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Experiential Learning through Community Lawyering: A Proposal for Indian Legal Education

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2011

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Citation for this paper:

Routh, S., (2011). Experiential Learning Through Community Lawyering: A Proposal for Indian Legal Education. *Pacific McGeorge Global Business & Development Law Journal*, 24(1), 115-159. <https://scholarlycommons.pacific.edu/globe/vol24/iss1/9/>

Experiential Learning Through Community Lawyering: A Proposal for Indian Legal Education

Supriya Routh*

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I. INTRODUCTION

The idea of *community lawyering* is increasingly being pointed to as an effective mechanism to serve the legal needs of impoverished and underprivileged groups.¹ Instead of advocacy on behalf of an individual client, advocacy on behalf of a group is seen as more efficient and cost effective, particularly when the group as a whole is at odds with the social, economic, cultural, and political situation.²

However beneficial it might be, the idea of community lawyering is also contested at different levels.³ For example, there is disagreement as to the definition of the term *community lawyering*.⁴ Advocacy for a specific group of individuals has been variously termed *cause lawyering*, *political lawyering*, or *social justice lawyering*, among other terms, and contexts attributed to these various terms may differ from one another.⁵ Another issue concerns the determination of the community for community lawyering purposes; the definitions of *community* may not always be mutually exclusive.⁶ One community or group may overlap another.⁷ In such circumstances, determination of the interests and priorities of individual communities becomes difficult.⁸ For instance, a *labor* community may include a *women's* community (i.e. women who are also laborers). The interests of these two overlapping communities may

1. See Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 U. KAN. L. REV. 509, 520-22 (2003); Raymond S. Brescia et al., *Who's in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831 (1998); Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLINICAL L. REV. 255 (2010). See also generally Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669 (1995); Juliet M. Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 WASH. U. J.L. & POL'Y 201 (2006); Stephen Loffredo, *Poverty Law and Community Activism: Notes from a Law School Clinic*, 150 U. PA. L. REV. 173 (2001).

2. See JoNel Newman, *Reconceptualizing Poverty Law Clinical Curriculum and Legal Services Practice: The Need for Generalists*, 34 FORDHAM URB. L.J. 1303, 1316-18 (2007); Joshua D. Blank & Eric A. Zacks, *Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation*, 110 PENN ST. L. REV. 1, 9-14 (2005); Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL'Y REV. 369, 405-19 (1998); Christine Zuni Cruz, *[On the] Road Back in: Community Lawyering in Indigenous Communities*, 24 AM. INDIAN L. REV. 229, 242-44 (2000). See generally Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 307-08, 311-12 (2001).

3. See Cruz, *supra* note 2, at 242-43, 254.

4. Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31, 33 (Austin Sarat & Stuart Scheingold eds., Oxford 1998); see also Terence C. Halliday, *Politics and Civic Professionalism: Legal Elites and Cause Lawyers*, 24 LAW & SOC. INQUIRY 1013, 1015 (1999).

5. Menkel-Meadow, *supra* note 4, at 33-37, 51-53.

6. See Cruz, *supra* note 2, at 243-44, 259-60.

7. *Id.*

8. See *id.* at 252, 260.

diverge—there may be interests of the women as group, which may conflict with the interests of the laborers as a group. In such a scenario, distinguishing the conflicting interests of the different groups and addressing them successfully becomes a challenge.⁹

Community lawyering is further contested at the level of the meaning of *lawyering*.¹⁰ Should lawyering in a community setting be limited to addressing judicial remedies, or should it also include lobbying for legislative purposes and legal literacy?¹¹ This apart, it has also been argued that the concept of lawyering should not be limited only to the legal remedies for the group:¹² community lawyers should also invoke non-legal measures in the redress of community grievances.¹³ Community lawyers are further perceived as organizers and educators for the different communities in which they work.¹⁴ However, initiatives of this nature give rise to concerns about the possibility of lawyers' intrusions into community affairs.¹⁵ It is contended that the nature of community lawyering makes communities vulnerable to manipulation by lawyers.¹⁶ Among these conflicting claims and counterclaims, the primary task in addressing any community lawyering proposition is to define the scope of its goals and functions.

The purpose of this article is to examine the community lawyering initiative from a clinical legal education perspective. The article endeavors to provide a successful clinical legal education model for a developing country like India, through which the goals of community lawyering can be purposefully achieved. The clinical legal education scenario in the United States is reviewed to ascertain the prevalent models of legal clinics through which community problems and issues are addressed, and the possibility of imitation or modified application of U.S. community law clinic models in the Indian context is addressed. Finally, the article proposes a model of a community legal clinic for India that suits the Indian social, political, economic, and educational situation.

9. *Id.*

10. See Houseman, *supra* note 1, at 1677-78, 1684-87, 1696, 1700, 1704-09.

11. See *id.* at 1689, 1704-06.

12. See V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 84-85 (2002); Brodie, *supra* note 1, at 238, 242-44, 254-55.

13. Robin S. Golden, *Toward a Model of Community Representation for Legal Assistance Lawyering: Examining the Role of Legal Assistance Agencies in Drug-Related Evictions from Public Housing*, 17 YALE L. & POL'Y REV. 527, 536 (1998); see also Cruz, *supra* note 2, at 241.

14. See Brodie, *supra* note 1, at 238, 242-44, 254-55.

15. See Anthony V. Alfieri, *Faith in Community: Representing Colored Town*, 95 CALIF. L. REV. 1829, 1857-62, 1865-67 (2007).

16. See Angela Harris et al., *From the "Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073, 2074-75 (2007); Sameer M. Ashar, *Law Clinical and Collective Mobilization*, 14 CLINICAL L. REV. 355, 378-79 (2008).

This article is divided into four main sections, apart from the introduction and a small concluding section. Section II defines the concept of community lawyering and explains its significance for the remainder of the article. In section III, the article charts the context of community lawyering in order to point out its social justice connotations. Community lawyering is then distinguished from other forms of advocacy and the article highlights the advantages in the Indian context. In section IV, the article draws out a strategy for building community lawyering clinics in law schools. The article argues that community lawyering through law schools is an effective device for imparting socially relevant legal education. Further, the article argues that community lawyering through law school clinics is important in the Indian socio-political scenario. The article calls for a reformulation of the Indian legal education curriculum to include mainstream community lawyering in legal education. In section V, the article offers a concrete and viable proposal to implement community lawyering clinics in law schools in India.

II. DEFINING COMMUNITY LAWYERING

The idea of “community lawyering” seems simple enough, even self-explanatory. Nevertheless, there is no consensus as to the appropriate definition and scope of this term. To some scholars, the term “community lawyering” suggests both a type of practice as well as a type of lawyer.¹⁷ The practice essentially centers on the problems and necessities of impoverished communities.¹⁸ From the lawyer’s perspective, community lawyering signifies the continuous interaction with the community and direct involvement of the community in advocacy strategies.¹⁹ But then, the same content has been ascribed to some other phrases, *viz. political lawyering*,²⁰ *critical lawyering*,²¹ and *cause lawyering*.²² A lawyer engaged in such kinds of lawyering has also been termed

17. Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 75 (2000).

18. *Id.* at 75.

19. *Id.*; see also Martha Minnow, *Political Lawyering: An Introduction*, 31 HARV. C.R.-C.L. L. REV. 287, 289 (1996).

20. See generally Minnow, *supra* note 19, at 288-89. This term is used by Martha Minnow to describe a variety of strategic advocacy mechanisms in furtherance of social change or to “alter allocations of power.”

21. See Louise G. Trubek, *Embedded Practices: Lawyers, Clients and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415, 416 (1996). This terminology is used by Louise G. Trubek in her article to denote social change lawyering, principally on behalf of subordinated people.

