving law schools with little autonomy. Instead, the suggestion is that the way forward is for law schools and the Bar Council to collaborate with the common goal of improving legal education in India.

However, the first challenge is to examine what the goals of legal education are. Menon states—and this theme runs throughout the book—that the obvious goal of legal education is to equip students with the knowledge and skills necessary to enter the legal profession (p. 1). While the emphasis on certain practical training aspects, such as Trial Advocacy, indicates that the Bar Council is concerned with inadequacies in the current training, there is nothing to suggest that the goal of legal education is anything other than preparation for entry into the profession. In his 1982 essay 'Legal Education and the Reproduction of Hierarchy', Duncan Kennedy argues that law schools make efforts to 'guarantee that their students will fit themselves into their appropriate niches in the existing system of practice'.³ Law students often feel compelled to take up jobs in law firms because alternative work like legal services for the poor is presented either as 'dull' (albeit morally praiseworthy) or as incapable of offering the monetary compensation required to maintain a good standard of living. Even when law schools have clinical components, these are 'peripheral subjects' and become 'a kind of playground or finishing school for learning the social art of self-presentation as a lawyer'.⁴ While this book was evidently put together due to the lack of a comprehensive manual for the emerging cadre of clinical educators in India, Menon's approach contains a tacit recognition that legal

³ Duncan Kennedy, 'Legal Education and the Reproduction of Hierarchy' (1982) 32(4) *Journal of Legal Education* 591, 601.

⁴ *Ibid.* 597-598.

education is designed primarily to channel students into the market, and not to give them the tools for critical thinking.

Nevertheless, Menon's commitment to reforming legal education within this liberal framework and encouraging students to pursue social justice is a commendable effort. As he highlights, the law cannot be studied through doctrinal principles alone, in isolation from social contexts (p. 7). Interdisciplinary approaches are vital to legal education, especially to a socially relevant legal education. CLE, as a methodology, offers an opportunity for law students to cultivate new interests and skills, as well as learn the subject-matter in a more substantive way than the lecture method. Menon argues that CLE—if properly devised and implemented—would enable students to develop a more meaningful understanding of the law. Further, central to CLE is student involvement in 'real-life, law-related situations' (p. 12), which enables self-directed learning. As such, he notes that careful selection of clinical programmes is key to implementing the methodology. If students are mere observers and not active participants in the activities, clinical learning will be unproductive. Fieldwork, with effective supervision, is therefore crucial to clinical training.

Another understanding crucial to CLE is that learning does not flow exclusively from the teacher to the student; the clinical teacher is as much a participant in the learning experience as the student (p. 17). Appreciating this requires a shift in the traditional notions of teaching and pedagogical practices. Feminist activist and scholar bell hooks writes of feminist classrooms as spaces 'where students could raise critical questions about pedagogical process'.⁵ hooks challenges what she refers to as the 'banking system' of education where students consume information fed to them by professors.⁶ She suggests that to educate as a practice of freedom requires both the student and teacher to be active participants, rather than merely consumers. Thinking of the classroom as more than a physical space in a fixed location, and imagining it rather as one of the most radical spaces of possibility in the academy,⁷ is only feasible with an engaged pedagogy that empowers teachers and students equally. CLE, when properly integrated into the legal curriculum, offers just such an opportunity.

The first chapter ends with a fairly thorough account of how legal education was originally conceived of in India, why the need for CLE arose, and brief examples of clinical programmes at various institutions. As Menon states, prior to the 1960s, aspiring lawyers were required to complete an apprenticeship in the chamber of a Senior Advocate for at least one year before they could practice. This arrangement ensured that students received practical training, but it was unsatisfactory due to the failure to integrate it with university education (p. 17). Hence, the Bar Council of India decided to draft a new, uniform legal education curriculum, applicable for the entire country. Despite being drafted in consultation with universities, the curriculum did not deem practical training compulsory. Only some universities made efforts to bring CLE into the curriculum; however, these too had limited scope. For

⁵ bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Routledge 1994) 6.

⁶ *Ibid.* 5.

⁷ *Ibid.* 12.

example, Delhi University introduced the case method of teaching in the 1960s and set up a legal service clinic in 1969, but there was no attempt to integrate this clinic into the curriculum (p. 18). The clinic undertook some extremely important work, such as providing legal assistance to survivors of the Bhopal Gas tragedy. However, it was voluntary and not specifically structured as a form of clinical education as it lacked both effective supervision and an academic framework for self-directed learning (p. 19). In 1977, the Bar Council reexamined the status of legal education with a greater focus on practical aspects of lawyering, and parallelly two government-appointed expert committees submitted reports on legal aid, which called for more involvement from law schools (p. 20). These resulted in a transformation in the evolution of clinical programmes as part of the curriculum.

