A Conception of Legal Education and Social Responsibility

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This article, written in the backdrop of social and political commotion, seeks to rediscover a lost dimension of legal education which has been eclipsed in the past. The authors put forward the idea that legal education can neither develop in isolation of the social realities nor can it be a bystander to the metamorphosis of society. Legal education has a moral imperative to shape society and ensure that transitions take place in an unruffled manner. In our view, the contemporary setup of legal education is hopelessly unequipped and unprepared for this quintessential task. Thus, in this article, we present an Indianised version of the Jeffersonian Vision of Legal Education based on social responsibility. The article chalks out the individual roles and responsibilities of the oft-ignored stakeholders in this quid pro quo arrangement.

I. Introduction

"The first thing we do," said Dick the Butcher in William Shakespeare's play, Henry VI, "let's kill all the lawyers."[1] The dialogue is placed in the midst of a class revolt by the subjects against their feeble king, Henry VI. The rebels, in the play, label lawyers as 'false caterpillars', a phrase meaning parasites and often used for capitalist oppressors, and express their desire to destroy the *Inns of Court* and burn all the records of the realm.[2] In this dialogue, Shakespeare has created an appealing harmony of satire and sorrow which perfectly depicts an ordinary man's frustration with lawyers and the labyrinth that the law is. Surprisingly, the dialogue which was written in the 16th Century echoes, with a certain precision, the opinion of the common populace towards law practitioners even five centuries

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1 William Shakespeare, Henry VI,Part 2, Act IV, Scene II, 481.

2 D. Kornstein, *Kill All the Lawyers? Shakespeare's Legal Appeal*, 26, Uiversity of Nebraska Press, (1st ed., 2005).

later. Even in developed jurisdictions like the United States, the public has been traditionally suspicious of the legal profession.[3]

One globally tested *modus operandi* to extinguish this dislike towards lawmen is reorienting the outlook of legal education.[4] Though this step is often dismissed out-rightly as a trite and overworked cliché, in our opinion the connection between the legal profession and legal education has more substance than is usually accepted. In the last analysis, the law is what the lawyers are, and the lawyers are what law schools make them.[5] For illustration, in the above-cited example of the United States, amelioration of the quality of legal education has played a decisive role in accentuating the prestige of the profession in the country and eradicating the 'traditional suspicion' to a great extent.[6] Legal education now occupies a high niche among learned curricula. It is on an elevated plane and teachers of law enjoy high respect, perhaps as high as, or higher than those of any other field of instruction.[7]

This article has the modest object of outlining the responsibilities that legal education has towards the society, which includes improving the quality of legal profession, but is not anyhow limited to it. Albeit, the topic is certainly perennial and perhaps a mundane one, this article seeks to approach it in a different way. Through this article, we seek to challenge the conservative conception that the only relationship between the society and legal education is through legal professionals, through which, legal education manifests and discharges its societal obligations. In this article, we contend that apart from law professionals, law students and law professors, in the capacity of academicians too are stakeholders in the process. They have certain distinct and discernible responsibilities towards the society, which form the subject matter of this article.

II. Nature of Legal Education: the Social-Professional Divide

Legal education, particularly in India, is faced with a dilemma in prioritizing between promoting the social justice agenda of a polity or equipping women

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3 Q. J. Reynolds, *Courtroom*, Farrar, Straus and Giroux (1st ed., 1999) *cited in* J.K. Bhavnani,"Legal Education In India", 4 Journal of Indian Law Institute 167, 171 (1962).

4 W. Pincus, "Reforming Legal Education", 53(5) American Bar Association Journal, 436-437 (May, 1967).

5 B.H. Barton, *The Lawyer-Judge Bias in the American Legal System*, 273 (Cambridge University Press, New York, 2011) (citing a letter from Felix Frankfurter to Mr Rosenwald, dated 13/5/1927).

6 J.K. Bhavnani, "Legal Education in India", 4 Journal of Indian Law Institute 167, 171 (1962).

7 The Report of the University Education Commission(December 1948-August 1949), 1 Ministry of Education, Government of India, 224 (1st reprinted edn., 1962), available at <https://www.educationforallinindia.com/1949%20Report%20of%20the%20University%20Education%20Commission.pdf>, last seen on 27/12/2019.

and men with skills necessary for the profession. In the range of subjects studied in universities, there are some like Mathematics and Philosophy which are studied for their value as cultural disciplines; while others like Medicine and Engineering have a definite vocational end in view. Law stands midway between these two groups. There are some who study the law as part of liberal education, and others do so because they wish to enter the legal profession after graduation.[8] Thus, both the objects, namely, developing social consciousness and skilled professionalism are within the realm of legitimacy for the legal discipline.