22. See STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 2-5 (2004). The authors define “cause lawyering” as using a variety of strategy and legal skills for a cause that the lawyer believes in, and as transcending client service. “Cause lawyers” are involved in diverse causes with varying degrees of legitimacy, be they social, cultural, economic or political. The authors assert:

What we call cause lawyering is often referred to as public interest lawyering within the legal profession and among academics. However, we prefer *cause lawyering* because it is an inclusive

the *people's lawyer*.²³ Are these concepts mutually exclusive? Or do they identify a common theme in group advocacy? The people's participation has been identified as the crux of the concept in all names ascribed.²⁴ The concept has also been articulated as the use of law to change the social disequilibrium by changing the power dynamics between the *haves* and *have-nots*.²⁵ A political lawyer would successfully use litigation, legislation, mass media, and social science research in furtherance of the long-term goals of the community in achieving social justice.²⁶ New strategic and collaborative roles of lawyers *vis-à-vis* other institutions (non-profit groups, the establishment bar, *pro bono* practice, etc.) are a necessary beginning point.²⁷

Gary Bellow sums up the concept succinctly:

Political lawyering, or whatever we choose to call it, simply describes a medium through which some of us with law training chose to respond to the need for change in an unjust world. Of course, the values and the faith that drive such efforts go well beyond law and lawyers. They embrace a community of men and women who try to make things "better than they found them."²⁸

To Bellow, the role of a political lawyer is multifaceted.²⁹ A political lawyer should seek judicial remedy, initiate administrative interference, and spread awareness and help the clients organize.³⁰ All these initiatives must be based on a collaborative approach between the lawyer and her client constituency.³¹ This collaborative approach and the phenomenon of pursuing group goals has also been termed "critical lawyering."³²

The practice of community lawyering builds upon the community network by collaborating with local institutions and individuals—lawyers, social workers,

term. It conveys a determination to take sides in political and moral struggle without making distinctions between worthy and unworthy causes.

See *id.* at 5.

23. See generally DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1998).

24. See Minnow, *supra* note 19, at 287-88.

25. *Id.* at 289.

26. *Id.* Although Martha Minnow uses the term "political lawyering" instead of "community lawyering," the essence of both phrases lies in the collaborative efforts of lawyers and the communities in which they work in furtherance of the goals of such communities. Phraseological jargon further complicates the matter in defining the concept of community lawyering. In the present section, I intend to discern a common trend that runs through the diversely termed concept of collaborative lawyering.

27. *Id.* at 293.

28. Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-L. REV. 297, 309 (1996).

29. *Id.* at 299-300, 303-05, 309.

30. *Id.* at 300.

31. *Id.* at 303-04.

32. See Trubek, *supra* note 21, at 415-16.

teachers, and civil society.³³ The network then functions by having individuals and organizations interact to educate the group as a whole, strategize their course of action, and take concerted action in furtherance of their goals.³⁴ An exceptional feature of community lawyering is the use of legal as well as non-legal strategies to solve both legal and non-legal client problems.³⁵

Thus, defining the term “community lawyering” requires defining two concepts—“community” and “lawyering.” The definition of the term “community” takes center stage in the ongoing discussion. Community is the basic unit around which the rest of the ideas of collaborative lawyering are developed.³⁶ Therefore, to address the problems and requirements of the client population, that population needs to be appropriately conceptualized as a community.³⁷ This further helps to channel the resources at the disposal of the identified community.³⁸ Although identification of a community is a complex task, it is the minimum requirement in the formulation of a social justice policy.³⁹

The second part of the definition calls for clarification of the term “lawyering.” As is evident from the ongoing discourse, an understanding of lawyering in a community context differs radically from the everyday notion of lawyering. Lawyering in the community is not limited to the pursuit of judicial remedies for the client.⁴⁰ Rather, it connotes a variety of functions on the part of the lawyer—from client education and organization to legislative lobbying as a member of the client community.⁴¹ The building of a power-center within the community and the mobilization of such a power block in furtherance of shared objectives form the crux of community lawyering.⁴² Further, the idea of lawyering in the context of a community setting overwhelmingly signifies lawyering for the poor.⁴³

Hence, one may define community lawyering as a mechanism of advocacy, principally for economically and politically weak groups, in which the lawyer does not participate as a disinterested party for the client’s cause.⁴⁴ The lawyer becomes an active member of the client community and identifies with the

33. Louise G. Trubek, *Poverty Lawyering in a New Millennium*, 17 YALE L. & POL’Y REV. 461, 462 (1998); see also Golden, *supra* note 13, at 555; Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001).

34. Trubek, *supra* note 33, at 463-64.

35. Golden, *supra* note 13, at 536; see also Houseman, *supra* note 1, at 1704-09.

36. Golden, *supra* note 13, at 556-57.

37. *Id.* at 530.

38. *Id.*

39. See *id.*

40. See generally Minnow, *supra* note 19.

41. Cruz, *supra* note 2, at 243-44.

42. Golden, *supra* note 13, at 555.

43. Cummings, *supra* note 33, at 443; see also Golden, *supra* note 13, at 536, 555. See generally Trubek, *supra* note 33, at 463-64.

44. See Houseman, *supra* note 1, 1684-85, 1696, 1700, 1704-09.

interests of the client.⁴⁵ In the context of community lawyering, a lawyer is required to take roles not identified with mainstream activities of law practitioners.⁴⁶ In addition to being an attorney, a community lawyer is an educator, an organizer, a lobbyist, and an activist.⁴⁷ This understanding of community lawyering will be used throughout the rest of the article.

III. THE CONTEXT OF COMMUNITY LAWYERING

A. *The Need for Community Lawyering*

Community lawyering is, in essence, a mechanism to counter subordination.⁴⁸ It has been argued that facilitation of individual rights has not benefited the long-term needs of communities, especially impoverished communities.⁴⁹ Rather than overemphasize the rights of individuals, legal assistance agencies should put their weight behind needy communities.⁵⁰ Prioritizing community lawyering would help such agencies use their limited resources most efficiently.⁵¹ Resources used on behalf of a community would impact a greater number of individuals than individual client cases could.⁵² Advocacy for impoverished communities can also lead to the shaping of state social and political policies, thereby impacting a wide range of diverse constituencies.⁵³

B. *Values Attached to the Concept*

Community lawyering is principally identified with social movements and transformative goals.⁵⁴ It is also termed “social change lawyering.”⁵⁵ Community lawyering challenges the basic concept of the individual rights strategy; instead of focusing on the individual, the concept concentrates on the community.⁵⁶ The

45. *See id.* There may be apprehension about lawyers identifying with the interests of client groups. Such identification may sometimes result in the manipulation of client groups by lawyers. However, there is a difference of opinion as to whether such manipulation or interference by lawyers is a good thing or an evil in itself; for a discussion of the possibility of manipulation of a client group by a lawyer, see Ashar, *supra* note 16, at 378-79.

46. *See Bellow, supra* note 28, at 300, 309; *see also* Houseman, *supra* note 1, at 1669, 1677, 1684-85, 1696, 1700, 1704-09.

47. Bellow, *supra* note 28, at 300, 309; Houseman, *supra* note 1, at 1669, 1677, 1684-85, 1696, 1700, 1704-09; *see also* Brodie, *supra* note 1, at 238, 242-44, 254-55.

48. Diamond, *supra* note 17, at 67.

49. Brescia et al., *supra* note 1, at 834, 836-37, 840-48, 862-63.

50. Golden, *supra* note 13, at 530.

51. *Id.*; *see also* Brescia et al., *supra* note 1, at 832, 845.

52. Brescia et al., *supra* note 1, at 832, 834-35, 840, 848-62.

53. *Id.* at 834-35, 840.

54. *See* Trubek, *supra* note 21, at 416.

55. *Id.* at 417-18.

56. Trubek, *supra* note 33, at 462-63.

long-term purpose of community lawyering is to use the various devices at the disposal of the lawyer and the community to enhance the political power of the community.⁵⁷ This purpose is achieved by collaboration between the lawyer, client, and other individuals and institutions.⁵⁸ One of the basic features of community lawyering is its identification with liberal democratic ideals.⁵⁹ Liberal democratic ideals can, however, encompass different discourses—left-liberal, neoliberal, libertarian, and the like.⁶⁰ Liberal democratic ideals are sometimes challenged by leftist social-democratic and emancipator democratic ideals and by rightist evangelical-democratic ideals.⁶¹ Whatever the nature and discourses of democratic ideals, such ideals justify the goals of building and sustaining the political power of the community. These divergent democratic theoretical ideals help community lawyers to merge the legal and non-legal (principally political) discourses of community lawyering, a typical feature of such lawyering.⁶²

C. Differences from Other Modes of Advocacy

A community lawyer must often take non-traditional legal approaches.⁶³ A community lawyering strategy is dichotomous because it lies between legal and political strategies.⁶⁴ Community lawyers invoke a variety of mechanisms apart from legal advocacy and judicial redress in furtherance of their causes.⁶⁵ It is argued that the community lawyer must first try to mobilize other means outside legal discourse to advance social justice before invoking legal means.⁶⁶ A community lawyer is required to educate her clients and be educated by her clients.⁶⁷ This interaction between the lawyer and the client community gives the lawyer insights into the problems of the client community and leaves the practitioner better able to appreciate client community needs.⁶⁸ It has been argued that in community lawyering, strategizing and decision making should be a

57. See Diamond, *supra* note 17, at 68; see also Minnow, *supra* note 19, at 289.

58. Diamond, *supra* note 17, at 102; see also Trubek, *supra* note 21, at 416.

59. See SCHEINGOLD & SARAT, *supra* note 22, at 17-22.

60. *Id.*

61. *Id.*

62. *Id.* at 18.