The second section of the book contains specific guidelines meant for law teachers to use as a guide to designing clinical courses and developing their pedagogy. Drawing from the vast experience of clinical teachers, the chapters in this section not only address questions of why certain skills are necessary, they also break down theoretical concepts (such as negotiation) into relevant components and provide guidelines for teachers on how to impart these skills as well as how to assess students. As noted in the preface, the contributors to this book hope that it ‘acts at least as an invitation to those who are still not employing clinical methods’ (p. vii).

Chapter 7, for example, explains negotiation theory in great detail and provides a framework for reflecting on teaching negotiation skills as well as the simulated negotiations themselves. Similarly, the role-plays described in Chapter 9 take readers through the entire process of conceptualising an exercise, instructing students on how to act out each character, and then debrief by pointing out their strengths and weaknesses. As Marlene Brun points out in the final chapter, at the time of this book’s publication, there was little literature available on assessment in CLE (p. 277). Scholarship on CLE has increased significantly in the last two decades, although the focus remains largely on the importance of CLE to social justice lawyering.⁸ While Brun discusses the difficulties in assessing clinical performances due to the difference between conventional and clinical teaching environments, Don Peters, in Chapter 12, writes of the ‘art’ of critiquing clinical performances. In this chapter, Peters describes different components of the process of critique, whether done in public or private, and offers suggestions to minimise the dangers of ineffective and insensitive critique.

Consistent feedback is integral to good clinical education, as it is to any aspect of learning. Peters identifies experiential learning as a three-step process consisting of preparation, action, and reflection. Without feedback, it is difficult to reflect on and change one’s behaviour. It is imperative to distinguish critique from negative criticism. Critique helps students reflect on their choices and correct them so that eventually, they are able to self-reflect and modify their approaches as they engage in lawyering

⁸ See Ajay Pandey, ‘Experimenting with Clinical Legal Education to Address the Disconnect Between the Larger Promise of Law and its Grassroots Reality in India’ (2011) 26(1) *Maryland Journal of International Law* 135; Frank S Bloch and MRK Prasad, ‘Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States’ (2006) 13(1) *Clinical Law Review* 165; Sital Kalantry, ‘Promoting Clinical Legal Education and Democracy in India’ (2015) 8(1) *NUJS Law Review* 1.

and learn from experience (p. 204). For critique to be effective, it must have inquiry, data sharing, and interpretation. It must unify these components with an element of improvisation that flows from the unique circumstances of each student and case; this is when it can ‘resemble ragas or jazz’ (p. 206). Peters states that critique involves much more than identifying a student’s effective or ineffective choices—it consists of guided, complex conversations that help identify areas for further work and contribute to the student’s learning. As self-directed learning is at the heart of CLE, the process of critique too must involve students taking an active role, especially at the stage of inquiry. This encourages them to analyse their performance and adds to the development of self-reflection skills.

Peters cautions clinical teachers against assuming that students are following the standard theories and actions set out at the beginning of the clinical training. Instead, by asking students to share their approaches at the outset of the critiquing process, teachers gain a more accurate picture of the situation and can offer feedback appropriately. A more balanced critique will also put students at ease and allay their anxieties, thus making them more receptive to the feedback. The second component of critique—data sharing—requires a more active role by teachers as it involves sharing specific observations—such as comments on the style of questioning during a stimulation—but directed at areas of improvement, rather than at the students themselves. The difference here is that the teacher comments only on specific acts in order to help students become more aware of their actions. Peters offers the example of an open-ended question that pushes students to think about their choices and identify errors themselves, which decreases the likelihood that they will take the critique personally or become defensive (p. 213). Finally, interpretation is also a collaborative process between the student and teacher and must be connected to observable evidence of the success or ineffectiveness of a student’s approach in order to enhance the learning experience. Peters points out that, wherever possible, feedback should include positive comments as it motivates further learning.

The insights and advice in the seventeen chapters of this book are immensely valuable to clinical teachers as well as to others interested in understanding the importance of CLE to legal education. Although this book does not challenge many of the underlying assumptions of legal education, it offers nuanced perspectives on the implementation of CLE and how to adapt it to the Indian context. Kennedy’s argument is that legal education is one of the causes of legal hierarchy.⁹ While reforming or reimagining legal education in India is a monumental (but necessary) task, clinical training that is fully integrated into the curriculum of law schools is one way to disrupt the hierarchy and position students as agents of their learning experiences rather than passive consumers. Clinical programmes allow more room for teachers to experiment with innovative pedagogies than conventional legal education does, and consequently to disrupt hegemonic patterns of knowledge production. More than two decades since the publication of this book, many law schools continue to treat CLE as a voluntary, peripheral activity.

⁹ Kennedy, ‘Legal Education and the Reproduction of Hierarchy’ (n 3).

However, for those invested in clinical legal education as a crucial part of the curriculum, this is an excellent handbook on how to design clinical programmes.

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