Lawyers have more often than not been in the vanguard of a country's progress and have always zealously guarded human liberties and the rule of law.[9] At the same time, it is equally important for a person trained in the law to possess the requisite 'professional' skills to analyze legal issues, effectively represent the case of his or her client before adjudicating authorities, and efficaciously articulate his or her views before any audience. The nature of the subject is such that it seeks to prepare students for both social and professional life, which for a law graduate can often be inexplicably entangled. While these two objectives are not necessarily diametrically opposite to each other, the conditions in which the Indian legal education system has evolved historically, make achieving them simultaneously a difficult task.[10] The ideal state of legal education is that institutional alchemy in which a perfect balance is struck between the needs of students to be professional enough to be able to earn handsomely on graduating, and the requirement of being sufficiently trained to serve the society.

III. Historical Background: from Law Colleges to Law Schools

In the initial years after independence, legal education was deliberately made cheap and conveniently accessible.[11] Law colleges at the time proved to be advantageous for the diffusion of legal knowledge. However, at the same time, the quality of professionals produced by them suffered heavily.[12] It would have been most desirable to fulfil the second object while not receding from the first. Professor Upendra Baxi lamented the sad state of the Indian legal education and argued for reforms that would keep the bigger picture in mind, that is, educating students about the challenges faced by the nation, a broader perspective that

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8 *Ibid* at 225.

9 266th Law Commission of India Report, The Advocates Act, 1961: Regulation of Legal Profession XII, 34 (March, 2017), available at <http://lawcommissionofindia.nic.in/reports/Report266.pdf>, last seen on 27/12/2019.

10 *Supra* note 7 at 225.

11 *Supra* note 6 at 172.

12 *Ibid*.

is commonly taught in advanced countries.[13] In his view, the predicament of the Indian independence era legal education structure was that it was 'insufficiently technocratic', and hence the need of the hour was a sound technocratic legal education, which was socially relevant.[14]

With the introduction of the American Law School (National Law University) concept, instead of being in the middle, the pendulum has tilted entirely from the social justice agenda project towards a legal technocrat project. Dr. N. R. Madhava Menon, the progenitor of the integrated five years law course in the country, admitted the fact that one of the original objectives of setting up of National Law Schools, that is, to enlarge access to justice and improve the quality of education, had not been achieved to a satisfactory level.[15] The focus of the curriculum at the National Law Schools is by and large geared towards the private sector, supplying trained graduates for corporate, legal and managerial jobs.[16] A stark reality is that students graduating from law schools presently have equal socio-political value as any engineering graduate would have. The words of Professor Upendra Baxi now seem prophetic when he reasoned that a peculiarly American pedagogy cannot simply be successfully transplanted in India. There are several intellectual and material prerequisites for any version of American case-method, which are simply lacking in India.[17] However, extending credit where it is due, the law school model has largely been successful in improving the quiver of skill sets that law students now possess. At the same time, it must be noted that the model has more or less failed in achieving the object of providing students with a socially responsive legal education.

IV. A Conception of the 'Good' Legal Education

The aims and objectives that we have demarcated for this article in the opening part require, for they presuppose, a prior conception of what the 'good' legal education model must look like; what it must do; and what responsibilities it might attach to various stakeholders. Without this, those aims and objectives would lack a framework and context in which they can be developed and achieved.[18] In this article, we propose an updated and Indianised version of the

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[13] L. Dasgupta, "Reforming Indian Legal Education: Linking Research and Teaching", 59(3) Journal of Legal Education 432, 439 (February, 2010).

[14] Professor U. Baxi, "A Note Towards a Socially Relevant Legal Education: A Working Paper for the UGC Regional Workshop in Law 1975-1976", 5(1-3) Journal of the Bar Council of India, 6, 9 (1976).

[15] Professor N.R. Madhava Menon, "The Transformation of Indian Legal Education: A Blue Paper",Harvard Law School Program on the Legal Profession, 8 (2012), available at <https://clp.law.harvard.edu/assets/Menon_Blue_Paper.pdf>, last seen on 27/12/2019.

[16] *Ibid*.

[17] *Supra* note 14 at 14.

[18] *See*, Richard Wasserstrom, "Legal Education and the Good Lawyer", 34(2) Journal of Legal Education 155, 156 (June, 1984) (Something similar to what Wasserstrom termed as "a conception

sophisticated 18th century *Jeffersonian Vision of Legal Education*, which envisioned education in law as being aimed at developing law graduates who can give direction to society by placing public interest at par, if not over their private interest.[19] We must realize, more than we have admitted heretofore, that public responsibility is an aspect of being a lawyer.[20] Legal education has the additional responsibility of preparing citizens for public leadership roles by imparting to them values that are indispensable in a democracy.[21]

In a developing country like India, where the length of the constitution runs beyond that of an ordinary textbook,[22] it goes to the very fundamental objective of legal education to aid the process of diffusion of legal knowledge to ordinary students with a non-legal background, facilitate the eradication of inequality of status and opportunity and ensure justice to all in social, political and economic spheres. These objectives cannot be sacrificed at the altar of skill development and professional efficiency.[23] In the opinion of Mr. Justice Shelat, "a law school should train the lawyer not merely in solving the problems of the individual clients, but of the society too, in which he lives."[24]

Another integral part of our conception of good legal education is the introduction of a *rhetorical method* to the pedagogy. Put simply, contemporary legal education is too text bound and approaches the text in a manner that is far too circumscribed and simplistic.[25] In response to the question, "how does legal education fail society?" Francis J. Mootshad replied that legal education suppresses the law's rhetorical roots and this failure leaves the students unprepared for the rhetorical demands of the future that they are destined to encounter.[26] Law is

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of the good lawyer").