63. Diamond, *supra* note 17, at 69.

64. *Id.* at 5. In this continuum of legal to political lawyering, legal engagement conforms with the rule of law principle, by using litigation and courts as instruments for emancipation. This can take various forms—class action litigation, *amicus curiae* briefs, raising legal and constitutional issues through client representation, etc. On the other end of the spectrum, political engagement would involve lobbying through political mobilization and organization, street demonstrations, civil disobedience, etc. *Id.* at 18-19.

65. *Id.* at 69; see also Minnow, *supra* note 19, at 289, 293 (describing the different legal and non-legal mechanisms that a community lawyer uses in furtherance of community interests).

66. Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105 COLUM. L. REV. 1436, 1445 (2005).

67. See Diamond, *supra* note 17, at 85; see also Golden, *supra* note 13, at 555.

68. Diamond, *supra* note 17, at 85; see also Golden, *supra* note 13, at 555.

collaborative, non-hierarchical,⁶⁹ and decentralized effort.⁷⁰ Such a collaborative approach can be achieved only when lawyers can bridge the social and political differences between themselves and their client communities.⁷¹ Such an initiative of similar magnitude on the part of lawyers is not a necessity in an individual client's case. Thus, community lawyering has also been projected as a multi-professional initiative,⁷² wherein the lawyer forms alliances with other professionals with similar interests.

D. Challenges of Community Lawyering

One of the basic challenges that community lawyers must face is the determination of the community with which they intend to work.⁷³ Another is bridging the gap between the lawyer and the community to further common, identified objectives.⁷⁴ On the lawyer's part, the challenge is to become an accepted member of the community.⁷⁵ Once such a goal is met, the lawyer must be careful not to intrude in community matters.⁷⁶ Over-interference in community affairs is fraught with the danger that the lawyer may inappropriately manipulate the client's cause.⁷⁷ Thus, there is a continuous balancing act between a lawyer's autonomy and client preferences. The relationship between the lawyer and the client community is extremely delicate and its balance determines the success, and in certain circumstances, the overall outcome of the alliance. Once such a relationship is established, sustaining it in furtherance of the goals of the community is of utmost importance.⁷⁸

69. See Diamond, *supra* note 17, 101-02. Two models of lawyering have been propounded in this context—the collaborative model and the client-centered model. The principal argument of these models is doing away with the domination of the lawyer in the decision making process. Whereas the collaborative model portrays an actual non-hierarchical decision making process, the client-centered model gives primacy to the wishes and understanding of the client community over that of the lawyer. *Id.*

70. Adriaan Lanni, *The Future of Community Justice*, 40 HARV. C.R.-C.L. L. REV. 359, 367 (2005).

71. Bellow, *supra* note 28, at 303-04.

72. Trubek, *supra* note 33, at 462.

73. See Diamond, *supra* note 17, at 112 (arguing identification of the community is the very first step in the determination of the strategies and policies at the disposal of such community); Golden, *supra* note 13, at 530.

74. Brescia et al., *supra* note 1, at 856-58.

75. *Id.*

76. *Id.*; see also Harris et al., *supra* note 16, at 2074-75; Ashar, *supra* note 16, at 378-79.

77. See Harris et al., *supra* note 16, at 2074-75; Ashar, *supra* note 16, at 378-79.

78. See Trubek, *supra* note 33, at 464 (describing the importance of sustaining the energy and growth of institutions involved in community lawyering. As an example, he cites the work of the Connecticut Women's Education and Legal Fund ("CWEALF"), which is a multi-professional organization involved in litigation, community education, policy advocacy, and coalition building).

E. *Different Discourses of Community Lawyering*

Various models of community lawyering can be devised depending on the institutions involved in such lawyering. Institutions that have been identified as possible facilitators of community lawyering are social justice law firms, law school clinical programs, *pro bono* models, and client non-profit organizations.⁷⁹ In the face of shrinking resources for community lawyering practices, these alternative models⁸⁰ are projected as possible solutions in the continued efforts of community lawyering.⁸¹

Creating community lawyering clinics in law schools would serve a two-pronged purpose. Apart from becoming alternative⁸² community lawyering institutions, law schools have an immense capacity to shape the student community for social justice initiatives.⁸³ Inculcation of such ideals often goes against the popular financial and cultural ethos of law school life. Nonetheless, working with communities provides the opportunity to sensitize law students to the needs of the impoverished,⁸⁴ instead of viewing them as mere elements of a case.⁸⁵

F. *The Concept of Community Lawyering in the Indian Context*

A perusal of the characteristics, nature, scope, values, and strategy of community lawyering indicates that the social and political scenario in India is perfectly suited for community lawyering to flourish.⁸⁶ The economic necessities of the different communities within India further call for the assistance of community lawyers.⁸⁷

India is the world's largest democracy.⁸⁸ A variety of constituencies are the constitutive elements of this democracy.⁸⁹ The Indian constitution is based on

79. See Trubek, *supra* note 21, at 418.

80. See generally *id.* at 415. These models are "alternative" to the individual lawyer's initiative to work with the community upon grants from the government exchequer.

81. *Id.* at 418-41.

82. *Id.* at 418. However, what may begin today as an alternative has the potential to become the most significant mechanism in rendering community lawyering.

83. See *id.* at 467.

84. See *id.* at 466-67 (discussing the effectiveness of the Yale Law School Liman Program on poverty lawyering in inculcating the values of social justice among the program's students).

85. See generally Donald Nicolson, *Legal Education or Community Service? The Extra-Curricular Student Law Clinic*, WEB J. CURRENT LEGAL ISSUES (2006), <http://webjcli.ncl.ac.uk/2006/issue3/nicolson3.html>.

86. See Patrick Heller, *Degrees of Democracy: Some Comparative Lessons from India*, 52 WORLD POL. 484-519 (2000) (pointing out the marginalization of different groups in India despite its vibrant democratic polity).

87. See *id.*

88. See *India Country Profile*, BBC NEWS, http://news.bbc.co.uk/2/hi/europe/country_profiles/1154019.stm (last visited Feb. 19, 2011).

socialist ideals⁹⁰ and the Directive Principles of State Policy of the Constitution⁹¹ endeavor to ensure social justice.⁹² The Preamble of the Constitution of India⁹³ emphatically delineates socialistic ideals;⁹⁴ the Directive Principles of State Policy recognize the socio-economic rights of citizens.⁹⁵ Although not enforceable in a court of law in isolation,⁹⁶ the Directives are “fundamental to the governance of the country” and every government (federal as well as state governments) should incorporate such principles in governance.⁹⁷ The Constitution recognizes certain groups of people who were historically marginalized in mainstream society or are otherwise in need of assistance.⁹⁸ The constitutional texture provides for distributive justice addressed to better the lives of these groups for the sake of social equilibrium.⁹⁹ The various groups addressed by the constitution are *scheduled castes*,¹⁰⁰ *scheduled tribes*,¹⁰¹ *women*,¹⁰² and

89. See Heller, *supra* note 86.

90. INDIA CONST. preamble.

91. See INDIA CONST. pt. IV, available at <http://lawmin.nic.in/coi/coiason29july08.pdf>.

92. INDIA CONST. preamble.

93. *Id.*

94. *Id.* The Preamble of the Constitutions declares:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

And to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do

HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Id.

95. See generally INDIA CONST. pt. IV. The Directive Principles of State Policy, in particular Article 38, states:

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

96. INDIA CONST. art. 37 states:

The provisions contained in this Part [i.e., Part IV of the Constitution of India] shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

97. *Id.*

98. See INDIA CONST. arts. 15-17, 23, 24, 39, 39A, 43, 46.

99. See *id.*

100. *Id.*

101. *Id.* Scheduled Castes and Scheduled Tribes are “socially and educationally backward classes of

children,¹⁰³ among others. Thus, the concept of *community* or *group* is historically ingrained in the law of the land. This is in recognition of the fact that group rights have been vital in the overall development of Indian society, apart from the focus on individual rights and privileges.¹⁰⁴

Although *scheduled castes* and *scheduled tribes* are the most recognizable communities within the country, there are a number of other impoverished communities in dire need of emancipation.¹⁰⁵ Other impoverished or marginalized populations include *dalits*,¹⁰⁶ *laborers*,¹⁰⁷ *agricultural laborers*,¹⁰⁸ *women*,¹⁰⁹ in addition to communities of *villagers*,¹¹⁰ *urban homeless poor*,¹¹¹ *slum dwellers*,¹¹² *linguistic and religious minorities*¹¹³—the list can never be exhaustive. All these

citizens” (Article 15(4) of the Constitution of India), for whom special provisions are made in the Constitution (Part XVI of the Constitution of India). Article 341(1) of the Constitution of India provides:

The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races, or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

Article 342(1) of the Constitution of India provides:

The President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

102. INDIA CONST. arts. 15-17, 23, 24, 39, 39A, 43, 46.

103. *Id.*

104. INDIA CONST. art. 38(2) of the Constitution asserts that the State shall promote equality of income, status, facilities, and opportunities not only of individuals, but also of groups of different dispensation. *See also* Deepa Sreenivas, *Forging New Communities: Gendered Childhood Through the Lens of Caste*, 11 FEMINIST THEORY 267, 281 (2010); Nalini Rajan, *Multiculturalism, Group Rights, and Identity Politics*, 33 ECON. & POL. WKLY. 1699, 1701 (1998). *See generally* Aswini K. Ray, *Human Rights Movement in India: A Historical Perspective*, 38 ECON. & POL. WKLY. 3409 (2003).

105. INDIA CONST. arts. 15-17, 23, 24, 39, 39A, 43, 46.

106. The term *dalit* signifies the erstwhile untouchable caste in India. Officially, in the constitution they are termed Scheduled Castes and Scheduled Tribes. *See* Jonathan Aitken, *The Broken and Crushed*, AM. SPECTATOR, 56, 57 (2007). *Dalits* in India have been termed slaves in democratic society. *Id.*; *see also* Philip Constable, *The Marginalization of a Dalit Martial Race in Late Nineteenth- and Early Twentieth-Century Western India*, 60 J. OF ASIAN STUD. 439, 478 (2001); Sreenivas, *supra* note 104.

107. *See generally* Sripad Motiram, *Attached Labour Contracts in Agriculture: Results and Analysis from a Survey in South India*, 28 CAN. J. OF DEV. STUD. 99 (2007).

108. *Id.*

109. *See* P. Banerjee, *The Acts and Facts of Women's Autonomy in India*, 53 DIOGENES 85, 85 (2006); Sreenivas, *supra* note 104, at 267. *See generally* Michelle Maskiell, *Embroidering the Past: Phulkari Textiles and Gendered Work as "Tradition" and "Heritage" in Colonial and Contemporary Punjab*, 58 J. ASIAN STUD. 361 (1999).

110. Ravina Aggarwal, *At the Margins of Death: Ritual Space and the Politics of Location in an Indo-Himalayan Border Village*, 28 AM. ETHNOLOGIST 549, 549 (2001).

111. *See generally* Robert Biswas-Diener & Ed Diener, *The Subjective Well-Being of the Homeless and Lessons for Happiness*, 76 SOC. INDICATORS RES. 185 (2006).

112. *See id.*

113. *See* Ayelet Harel-Shalev, *Lingual and Educational Policy toward 'Homeland Minorities' in Deeply Divided Societies: India and Israel as Case Studies*, 37 POL. & POL'Y 951, 951 (2009). *See generally* Ruzica

groups are in need of help to increase their visibility and political power *vis-à-vis* the elites of society.¹¹⁴

If one looks at the social construction of India, one could easily ascertain that community life is far more important and prevalent than individualistic living.¹¹⁵ Almost every individual has a sense of belongingness to a community and the idea of being a part of a community is cherished by each constitutive unit.¹¹⁶ The sociological concept of community has transgressed the boundaries of informality and has attained legal recognition as administrative units under the law of the land.¹¹⁷ Since the very early days of Indian history, village communities formed the administrative and government units of the village.¹¹⁸ Most of the executive and judicial functions were performed by (and are still being performed by) such village communities.¹¹⁹ Only very serious matters would go to higher authorities.¹²⁰ Sometimes village communities would also legislate on certain matters.¹²¹ These village communities or “*panchayats*” continue to be the basic administrative units in Indian villages, albeit without

Cicak-Chand, *Minorities in India: Democracy and the Modernization of Tradition*, 24 *MIGRACIJSKE I ETNICKE TEME* 165 (2008).

114. See *supra* notes 106-13; see also Heller, *supra* note 86.

115. See Justin P. Jose et al., *Tribal Mothers in Kerala: Exploring Empowerment Needs for Greater Community Participation*, 71 *INDIAN J. SOC. WORK*, 243, 243-66 (2010); Jean M. Langford, 37 *AM. ETHNOLOGIST* 173 (2010) (reviewing RICHARD S. WEISS, *RECIPES FOR IMMORTALITY: MEDICINE, RELIGION, AND COMMUNITY IN SOUTH INDIA* (2009)); Indra Barua, *Conservation and Management of Community and Natural Resources: A Case Study from North East India*, 7 *STUD. TRIBES & TRIBALS* 39, 39-46 (2009); Alok Chintia, *Effects of Inbreeding on Health Among Dhankut—An Endogamous Group of Bahraich, Uttar Pradesh*, 10 *ANTHROPOLOGIST* 219, 219-24 (2008); Ashis Nandy, *The Culture of Indian Politics: A Stock Taking*, 30 *J. ASIAN STUD.* 57, 57-79 (1970); T.K. Oommen, *Rural Community Power Structure in India*, 49 *SOC. FORCES* 226, 226-39 (1970); Sumit Guha, *Cultural and Religious Pluralism in India and the US*, 32 *ECON. & POL. WKLY.* 2851, 2851-53 (1997). See generally Sebastian Sanne, *British Colonialism in India and its Influence on Indian Society* 3, 17-18, available at <http://sanne.squarespace.com/storage/British%20Colonialism%20in%20India%20and%20its%20Influence%20on%20Indian%20Society.pdf> (last visited Oct. 20, 2011).

116. See Oommen, *supra* note 115, at 226-39.

117. INDIA CONST. art. 40, § IX. See also generally Upendra Baxi & Mark Galanter, *Panchayat Justice: An Indian Effects of Inbreeding on Health Among Dhankut—An Endogamous Group of Bahraich, Uttar Pradesh Experiment in Legal Access*, in *ACCESS TO JUSTICE: EMERGING ISSUES AND PERSPECTIVES* 341-86 (M. Cappelletti and B. Garth eds., Milan: Sijthoff & Noordhoff-Alphenaaenderijn, 1979).

118. See Lynn Vincentnathan & S. George Vincentnathan, *Social Disorganization in a Modernizing Dalit Community*, 45 *SOC. SCI. J.* 565, 565-79 (2008) [hereinafter *Social Disorganization*]; J.L. Singh et al., *Fifty Years of Panchayat Raj and Rural Development*, XLV *INDIAN J. PUB. ADMIN.* 274 (1999). See generally J.S. Sodhi & M.S. Ramanujam, *Panchayati Raj System: A Study in Five States of India*, 42 *INDIAN J. INDUS. REL.* 1 (2006); Baxi & Galanter, *supra* note 117.

119. See *Social Disorganization*, *supra* note 118, at 565; Singh et al., *supra* note 118, at 274. See generally Baxi & Galanter, *supra* note 117; Katherine Mangu-Ward, *Slum Justice*, 39 *REASON* 14 (2007); Lynn Vincentnathan & S. George Vincentnathan, *Village Courts and the Police: Cooperation and Conflict in Modernizing India*, 8 *POLICE PRAC. & RES.* 445 (2007).

120. *Social Disorganization*, *supra* note 118.