19 D.M. Douglas, "The Jeffersonian Vision of Legal Education", 51(2) Journal of Legal Education 185, 193(June, 2001).

20 R.E. Mathews, "Legal Education and Responsible Leadership",4(3) Journal of Legal Education 249, 250 (Spring, 1952).

21 *Ibid*.

22 Professor T. Ginsburg, a Leo Spitz professor of International Law, University of Chicago, points out this fact in response to a question in an interaction relating to the lack of Constitutional education in India. *See How to Save a Constitutional Democracy: Justice D.Y. Chandrachud & Tom Ginsburg*, 22/10/2019, available at <https://www.youtube.com/watch?v=smJ99cdPrns>, last seen on 27/12/2019.

23 Indian Medical Assn. v. Union of India, (2011) 7 SCC 179: AIR 2011 SC 2365 (The Hon'ble Supreme Court of India observed that Art. 14 does not provide for mere formal equality, but also equality of status and opportunity. The goals of nation-states is the securing, for all its citizens, a fraternity assuring the dignity of the individual and unity of the nation. While justice,—social, political and economic—, is mentioned in only Art. 38, it is recognised that there can be no justice without equality of status and opportunity).

24 S.K. Agrawala, "All India Seminar on Legal Education",14 Journal of the Indian Law Institute 74, 75 (January-March, 1972).

25 F.J. Mootz III, "Vico, Llewellyn and the Task of Legal Education", 57 Loyola Law Review 135, 135 (2011).

26 *Ibid*.

inherently a specialized rhetorical discourse but unfortunately, contemporarily too many stakeholders regard it as a system of 'given' narratives. Law is often misconstrued as a static concept instead of a dynamic one under constant construction.[27] There can be a twin-pronged explanation of this 'anti-intellectualism'. First, a lack of imagination permeates through the entire Indian legal system. Excellence exists only in the form of *Al Jazeera* (Arabic for 'the island'), that is, more in the form of an exception instead of the norm. Second, there is a general desire in grained in 'our' minds for the law to be definite, objective and enduring.

It must be clarified at the very outset that, it is not our contention that a return be made from the *Cartesian method* in favour of ancient wisdom. But instead, we favour embracing rationalism along with the ancient rhetoric. Eighteenth-century Italian philosopher Giambattista Vico argued that it is only in rhetorical engagement that one can deal with questions that admit of no definitive answer.[28] Indeed, the law must purport to seek certainty, but when this goal is understood to mean truth in the sense of the rational *Cartesian method*, it becomes a debilitating straitjacket for legal practice.[29] Such pedagogy gives rise to *practical-theory divide* which has reduced legal education into an antique that has no significance outside the classroom in the legal profession or real world, a role that was never envisaged or contemplated for the discipline of law or legal education in modern times. American scholar Karl Nickerson Llewellyn, had emphasized that legal education must prepare students to lead a full and enriching professional life by educating them about the social context in which law operates rather than just teaching the abstract rules.[30] Llewellyn insisted that the study of law must be undertaken as a 'liberal art' if students are to bring critical insights into legal practice, grounded in a combination of technical proficiency and broader learning.[31]

V. Role and Responsibilities of 'Other' Stakeholders

As already discussed in the introductory paragraphs, the primary motive of this article is not just to suggest abstract and theoretical improvements but to ascribe certain tangible and definite duties to each stakeholder of legal education.

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[27] J.C. Hutcheson, Jr., "This Thing Men Call Law", 2(1) The University of Chicago Law Review 1, 12-13 (December, 1934) (In this article, the author takes on the task of defining law in its most elusive and enticing phrases, its ever-changing content under the steady pressure of the changing life it serves and rules).

[28] GiambattistaVico, *On the Study Methods of Our Time*, 863, 870-872 (Elio Gianturco translation, Cornell University Press, 1990).

[29] *Supra* note 25 at 137.

[30] K.N. Llewellyn, "On What is Wrong with So-Called Legal Education", 35(5) Columbia Law Review 651, 668-671 (1935).

[31] K.N. Llewellyn, "The Study of Law as a Liberal Art, Lecture (Delivered in 1960)", 375, 376 in *Jurisprudence: Realism in Theory and Practice* (K.N. Llewellyn, Revised edition, 2008).

This would provide quintessential assistance in achieving the goals of studying law. While, there are three stakeholders in the teaching of law, namely, law practitioners, law teachers, and students, this article will exclusively focus on the role of law teachers and law students, since much literature has already been produced about the responsibility of law professionals.[32] Hitherto, it is the role of the ones who teach law and that of the students, that have been eclipsed and have received almost negligible attention. The succeeding sections outline a few of their responsibilities which are integral to our socially responsible model of legal education. In the succeeding paragraphs, the phrases *law teachers* and *law professors* have been used synonymously.