121. See generally Baxi & Galanter, *supra* note 117; Marc Galanter, *The Displacement of Traditional Law in Modern India*, XXIV: 4 *J. SOC. ISSUES* 65, 66-72 (1968).

much legislative or judicial power.¹²² Lawyers have been the strongest group in the development and progress of the socio-political struggle of the country.¹²³ Individually and collectively, they have been the force behind India's biggest political and social victories.¹²⁴ The era of India's struggle for independence was the golden age of community lawyering on the sub-continent.¹²⁵ Political subordination coupled with social suppression set the perfect stage for community lawyering to thrive.¹²⁶ Leaders like Mohandas K. Gandhi, Jawaharlal Nehru and B.R. Ambedkar made use of the prevailing socio-political situation of their time to practice what may be termed as the greatest *activist* or *political lawyering* India has ever witnessed (in terms of community lawyering, these non-violent lawyer freedom-fighters undertook advocacy for marginalized and impoverished communities, strategized self-determination, initiated law reform, instituted constitutional guarantees, and advocated for an egalitarian society).¹²⁷ Thus, even though the country's struggle could be seen as purely political, devoid of any lawyering, India's non-violent political struggle actually satisfies the principles of political or community lawyering.¹²⁸ The biggest proponents of community lawyering in the country helped to attain the greatest victory of independence and self-determination for the country.¹²⁹

However, the resulting self-governance in India created innumerable constituencies that gave rise to a plethora of problems situated in the diversity of the nation.¹³⁰ Such diversity in every aspect of the nation—social, economic, political, cultural, religious, linguistic—juxtaposes the requirements of the various populations in such a manner that, more often than not, the interests of constituencies conflict with one another.¹³¹ The situation is aggravated by the

122. See Sodhi, *supra* note 118; Singh et al., *supra* note 118; Galanter, *supra* note 121, at 65. See generally Vincentnathan & Vincentnathan, *supra* note 118.

123. See generally Bishakha Datta & Geetanjali Misra, *Advocacy for Sexual and Reproductive Health: The Challenge in India*, 8 REPRODUCTIVE HEALTH MATTERS 24 (2000); Aparna Rayaprol & Sawmya Ray, *Understanding Gender Justice: Perceptions of Lawyers in India*, 17 INDIAN J. GENDER STUD. 335 (2010).

124. See generally Rayaprol & Ray, *supra* note 123; Datta & Misra, *supra* note 123.

125. See generally *Lawyers in the Indian Freedom Movement*, B. COUNCIL OF INDIA, <http://www.barcouncilofindia.org/about/about-the-legal-profession/lawyers-in-the-indian-freedom-movement/> (last visited Feb. 20, 2011).

126. *Id.*

127. *Id.* See generally Ian Desai, *Gandhi's Invisible Hands*, 34 WILSON Q. 30, 30-37 (2010).

128. See generally *Lawyers in the Indian Freedom Movement*, *supra* note 125.

129. *Id.*

130. See INDIA CONST. arts. 15, 16, 17, 23, 24, 39, 39A, 43, 46; see also *supra* notes 86, 106-13.

131. See generally Riwanto Tirtosudarmo, *Population, Ethnicity and Violent Conflict*, 45 POPULATION REV. 6 (2006); Ornit Shani, *Conceptions of Citizenship in India and the Muslim Question*, 44 MOD. ASIAN STUD. 145 (2010); Joel T. Heinen & Rahul J. Shrivastava, *An Analysis of Conservation Attitudes and Awareness Around Kaziranga National Park, Assam, India: Implications for Conservation and Development*, 30 POPULATION & ENV'T 261 (2009); Joe C. Arun, *From Stigma to Self-assertion: Paraiyars and the Symbolism of the Parai Drum*, 41 CONTRIBUTIONS TO INDIAN SOC. 81 (2007).

problem of social welfare mechanisms in the country.¹³² Such a situation calls for the creation of political power by the different constituencies within themselves to assert their rightful place in society.¹³³ It would seem that, since it is an accepted fact that democracy works only under pressure, garnering political power would enable communities to exert pressure on the governing elite to address their issues. Hence, the prevailing circumstances suit the kind of work that is identified with the purposes of community lawyering.

Indeed, community lawyers in India have, in some circumstances, taken the initiative to address the needs of communities.¹³⁴ In India, community lawyering initiatives have mostly been undertaken on behalf of women, AIDS victims, laborers, environmentalists, and have thus required specialized knowledge, as is discussed presently.¹³⁵

Most of these initiatives are the result of individual lawyers practicing law in the higher courts of the country.¹³⁶ In addition to resorting to the traditional litigation methods of promoting emancipation, community lawyers have created some organizational initiatives to foster political power within communities.¹³⁷

Majlis is one such organization that is actively engaged in community lawyering.¹³⁸ *Majlis* specializes in gender issues.¹³⁹ The organization views litigation as a part of its overall strategy that also includes educating the constituency, lobbying on behalf of the constituency, and networking with the

132. A perusal of the legislative discourses in India shows that the country did not leave any subject unlegislated. A plethora of welfare schemes enabled by legislation exist on paper, but the real challenge is the implementation of these schemes at the ground level. Social welfare programs lack appropriate focus, planning, and investment. See Dolly Arora, *Addressing Welfare in Third World Contexts: Indian Case*, 30 *ECON. & POL. WKLY.* 955, 955-62 (1995); S. Irudaya Rajan & U.S. Mishra, *Restructuring Welfare Programmes: Emerging Trends*, 32 *ECON. & POL. WKLY.* 261, 261-63 (1997); Shenggen Fan et al., *Government Spending, Growth and Poverty in Rural India*, 82 *AM. J. AGRIC. ECON.* 1038, 1038-51 (2000).

133. Members of each of these constituencies closely identify with each other because of their homogeneous economic, social, cultural, political or religious allegiances. See Heller *supra* note 86. They are the targets as well as victims of the failure of various welfare schemes. The typical situations that communities are in enhance the possibility of their being closely knit entities. See *supra* note 132.

134. See Jayanth K. Krishnan, *The Rights of the New Untouchables: A Constitutional Analysis of HIV Jurisprudence in India*, 25 *HUM. RTS. Q.* 791, 795-812 (2003) [hereinafter *Rights of the New Untouchables*]; Jayanth K. Krishnan, *Lawyering for a Cause and Experiences from Abroad*, 94 *CAL. L. REV.* 575, 575-79, 596-613 (2006) [hereinafter *Lawyering for a Cause*].

135. See *Rights of the New Untouchables*, *supra* note 134, at 795-812; see also *Lawyering for a Cause*, *supra* note 134, at 575-79, 596-613.

136. See Jayanth K. Krishnan, *Transgressive Cause Lawyering in the Developing World: The Case of India*, in *THE WORLDS CAUSE LAWYERS MAKE: STRUCTURE AND AGENCY IN LEGAL PRACTICE* 349 (Austin Sarat & Stuart Scheingold eds., 2005). See also generally Arvind Narrain et al., *Conference Report: Alternative Lawyering in India*, *LAW, SOC. JUSTICE AND GLOBAL DEV. J. (LGD)* (Dec. 19, 2001), http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2001_2/alf/.

137. See Tarunabh Khaitan, *From Activist to Alternative Lawyering in India*, *ALTERNATIVE L. F.*, <http://www.altlawforum.org/legal-advocacy/publications/the-court-as-a-theatre-of-struggle> (last visited Oct. 20, 2011).

138. See *id.*

139. See *id.*

various relevant administrative units to create political power on behalf of the community.¹⁴⁰

Anand Grover is a Mumbai-based lawyer whose constituency is AIDS victims.¹⁴¹ Grover principally resorts to individual litigation on behalf of his clients.¹⁴² Sensitization programs and workshops are an integral part of the overall lawyering process of Grover's organization.¹⁴³

Arvind Narrain, who works with gays and lesbians, prefers non-litigative community lawyering to court-based litigation mechanisms.¹⁴⁴ Because of the issues he deals with and the institutionalized socio-political attitudes towards homosexuality in India, Narrain thinks that non-litigative strategies are more effective in mitigating the plight of the community.¹⁴⁵ For M.C. Mehta, an environmental lawyer, Public Interest Litigation ("PIL") is a significant means of achieving social equilibrium.¹⁴⁶ There are other community lawyers who strategize somewhere in the middle of the continuum of litigation-based and non-litigation-based effort.¹⁴⁷

The phenomenon of community lawyering has been restricted to limited corners of the country—it bears more of an elitist demographic connotation.¹⁴⁸ Most of the abovementioned community lawyers and their lawyering initiatives are based in cities such as Mumbai or Delhi.¹⁴⁹ While charting community lawyering discourses in India, Jayanth Krishnan identified the pertinent problems and challenges associated with the development of community lawyering.¹⁵⁰ He identifies the typical construct of Indian lawyers as people who cannot think of strategies outside the law courts.¹⁵¹ There is a general apathy or disinterest (or perhaps, it is the indifference of lawyers to such concepts) among lawyers about getting involved in non-courtroom activities to empower underprivileged and impoverished communities.¹⁵² Krishnan argues that, whatever community

140. *See id.*

141. Mr. Grover is in charge of the Mumbai branch of *Lawyer's Collective*, another community lawyering agency. *Id.*

142. *Id.*

143. *Lawyer's Collective* organizes regular workshops, seminars, and other sensitization programs to educate stakeholders—hospitals, judges, lawyers, police, NGOs, health care workers—and advocate their constituency's cause. *Id.*

144. *Id.*

145. *Id.*

146. *But see Lawyering for a Cause*, *supra* note 134, at 608-09.

147. Yug Chaudhry, a Mumbai-based legal aid lawyer, works with the prisoners, "slum dwellers and juvenile delinquents"; Nitya Ramakrishnan is a death penalty abolitionist lawyer; Rajeev Dhavan is a typical PIL lawyer—one of his significant recent initiatives addresses the plight of the Gujarat riot victims and the state government's accountability. *See Khaitan*, *supra* note 137.

148. *See Krishnan*, *supra* note 136.

149. *See generally id.*

150. *See id.*

151. *See id.* at 355.

152. *See generally id.* at 355-56.

lawyering exists in India, it can actually be associated with the highly stratified legal practice in the country.¹⁵³ Community lawyering initiatives are principally undertaken by High Court and Supreme Court advocates.¹⁵⁴ This is because lawyers practicing in the higher courts have more resources at their disposal.¹⁵⁵ They have the resources and the required time to invest in the causes they believe in.¹⁵⁶ These lawyers, on their own initiative, and based on their beliefs and understanding of their moral obligations, involve themselves with the causes of politically marginalized communities.¹⁵⁷ Therefore, community lawyering initiatives have mainly been limited to the areas where these elite groups of lawyers are based.¹⁵⁸ While not a broadly based popular initiative, this phenomenon does not occur in a vacuum—other politico-socio-economic conditions explain the scenario.

An individual's personal initiative and sense of moral obligation and orientation have been the driving force of community lawyering in India.¹⁵⁹ Emancipation of underprivileged sections of society has never been a systematically practiced or propagated concept.¹⁶⁰ However, as pointed out earlier, the typical characteristics of Indian society engender numbers of communities who are in need of assistance.¹⁶¹ To address the typical needs of these divergent communities, a breed of lawyers needs to be created which would embrace the concept of lawyering for the people and such lawyering need not be limited only to litigation. There is no reason why the country cannot produce enough community lawyers, considering the fact that the 900-odd law institutes¹⁶² in the country are producing thousands of law graduates every year.¹⁶³ There should not be a dearth of lawyers taking up community lawyering, as long as they are properly trained and adequately oriented. What better place to inculcate such values and skills than the law school itself? The piecemeal effort of a few

153. *See id.*

154. *Id.* at 351-52.

155. *See id.*

156. *See id.*

157. *See Lawyering for a Cause, supra* note 134, at 575; Khaitan, *supra* note 137.

158. *See* Krishnan, *supra* note 136, at 362.

159. Khaitan, *supra* note 137.

160. *See generally* Krishnan, *supra* note 136, at 349.

161. For example, *dalits*, indigenous communities, women, laborers, and AIDS victims are communities that are in dire need of assistance and support. *See* Sreenivas, *supra* note 104; INDIA CONST. arts. 15-17, 23, 24, 39, 39A, 43, 46; Aitken, *supra* note 106; Constable, *supra* note 106; Motiram, *supra* note 107; Maskiell, *supra* note 109; Banerjee, *supra* note 109; Aggarwal, *supra* note 110; Biswas-Diener & Diener, *supra* note 111; Cicak-Chand, *supra* note 113; Harel-Shalev, *supra* note 113.

162. *See List of Law Colleges Maintained by the Bar Council of India*, B. COUNCIL OF INDIA (Oct. 4, 2010), <http://www.barcouncilofindia.org/wp-content/uploads/2010/06/approvedlawcolleges.pdf>.

163. In 2002, the total number of law graduates admitted to the bar was 28,268. In 2003, the number rose to 33,657, and in 2004, the number further rose to 46,438. *See* NAT'L KNOWLEDGE COMM'N, REPORT OF THE WORKING GROUP ON LEGAL EDUCATION 4, http://www.knowledgecommission.gov.in/downloads/documents/wg_legal.pdf (last visited Jan. 17, 2011).

enterprising lawyers can begin to take concrete shape only through the educational training available at law school. More specifically, law school clinics are the best places to synthesize the ideals of community lawyering.

IV. A STRATEGY FOR COMMUNITY LAWYERING THROUGH LAW SCHOOL CLINICS

Some form of clinical legal education has been a part of law school curricula to a limited extent for about 100 years.¹⁶⁴ However, the idea of such clinics as it exists today did not take shape until the 1960s and 1970s.¹⁶⁵ Development of clinics as part of legal education has primarily taken place in U.S. law schools¹⁶⁶ (even though modern-day law clinics are a global phenomenon).¹⁶⁷ Not only were law school clinics devised as a means to impart pragmatic skills to students,¹⁶⁸ but they were also envisioned as institutions for furthering social justice.¹⁶⁹ The social justice goal of legal clinics is more in keeping with live-client clinics, rather than with the simulation clinics devoid of live client interaction.¹⁷⁰ Live-client clinics address a range of issues, from litigation to negotiation of business deals, from documentation (involving factual and legal issues) to counseling of clients.¹⁷¹ All of this takes place in the unpredictable environment of real legal issues.¹⁷² In the United States, which has pioneered the clinical legal education scenario,¹⁷³ most clinics operate in specific subject areas such as “family law,” “criminal law,” “civil law,” “tribal law,” “business law transaction,” “juvenile justice,” “prisoner assistance,” “media law,” “intellectual property,” etc.¹⁷⁴ These clinics are intended to expose students to the everyday aspects of a limited area of law

164. Aliza G. Organick, *Creating a Tribal Law Practice Clinic in Kansas: Carving the Peg to Fit the Hole*, 82 N.D. L. REV. 849, 850 (2006).

165. *Id.*; Jeff Giddings, *Contemplating the Future of Clinical Legal Education*, 17 GRIFFITH L. REV. 1, 2-4 (2008). However, the idea and popularity of clinical legal education has principally been an American phenomenon. It is only very recently that the rest of the world has taken the clinical component to be an inseparable part of legal education. In most parts of the world, the clinical component is still unstructured and in flux. Law schools throughout the world look to the American example in visualizing and conceptualizing their respective clinical curricula. The United States' preeminent status and lead role is also evident from the numerous clinical exchange programs that take place between law schools in the United States and in the rest of the world.

166. *See* Giddings, *supra* note 165. *See generally* Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 2-3, 5-21, 30-32 (2000).

167. *See* Giddings, *supra* note 165. *See generally* Frank Bloch, *Access to Justice and the Global Clinical Movement*, 28 J.L. & POL'Y 111, 139 (2008).

168. *See* Lopez *supra* note 2, at 309-10.

169. *Id.* at 310.

170. *See generally* Organick, *supra* note 164, at 850.

171. *See generally* Barry et al., *supra* note 166.

172. *See* William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 470-77 (1995).

173. *See* Giddings, *supra* note 165. *See generally* Barry, Dubin & Joy, *supra* note 166.

174. Organick, *supra* note 164, at 851, 857; *see also* Carey, *supra* note 1, at 522-28.

practice.¹⁷⁵ Practical ramifications in each of these areas allow students to put things in perspective. Students can appreciate the social interactions, political influences, economic limitations, and many other issues surrounding clients and their cases. This helps students to see the human face behind the legal problems. These specifically targeted clinics give students the required practical exposure within manageable limits.¹⁷⁶ Students are primarily involved in client interviewing, counseling, fact investigating, professional ethics, and trial practice skills within the scope of each of the clinics.¹⁷⁷ The purpose of the abovementioned core components of clinical education in these clinics is to inculcate lawyering skills in the students.¹⁷⁸ Such skills, however, are limited in nature compared to the skills employed in community lawyering.¹⁷⁹

The *community lawyering* clinic is a complex concept within the context of clinical legal education. The multidirectional nature of the concept contributes to the complexity of the issue.¹⁸⁰ Participants in community development lawyering must always be “on their toes”—they need to strategize at each stage of their involvement and must be prepared to change and adapt their strategies with the evolution of the community case or issue.¹⁸¹ The clinical set-up for community lawyering involves the association and collaboration of diverse entities centered on the community.¹⁸² This, however, allows students to appreciate the broad-based, overarching concept of the larger role of lawyers in society.¹⁸³ The idea of lawyering in the community context is not limited to the typical lawyering skills of interviewing, investigating, counseling, and litigation.¹⁸⁴ As previously discussed, the concept of community lawyering also involves collaborating, partnering, networking, forming bargaining units, generating political power, and transforming how legal services are offered to the poor.¹⁸⁵ Although many of these functions are not traditionally considered to be a part of a lawyer’s role, all are vital for a community lawyer. How then can law students be exposed to these broader skills associated with the concept of community lawyering?