A. Law Professors

In the words of the University Education Commission (1949) headed by Dr. S. Radhakrishnan, an ideal teacher is the one who arouses the interest of the pupil in the field of study for which he is responsible. He has not merely to convey factual information and the principle generalizations that accrue from them, he has to stimulate the spirit of enquiry and criticism, so that the mind may acquire the habit of independent and unbiased judgment.[33] In our opinion, in the case of law professors, this ideal state is qualified by certain caveats, the fulfilment of which is *sine qua non.* The next section explains and develops upon these material prerequisites.

a. Continuous Research

The first caveat or pre-requisite in being the ideal teacher of law has been flagged in the Commission's report of 1949 itself, that is, the requirement of continuous research. The report cautions that no teacher who is not in touch with the latest developments in his subject will ever succeed in inspiring youth with that love of truth which is the principal object of higher education.[34] The report further notes that

> *"No teacher who is not a fellow traveler in this exciting pursuit, and who stands merely watching others misses the adventure which is so potent a stimulus of thought. For the quest for new knowledge is not merely an additional casual university which he may if he so choose to omit, it is an*

[32] For example, *see generally* L. M. Hager, "The Role of Lawyers in Developing Countries", 58(1) American Bar Association Journal 33 (January, 1972); Dwight D. Eisenhower, "The Role of Lawyers in Promoting the Rule of Law", 46(10) American Bar Association Journal 1095 (October, 1960); S. D. Ross, "The Role of Lawyers in Society", 48(1) The Australian Quarterly 62 (March, 1976).

[33] The Report of the University Education Commission (December 1948-August 1949), 1 Ministry of Education, Government of India, 58-59 (1st reprinted edn., 1962).

[34] *Ibid*, at 59.

> *essential part of his function and may he neglect only at the peril of intellectual stagnation."*[35]

Hence, not just classroom excellence, research in legal pedagogy has another role to play, which is to address the numerous challenges relating to law and justice.[36] Law is a dynamic subject and it is important that its interpretations change with time to confront the challenges posed by the political, social, and economic transformation in the country. The role of law schools in India is paramount in keeping track of these changes.[37] The onus to bridge the *practical-theory divide* falls squarely upon the law professors of the country. For illustration, Indian society is facing deeply institutionalized problems relating to the administration of justice because of extraordinary delays in justice delivery,[38] poverty, corruption, favouritism, and nepotism.[39] Law teachers must come up with suggestions to deal with the real issues that have the potential to reduce justice to a façade.

Harry T. Edwards, an American jurist and chief judge *emeritus* of the United States Court of Appeals for the District of Columbia Circuit in Washington, while sharing his experience about a conference in NYU Law School on the 'crisis in volumes in federal courts' made some observations pertinent to our discussion. In his view, academicians at law schools do not really understand the problem facing the judiciary, or for that matter, those facing other components of the legal profession.[40] At the end of that conference, there was a clear disjunction between the academic participants and all other conferees. All the attempts by the Judges to convince the academics of the problem of judicial overload were in vain.[41] The reasons behind this could either be sheer indifference or hopeless naivety of the academic community. For legal education to become socially receptive and responsive by itself, this indifference and/or naivety needs to be shed. Law schools represent the profession's greatest problem but they also constitute the profession's greatest opportunities.[42] Without the devoted co-opera-

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35 *Supra* note 33.

36 C. Raj Kumar, "Legal Education: Globalization, and Institutional Excellence: Challenges for the Rule of Law and Access to Justice in India", 20(1) Indiana Journal of Global Legal Studies 221, 236 (2013).

37 E. Chambliss, "Two Questions for Law Schools about the Future Boundaries of the Legal Profession", 36 The Journal of the Legal Profession 329, 347-348 (2012).

38 S. Kaushik and A. Singh, "All India Judicial Services: Problems and Prospects", 11 NUJS Law Review 4 (2018).

39 V.E. Anand, "Corruption in Judiciary: Time for Action", The Tribune (Chandigarh, India), 3/12/2010, available at <http://www.tribuneindia.com/2010/20101203/edit.htm#6>, last seen on 27/12/2019.

40 H.T. Edwards, "The Role of Legal Education in Shaping the Profession", 38(3) Journal of Legal Education 285, 285 (September, 1988).

41 *Ibid.*

42 "'…In the Spirit of public Service': A Blueprint for the Rekindling of Lawyer Professionalism", American Bar Association, Commission on Professionalism, 16 (Chicago, 1986).

tion from academia, these challenges will continue to haunt the judicial setup and make justice an illusion.

This suggestion cannot work in isolation and would have to be supplemented with other incidental changes to be pragmatically possible. A big predicament in the research endeavour of professors is the worrisome student-teacher ratio in India (24:1). Low student-teacher ratio indicates the burden on teachers of teaching multiple students. As a result, overburdened teachers are not able to pursue any research initiative effectively.[43] Also, worth discussing is the workload prescribed by the University Grants Commission (UGC) for faculty members, which in practice does more harm than good. The UGC Regulations make it mandatory for teachers in full employment to be available in the University for at least *five hours* daily and for *forty* hours in a week.[44] Such a hectic schedule does not leave any substantial time for professors to carry out any independent research. The National Knowledge Commission highlighted this problem and suggested some remedial measures which included rationalizing the teaching load to leave sufficient time for research, and providing sabbatical leave to faculty to undertake research.[45] In our view, the implementation of these recommendations forms a condition precedent before law professors start to engage in research on contemporary problems.

b. Participation in Policy Making

It is in the best interest of the nation and society that the wisdom that law professors acquire in the process of reading, research and teaching be put to use. Law instructors are best suited for the job of legal policy-making because of their adept and intellectual position in the discipline. They always have an ear to the ground in the form of the connection with the students, while the other is affixed to intellectual circles. Law professors are naturally cut out for the job of legal policy making, and their absence from the scenario is conspicuous. This has led to the creation of a void in legal policy-making which has until recently been seen to be a permanent state of affairs. However, the last decade has seen mushrooming of private think tanks and trusts, taking upon themselves the responsibility of advising the government and conducting sponsored legal research.

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[43] Ministry of Human Resource Development, Government of India, Education Quality Upgradation and Inclusive Programme (EQUIP): Five Year Vision Plan 2019-2024, 17, available at <https://sndt.ac.in/pdf/downloads/circulars/2019/equip-report.pdf>, last seen on 27/12/2019.

[44] Regulation 15.1, UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018, available at <https://www.ugc.ac.in/pdfnews/4033931_UGC-Regulation_min_Qualification_Jul2018.pdf>,last seen on 27/12/2019.

[45] The National Knowledge Commission: Report to the Nation(2006-2009), 80 (March, 2009) available at <https://www.aicte-india.org/downloads/nkc.pdf>, last seen on 27/12/2019.

These voluntary policy centers were established in recognition of the 'need' to have legal research organizations dedicated to the rule of law and constitutional values.[46] Their functions include doing legal research to make better laws and improve governance for the public good.[47] The purpose of the Center for Law and Policy Research (CLPR), in their view, is to equip citizens to better evaluate their own socio-political contexts and improve access to justice to marginalized groups.[48] Another such think-tank, VidhiCenter for Legal Policy (Vidhi) works with ministries of the Government of India and State Governments, as well as other public institutions, providing research and drafting support at various stages of law-making.[49] It is by no means our argument that such assistance to government in policy making and drafting should be under the exclusive domain of legal academicians. Instead, the point that is sought to be made is that the formation of such think-tanks is conclusive evidence of the failure of legal academicians in taking the charge in this vertical.

In the United States, there is a permanent Office of Law Revision Counsel. Tasks integral to the Office include preparing a consolidated Code of general and permanent laws of the United States,[50] and legal policy-making which includes determining new laws.[51] Thus, in the United States, legal academicians lend a hand in shaping the United States Code and also contribute to its interpretation through research and publications.[52] Dr. C. Raj Kumar highlights the standalone example of an initiative in India that had contribution from academic circles, that is, *The Restatement of Indian law on Legislative Privileges, Contempt of Court and Public Interest Litigation*, which was drafted with the contribution of 'distinguished jurists' along with other persons.[53] However, the travesty is that such instances are rare in Indian legal history. The participation of academia in policy-making can certainly play an important role in making policies more citizen-centric and socially pertinent.

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[46] About Us, Our Story,Centre for Law and Policy Research (CPLR), available at <https://clpr.org.in/our-story/> last seen on 27/12/2019.

[47] What do We do, VidhiCenter for Legal Policy, available at <https://vidhilegalpolicy.in/about/> last seen on 27/12/2019.

[48] Purpose; Our Story, Center for Law and Policy Research (CLPR), available at <https://clpr.org.in/our-story/>, last seen on 27/12/2019.

[49] *Supra* note 47.

[50] About the Code, Office of the Law Revision Counsel, United States Code, available at <https://uscode.house.gov/about/info.shtml>,last seen on 27/12/2019.

[51] Editorial Reclassification, Office of the Law Revision Counsel: United States Code, available at <https://uscode.house.gov/editorialreclassification/reclassification.html>, last seen on 27/12/2019.

[52] *Supra* note 36 at 239.

[53] Press Information Bureau, Government of India, Ministry of Law and Justice, Press Release, available at <https://pib.gov.in/newsite/erelease.aspx?relid=76582>, last seen on 27/12/2019.

c. A Critique of Critical Legal Studies (CLS)

A substantial portion of legal researchers contemporarily focus on or devoutly study Critical Legal Theory (CLS). This, in our view, is a disturbing trend that has the potential to affect legal studies to its core. To understand the concern that is sought to be raised, it is necessary to first briefly understand the nature of CLS. The Frankfurt School of Critical Theory is fundamentally a form of the postmodern theory of law, which studies law philosophically within the scope of the postmodern theoretical outline.[54] It basically views modernist theories of law as incoherent, descriptively inadequate, or normatively problematic, and incapable of securing freedom, equality, and justice.[55] According to Ian Duncanson, there are two methods of being critical; one way is to engage in the process of recognizing faults, and a second way is to refuse to accept objects of knowledge as unproblematic.[56] It is in the latter sense of critique that theoretical frameworks are questioned.