175. See Organick, *supra* note 164, at 851; see also Carey, *supra* note 1, at 517-18, 527, 529-30.

176. See generally Lopez, *supra* note 2, at 307-08, 311-12.

177. Organick, *supra* note 164, at 851.

178. See Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555, 556-57, 559-69 (1980); Irene Scharf, *Nourishing Justice and the Continuum: Implementing a Blended Model in an Immigration Law Clinic*, 12 CLINICAL L. REV. 243, 244-45 (2005).

179. See Menkel-Meadow, *supra* note 178, at 557, 569-73; Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLINICAL L. REV. 405, 432 (2002).

180. See generally Giddings, *supra* note 165; Barry et al., *supra* note 166.

181. See generally Giddings, *supra* note 165; Barry et al., *supra* note 166.

182. For an example of the collaboration between University of Wisconsin law school students and the working poor, see Brodie, *supra* note 1, at 202-05, 225-35.

183. See generally Giddings, *supra* note 165; Barry et al., *supra* note 166.

184. See Kruse, *supra* note 179, at 407, 423-24, 432-33; Brodie, *supra* note 1, at 238, 242-44, 254-55.

185. See Houseman, *supra* note 1, at 1677, 1684-85, 1696, 1700, 1704-09; Brodie, *supra* note 1, at 238, 242-44, 254-55.

A. Community Lawyering Through Law School Clinics

The community lawyering clinic is considered to be a new type of clinic invoking “collaborative” and “rebellious” advocacy.¹⁸⁶ The community lawyering initiative recognizes that one single intervention by a lawyer cannot facilitate long-term community emancipation.¹⁸⁷ This model of lawyering builds partnership with communities and allows communities greater scope in making informed decisions about choosing from a wide range of legal and non-legal mechanisms to further their agendas.¹⁸⁸ Since a community lawyer looks into the client’s issues from the client’s perspective, community lawyering is hence a “client-centered” process.¹⁸⁹ Participating in such a process is the best way to address the goals of clinical legal education, social justice, and skills training.¹⁹⁰

Having forged a cooperative relationship with the client community, students are exposed to a variety of jobs in a community clinic: “staffing legal assistance centers for pro se litigants, teaching in community education projects, pursuing legislative reform, [and] designing other projects to prevent or address some of the underlying economic or political situations that lead to their clients’ legal problems.”¹⁹¹ This type of clinic can provide non-traditional ways to serve the community.¹⁹²

In a tribal law clinic, students research client issues, represent clients in the tribal courts, and interact with clients on a regular basis.¹⁹³ Interaction among students, indigenous people, and social workers working with tribal issues at the community level constitutes one of the principal features of the clinic.¹⁹⁴ Students also build relationships with court personnel.¹⁹⁵ All of this networking is done for the purpose of generating political power on behalf of tribal communities and transforming them into collective bargaining agents in the democratic political

186. See Brodie, *supra* note 1, at 225.

187. *Id.* at 226.

188. See Enos & Kanter, *supra* note 12, at 84-85.

189. *Id.*

190. See Lopez, *supra* note 2, at 311.

191. Kruse, *supra* note 179, at 408-09. Kruse argues that the functions performed by community law clinic students are actually identical to those of the social justice lawyers constantly struggling for their clients’ causes:

These efforts mirror those of legal service providers, who daily confront the challenge of doling out a limited commodity of lawyers to a growing number of poor and socially marginalized persons in need of legal assistance. Through fundraising, activism, triage, heightened caseloads, pro bono networks of volunteer lawyers, and “unbundled legal services” like legal advice hotlines, legal services organizations try to piece together some combination of strategies to reach out to unrepresented persons who desperately need lawyers to handle the most basic of life’s problems.

Id. at 409.

192. See Lopez, *supra* note 2, at 311-12.

193. Organick, *supra* note 164, at 852-62 (describing the University of Arizona Tribal Law Clinic).

194. *Id.* at 853-54 (describing the University of New Mexico Southwest Indian Law Clinic).

195. *Id.* at 862.

process.¹⁹⁶ Likewise, in immigrant worker and refugee rights clinics, relationships between workers' centers, unions, and clinic students are forged.¹⁹⁷ Students also use a variety of mechanisms to address the concerns of their clients: political mobilization using media, legal education, counseling and support, campaigning and generation of international consensus, mobilization of international machinery, and individual litigation.¹⁹⁸

B. Inculcating the Spirit of Social Justice in Law Students¹⁹⁹ Through Community Lawyering Programs in Law Schools

In 1893, a twenty-four-year-old Indian lawyer traveled to South Africa to take part in a lawsuit.²⁰⁰ This gentleman was forced to get off the train on his way to Pretoria because he refused to surrender his seat to a white European, which, for a person of color, was forbidden.²⁰¹ He spent the night in a non-European waiting room at the Maritzburg railway station.²⁰² The lawyer later came to be known as Mahatma Gandhi.²⁰³ Experiences like this led the humble lawyer of 1893 to dedicate the rest of his life to helping others.²⁰⁴

A more recent example of such dedication, and in a context that is closer to our discussion, is Flavia Agnes.²⁰⁵ As a battered wife in India, Agnes sought divorce through the court process.²⁰⁶ She suffered the plight of battered women entangled in the complex web of legal mechanisms.²⁰⁷ So that other women might

196. See Brodie, *supra* note 1, at 204.

197. See Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879, 1892-93 (2007).

198. *Id.* at 1895-98, 1915-16. A classic feature of community lawyering is that immigrant worker issues are not resolved by litigation; rather, they are solved by outside court settlement through campaigning and other pressures exerted by the "community" of workers.

199. Despite being seemingly evident because of the very nature of the legal profession, the absence of the spirit of social justice vitiates the profession to a significant extent. Instead of being a vocation, the legal profession has turned into a profitable business and, hence, legal education has become an investment in furtherance of such business. In a powerful piece on social justice in legal education, William P. Quigley quotes a student: "[t]he first thing I lost in law school was the reason that I came [here for]." The student, who was working with victims of Hurricane Katrina in New Orleans, asserts that his experience as a volunteer brought him back to the real purpose of legal education. For a detailed account of the practical work done by students in the aftermath of Katrina, and its educational and moral effect, see William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7, 7-11 (2007).

200. See *On The Threshold Of Manhood*, GANDHIAN INST. BOMBAY SARVODAYA MANDAL, <http://www.mkgandhi.org/bio5000/threshold.htm> (last visited Jan. 14, 2011).

201. *See id.*

202. *See id.*

203. *See id.*

204. *See id.*

205. See Nirupama Dutt, *Flavia Now and Again*, THE TRIBUNE (May 15, 2005), <http://www.tribuneindia.com/2005/20050515/society.htm#2>.

206. Parizaad Khan, *Freedom From Abuse: Flavia Agnes*, LIVEMINT (Aug. 14, 2009), <http://www.livemint.com/2009/08/14212105/Freedom-from-abuse--Flavia-Ag.html>.

207. *Id.*

not be forced to undergo the same experience, Agnes became a lawyer and is now a women's rights crusader.²⁰⁸ Not everyone is a Gandhi or an Agnes, whose own experiences of discrimination propelled them towards the causes of social justice on behalf of others. For some individuals, social justice causes have to be inculcated in a formal educational setting for them to be able to effectively serve the larger needs of humanity.²⁰⁹

One of the educational purposes of clinical legal education is to foster a sense of social justice and its values in law students.²¹⁰ Students are encouraged to reflect on their experiences working with underprivileged groups of people.²¹¹ These experiences expose students to the diverse forces that persistently suppress impoverished and marginalized groups and perpetuate social, economic, and political inequality.²¹² The use of the justice system to perpetuate such inequality and the hurdles of the justice system in reaching equality become evident to the students through exposure to real client problems.²¹³

An image reveals much more than words; an enactment works better than an image; but actual situations shape us and make us the people we are.²¹⁴ Recent scientific research has found that decision-making by the human brain is determined by active experience, rather than passive indoctrination.²¹⁵ Community clinics place the students, who are generally from reasonably privileged, middle class backgrounds,²¹⁶ in uncomfortable situations.²¹⁷ The hardships of life that these students have never known become realities as they personally live through them. The importance of the humble requirements of life that they could otherwise never have imagined becomes strikingly distinct and evident to them.²¹⁸ While working in clinics, students begin to shift their thinking from their own educational objectives to the plight of their clients.²¹⁹ Client needs

208. *Id.*

209. *See generally* Lopez, *supra* note 2, at 311-12; Scharf, *supra* note 178.