The adherence of CLS scholars to the latter understanding of 'critique' drawn out by Duncanson is deeply problematic. For the logical thing to be done by any theorist that criticizes another is to provide an alternative perspective. However, CLS is basically directed at 'deconstruction' and while criticizing all modernist theories of law, it provides no alternative vision of law.[57] This approach is problematic because it does not in any manner help to fulfil the fundamental purpose of the law, which is to better serve society. To simply yield that law is politics, is to yield that law has no role to play in securing justice or equality, and this is unavailing and pointless to say the least. CLS has shifted conventional focus away from asking how law can regulate violence to showing how the very existence of law is violence.[58] Such scholarship does no more than justify the violence of the law. It itself becomes the legitimizing force for all contemporary inequities perpetuated via law.[59]

Such conception of legal theory can have no position in the *Jeffersonian model* that is proposed in this article; because this model is based on the postulate that law is a vehicle for the betterment of the society. The overemphasis of CLS on 'deconstruction' leads to an unimaginative and somber reading of legal texts. This emphasis on *semiotics* allows these thinkers to make no serious effort

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[54] I. Benitez, *A Discussion of Critical Legal Studies' Claim of Legal Indeterminacy, Bachelor Thesis*, GRINVerlag 6 (1st edn., 2015).

[55] D.A. Reidy, *Postmodern Philosophy of Law, The Philosophy of Law: An Encyclopedia*, Vol. 2, 668, (Christopher Barry Gray, 1st edn., New York: Garland Publishing Co., 1999).

[56] I. Duncunson, "Legal Education and the possibility of Critique: An Australian Perspective", 8 Canadian Journal of Law and Society 59, 60 (1993).

[57] A. Dhanda and A. Parashar, *Decolonisation of Legal Knowledge*, XVIII (1st edn., 2009).

[58] A. Sarat, *Law, Violence, and the Possibility of Justice*, 8 (1st edn.,Princeton: Princeton University Press, 2001).

[59] *Supra* note 57.

at exploring the alternative possibilities of what adjudication could be.[60] For illustration, Stanley Fish argues that whichever interpretation finds acceptance in the relevant community becomes the law.[61] However, R.L. West has called Fish out, as an understanding of judicial pronouncements and legal texts as representing conventional beliefs leaves no room for criticizing them or ensuring that 'progressive' interpretations are more acceptable than the ones which are acceptable to society.[62] The function of law is not merely descriptive and it has a normative character too. The repercussions of any criticism which is only descriptive in nature, simply becomes a part of the problem or even its justification. In the view of Foucault and Deleuze, the function of 'theory' is to destabilize power, but CLS seems to falter on that touchstone to be called as a theory at all, for non-fulfilment of this 'critical' function. Such scholarship is irrelevant to the cause of social justice and fairness and hence, it cannot find any place in the prospective model proposed by us, for every element of the model has to be informed by a 'normative function.'

A solution to the reactionary implications of CLS has been suggested by Dhanda and Parashar, who suggest coupling knowledge with responsibility. They argue that it is imperative that every legal scholar carries the responsibility of being self-reflective about their role in creating and maintaining the contemporary social structures.[63] This approach of attaching responsibility to legal academicians is what is desired, for a critique must be a responsible critique; otherwise, it is merely a self-serving activity of intellectuals, who actually can do nothing to change the unjust *status quo*.[64]

B. Law Students

Another important, albeit often ignored, stakeholder in legal studies are law students. Quantitatively, law students are the biggest stakeholders who after the completion of their legal education enter into the profession of law (if not all, then most of them). Although, after entering the profession their actions necessarily affect the society because of the nature of the profession which has already been highlighted above, they can also play a vital role during their incubation period. Also, many law professionals who are willing, are not able to devote significant time to socially beneficial activities which may not necessarily be economically lucrative because of economic constraints, since entering the profession brings certain responsibilities and expectations, and the stark reality of earning

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60 *Ibid* at XIX.

61 *Ibid.*

62 R. L. West, "Adjudication is not Interpretation: Some Reservations about the Law-as-Literature Movement", 54 Tennessee Law Review 203, 219 (1987).

63 *Supra* note 57.

64 *Supra* note 57 at XXII.

a living, all of which do not affect law students.[65] The elongated length of the course of law which previously was 3 years, but since the inception of an integrated law course, has extended to 5 years, leaves ample time in the hands of students to engage in meaningful activities. Some such activities are discussed in this part.

a. Public Interest Litigations (PIL)

Swapnil Tripathi, an erstwhile 4th year student of National Law University, Jodhpur filed a Public Interest Litigation (PIL) against the Rule which denied students interning with advocates and counsels entry into SC premises on miscellaneous days. The relief sought was striking down of the Rule as it denied the students' 'right to know' or in the alternative, live streaming of the proceedings of constitutional matters of national importance having an impact on the public at large. The petitioner, Swapnil Tripathi, along with Senior Advocates of the Court argued before the Hon'ble Court in person. The court while placing reliance on § 327 of Cr.P.C and practices in vogue in constitutional courts of other nations, agreed to live streaming of important cases, subject to certain conditions.[66] The said relief was found to be in public interest, and in consonance with the principle of open courts. When asked about the said step, Swapnil opined that law students are *equally* members of the legal fraternity and thus, share an obligation to take a stand for causes, in challenging notions and practices, which contravene the principles of our constitution.[67] Our views are more or less in consonance with this view, about the role and responsibilities of law students.

This is not a standalone instance and there have been other instances too, where law students have taken the lead on social issues. For illustration, few law students wrote a letter to Chief Justice of India in the matter relating to the felling of trees in *Aarey* Colony.[68] The court took cognizance of the matter and stayed the felling of the trees. Another PIL was filled by students of NLU, Gandhinagar challenging the validity of §9 of the Hindu Marriage Act, 1955 which allows 'restitution of conjugal rights'.[69] A 3 judge bench of the Supreme Court has agreed to hear the challenge. It is in the best interest of society and

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[65] E.C. Gerhart, "A Noble Profession: A Panorama of Law Office Practice",41(3) American Bar Association Journal 213 (March, 1955).

[66] Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639: AIR 2018 SC 4806.

[67] "Swapnil Tripathi on His Experience of Arguing in the Supreme Court against the Bar Imposed on Interns in Entering Court Rooms", The SCC Online Blog,available at, <https://www.sconline.com/blog/post/2019/05/01/swapnil-tripathi-on-his-experience-of-arguing-in-the-supreme-court-against-the-bar-imposed-on-interns-in-entering-court-rooms/>, last seen on 26/12/2019.

[68] "Aarey Forest Protests: Student Delegation Write to CJI RanjanGogoiSeeking Intervention", India Today, available at <https://www.indiatoday.in/india/story/aarey-forest-protests-student-delegation-write-to-cji-ranjan-gogoi-seeking-intervention-1606736-2019-10-06>,, last seen on 6/10/2019.

[69] S. Rautray, "SC to Decide Validity of Provisions Governing Restitution of Conjugal Rights", The Economic Times, available at <https://economictimes.indiatimes.com/news/politics-and-nation/

social spirit within students that such steps are promoted by an institutionalized mechanism. Such a mechanism can be installed at the university and law school level, in providing guidance and mentoring such public spirited students.

While we write about this, certain law schools already have this policy in place. These law schools have 'social lawyering'[70] and 'Public Interest Lawyering'[71] like schemes run by their Legal Aid Clinics (LAC) under their Clinical Legal Education Program. The students involved with the Legal Aid and Service Clinic (LASC) at Law School, BHU, in furtherance of this idea, filed a PIL in the Allahabad High Court for enforcing the rights of prisoners in jails where the implementation of the Supreme Court judgment in *Inhuman Conditions in 1382 Prisons*, *In re*[72] was sought.[73] Such programs should basically be aimed at capacity building of public spirited students towards using the law and legal institutions as a means to bring about social change. Such activities, in fact, do exponentially ameliorate the possibility of students taking up such initiatives after entering the profession. In other law schools too, such initiatives have been taken but there is no permanent mechanism in place, which is the need of the hour. It is desirable that such schemes are promoted administratively and are allocated separate funds for proper functioning in all law schools.

b. Clerkships and lower Courts

The problem of the unprecedented backlog in lower courts in India is an open secret. Law commission has already aired its views that the current judges' strength is 'completely inadequate' for it.[74] This, in turn, is leading to a dilution of the constitutional guarantee of timely justice and erosion of the rule of law. While, the Commission itself, and other scholars have suggested various methods,

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sc-to-decide-validity-of-provisions-governing-restitution-of-conjugal-rights/articleshow/68279688.cms>, last seen on 6/03/2019.

70 "Social Lawyering by Legal Aid Centre through Public Interest Litigation", New Law College, Free Legal Aid Centre, available at <http://bvpnlcpune.org/law/law/PIL.html>, last seen on 27/12/2019.

71 "Public Interest Lawyering and Clinical Legal Education", Lloyd Law College, available at <https://www.lloydlawcollege.edu.in/center-of-excellence/pil.html>, last seen on 27/12/2019.

72 (2017) 10 SCC 658.

73 Legal Aid and Service Clinic Law School B.H.U v. Union of India, Criminal Writ-Public Interest Litigation No. - 21033 of 2017 (In this Writ Petition, the Clinic is seeking implementation of the eleven specific directions of the Supreme Court of India issued on 15/9/2017 in the *Inhuman Conditions of Prisons case*).

74 245th Law Commission of India Report, Arrears and Backlog: Creating Additional Judicial (Wo) manpower, 1 (July, 2014), available at <http://lawcommissionofindia.nic.in/reports/report245.pdf>, last seen on 27/12/2019;*see also*, e.g., National Court Management Systems: Policy and Action Plan 34 (September 2012), at ¶ 5.3<https://main.sci.gov.in/pdf/NCMSP/ncmspap.pdf>, last seen on 25/06/2020.

like increasing the number of judges,[75] alternate dispute settlement mechanisms,[76] and other similar methods, implementation of such tools would be in its due course, thus taking the substantial time. The untapped resources that instead can be utilized immediately are students of law. A short term clerkship like programme can be put in place in lower courts, with its duration varying between a year to six months. Under it, 4th year or 5th year students can be made eligible to work in District and Sessions Courts assisting judges after passing a selection process. Necessary changes in the academic curriculum can be made to fit the model in.

Such an arrangement is pragmatic and can be justified, as it is beneficial for all the participants. Students get to gain knowledge about the practical functioning of lower courts, which are by far most distant from theoretical law. Such a step would help further bridge the *practical-theory* divide by synchronizing legal education better with the profession. Such training programs are already placed and made part of the curriculum of medical students and there is no reason why it cannot be implemented in the legal curriculum too. The Courts too would certainly benefit from the new age of law students who are masters of technology and online research, assisting the court in research, writing judgments and other law-oriented work, where the assisting staff of judges are not of particular use. It would be nothing less than a blessing to lower Courts. Also, the appropriateness of such programs cannot be in question, when there are already similar programs at the High Court and Supreme Court level.[77] In such circumstances, the question that is needed to be asked is, *why not have law clerks and research assistants at lower courts too?*

c. Equal Treatment Amongst Law Schools

In our view, to extract the maximum returns out of law students of the country, *first*, the 'elite-mediocre split' amongst the law schools in India needs to be removed. There are approximately 1600 law schools in the country. A majority of those are struggling to ensure even a basic level of competence in the law whereas the 'top law schools' seem to be thriving.[78] To remedy the situa-

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[75] Imtiyaz Ahmad v. State of U.P, (2012) 2 SCC 688: AIR 2012 SC 642.

[76] V. Vaish, Alternate Dispute Resolution (ADR) in India, Mondaq, available at <https://www.mondaq.com/india/court-procedure/654324/alternate-dispute-resolution-adr-in-india>, last seen on 22/06/2019. (The author enumerates the example of statutory measures like Legal Services Authorities Act, 1987 establishing Lok Adalats;the Arbitration and Conciliation Act, 1996, § 89; Code of Civil Procedure, 1908 (amended in 2002) which seek to promote conciliation, mediation as pre-trial settlement methodologies for early resolution for effective resolution of disputes).

[77] The Supreme Court has framed a scheme for engaging Law Clerks-cum-Research Assistants on short-term contractual assignments in the Supreme Court of India, available at <https://main.sci.gov.in/pdf/cir/2015-01-08_1420713261.pdf, last seen on 27/12/2019.

[78] *Vision Statement 2011-2013*, Bar Council of India, available at http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13/, last seen on 27/12/2019.

tion, the need of the hour is to work on a macro level-law school ameliorations programme instead of having a narrow focus on limited premier institutions of law. The internet has initiated a knowledge revolution and it would only be fair to attempt to make all law students a beneficiary of this knowledge revolution. Research friendly libraries should be established, internet facility and access to legal databases must be made available to students of these law schools, who are still struggling even for the basic academic amenities. Modernization of few elite institutions cannot lead to the emancipation of legal education.

VI. Conclusion

This article is a humble attempt to bring about the renaissance of a socially active legal education in India. Of late, the primary focus of our legal system has shifted towards manufacturing 'law graduates' according to the demands of globalised, capitalist markets. The article has argued throughout that an element integral to legal education is that of 'social responsibility'. Abdication of this quintessential duty leaves a void in the social fabric that can have catastrophic consequences. Legal education coupled with the legal system, is the society's vent for alternative views and opinions and to blow off the steam which otherwise has the potential to crack open the society. In case of choking of this vent, leakages are bound to arise in the machinery from places that are not meant to act as egress.

The desirable thing to do to bring about such a renaissance in Indian legal education, is to introspect and smoothen off the existing rough edges in the ways suggested in the preceding sections,because it is not desirable to shift the responsibility completely over to legal practitioners when there are enough capable shoulders to take on the responsibility. Legal education does not have to be confined to classrooms as unlike other disciplines, the law is not just about knowledge, which is exclusively the preserve of law professionals. The law also gives 'rights' to those people who have no knowledge about law or those rights. They too can claim these rights with equal vigor as someone who knows about them. Is this not an oxymoron of law? How can someone claim something that she does not know about? This difficulty and ignorance of the law has to be obliterated and this task squarely falls upon legal education system.

The need of the hour is for law enforcers, policy-makers, lawmakers, law teachers, and law students to join hands in creating an atmosphere of information and responsibility. Advocating and giving voice to the disentitled, poor and vulnerable sections of the society on the legitimate platforms will certainly help the cause. If this point is not addressed in due time, it may eventually lead to the extinction of lawyers from the face of the earth, as *Dick the* Butcher wanted it.