210. Lopez, *supra* note 2, at 311-12; *see also* Scharf, *supra* note 178, at 244-58, 262-63.

211. *See* Brodie, *supra* note 1, at 226.

212. *See generally* Brodie, *supra* note 1.

213. *See* Lopez, *supra* note 2, at 316-17; Brodie, *supra* note 1, at 250-51.

214. *See generally* Elizabeth A. Carlson, L. Alan Sroufe & Byron Egeland, *The Construction of Experience: A Longitudinal Study of Representation and Behaviour*, 75 CHILD. DEV. 66, 66-67, 79-80 (2004).

215. *See generally* JONAH LEHRER, HOW WE DECIDE (2009); Alan Learner, *Using Our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students To Make Ethical, Professionally Responsible, Choices*, 23 QUINNIPAC L. REV. 643, 643 (2004).

216. *See* Brodie, *supra* note 1, at 234.

217. *See* Quigley, *supra* note 172, at 15 (Professor Quigley asserts that "the first step of any real educational or transformative experience [is] a willingness to go beyond your comfort zone and to risk being uncomfortable."); Lopez, *supra* note 2, at 325-26.

218. *See* Brodie, *supra* note 1, at 234-35. Brodie presents a hypothetical in which a client was on the verge of eviction because she fell behind in her \$685 monthly rent. He asserts that the students are compelled to think about all of the factors that compel a client to default on his/her rent. These experiences lead students to consider what they can do to address the effect poverty has on communities.

219. *See* Brodie, *supra* note 1, at 234-35.

become more important to students than their individual clinical educational experience.²²⁰

C. Strategies to Successfully Formulate Clinical Programs for Community Lawyering

At the very outset, community lawyering clinics should attempt to build and maintain long-term relationships with client communities.²²¹ Building these relationships is the pivotal point of the community clinic²²² because such relationships go beyond the needs of individual clients and concern the community as a whole.²²³ There must be an underlying bond between the community and the lawyer in order to be able to work together successfully over the long term. This bond between the client-community and the clinical “community lawyers” helps lawyers conduct much-required needs assessments to formulate clinical projects²²⁴ for community lawyering.

The next proposition in the formulation of a clinical strategy is to contextualize community lawyering in the law school background. Katherine Kruse proposes a community lawyering clinic structure that consists of four notionally distinct but interrelated stages of the community lawyering process: “compartmentalization,” “connection,” “collaboration,” and “continuity.”²²⁵ The process of community lawyering is a long-term, lengthy process. It is very difficult for students to see the process through in one or two semesters.²²⁶ Therefore, through compartmentalizing, the entire lawyering process is broken down into sub-processes.²²⁷ Each subprocess consists of finite goals that can be assigned to, and controlled by, a student.²²⁸ Supervisors must help students identify the significance of the sub-process in the entire scheme of community lawyering.²²⁹ Identification of a student’s immediate job with that of the entire process of lawyering for the community is what Kruse terms a “connection strategy.”²³⁰ Compartmentalization and connection strategies make students identify finite goals that they are to achieve and realize their contributions to the

220. See Kruse, *supra* note 179, at 443-44.

221. See Enos & Kanter., *supra* note 12, at 85-86.

222. See *id.*

223. See Kruse, *supra* note 179, at 405, 408.

224. See Lopez, *supra* note 2, at 313-14.

225. See Kruse, *supra* note 179, at 433-40.

226. *Id.* at 423.

227. *Id.* at 433-34.

228. *Id.* at 430, 433-35.

229. *Id.* at 433-40.

230. *Id.* at 433, 436.

entire process.²³¹ This contributes to the satisfaction of the student and creates scope for collaborative partnerships among colleagues and clients.²³²

Collaboration among students, their clients, and other communities provides the opportunity to brainstorm and weigh the various alternatives to a problem.²³³ The collaborative ideal is one of the significant methods of the community lawyering process.²³⁴

Continuity between academic study terms is essential to the community clinic process because of its length.²³⁵ In this context, the institutional memory of the law clinic becomes important.²³⁶ The clinical supervisor would be the repository of the clinic's institutional memory and the only constant clinical entity in the entire problem-solving process.²³⁷ The supervisor needs to take each group of students through the community issues and contextualize their roles in the larger process with the help of the abovementioned strategies.²³⁸ Although the clinical supervisor must have sufficient control over the entire process, this might undermine the control and ownership of the students over their part of the enterprise.²³⁹ Nonetheless, the nature of the community process and the clinical involvement compel such control.²⁴⁰

The abovementioned four-part strategy of community development in clinical education can be taken as being an *indicative* policy. However, not all community lawyering clinics need follow this strategy. The vast concept of community lawyering throws open many possible strategies that law school clinics can adopt according to their individual clinical and clientele requirements.

D. The Advantages and Constraints of Basing Community Lawyering Initiatives in Law School Clinics

The greatest advantage of a community development clinic is that it can provide a wide range of experience to students; a unique experience in that regard is building relationships and making them work.²⁴¹ If students can weigh their roles as lawyers in the larger social context,²⁴² they can also balance the

231. *Id.* at 433-34.

232. *Id.* at 435, 438-39.

233. *Id.* at 438-39.

234. Diamond, *supra* note 17, at 67, 75.

235. Kruse, *supra* note 179, at 439.

236. *Id.* at 432.

237. *Id.* at 432, 440-42.

238. *Id.* at 440.

239. *Id.* at 441.

240. *Id.*

241. See Organick, *supra* note 164, at 862; Brodie, *supra* note 1, at 238, 242.

242. See Lopez, *supra* note 2, at 317-18 (such an understanding is otherwise absent when students work for individual clients).

legal and non-legal strategies in furtherance of the interests of their clients.²⁴³ Once students are sufficiently acquainted with the problems of the justice system, they are encouraged to think about alternatives to litigative strategies, which include legal education, networking, and other political activities.²⁴⁴ Students begin to realize that sometimes avoidance of litigation is the best option for the client.²⁴⁵ From the community perspective, community lawyering initiatives strengthen political bargaining power within communities.²⁴⁶ Since the lawyering strategy is *client-centered*, it gives due attention to client choice and client satisfaction.²⁴⁷

Further, since community law school clinics are part of academic institutions, research and academic pursuits go hand in hand with the practical aspects of the advocacy work.²⁴⁸ This facilitates research and publication on important issues in a systematic manner for a wider readership and encourages people to ponder the issues themselves.²⁴⁹ An added advantage of community lawyering through law school clinics is marked by the absence of institutional politics that would otherwise cripple community development goals.²⁵⁰ Since law schools have autonomous policy-formulating bodies devoid of government interference,²⁵¹ they can decide for themselves which causes to get involved in and the extent of such involvement. A serious and daunting hurdle in building a new community development clinic is the establishment of relationships with the community and other *interests and institutions*.²⁵²

Another significant problem is the nature of the clinic itself. The edge that community lawyering clinics have over individual client representation clinics is the ability to address complex issues.²⁵³ Sometimes, however, the complexity of

243. See Brodie, *supra* note 1, at 238, 242-44, 254-55 (Brodie terms the legal and non-legal work as “legislative” and “organizational” activities); Enos & Kanter, *supra* note 12, at 84, 99-100 (the authors suggest weighing the legal and non-legal options in the context of the short- and long-term interests of their clients).

244. See Brodie, *supra* note 1, at 250-52.

245. Enos & Kanter, *supra* note 12, at 87.

246. Brodie, *supra* note 1, at 237-38.

247. See Enos & Kanter, *supra* note 12, at 86, 93-95.

248. See Brodie, *supra* note 1, at 259.

249. *Id.*

250. See *id.* at 259-60. However, there have been instances in which political interference has crippled the work of law clinics by substantially limiting their scope of operation. For a detailed discussion of political interference in law school clinics, see generally Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235, 237-41, 244-47, 261-63, 268-79 (1999). See also Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom, and Political Interference: A Clinical Program Under Siege*, 4 CLINICAL L. REV. 531, 533-37 (1998).

251. However, the same cannot be said of all the law schools in India. The “National Law Schools” are autonomous decision-making bodies, whereas the law departments of the traditional universities are influenced by direct government policy and action. See generally Navoneel Dayanand, *Overview of Legal Systems in the Asia-Pacific Region: India*, CORNELL L. SCH. (Apr. 10, 2004), http://scholarship.law.cornell.edu/lps_lsapr/1.

252. See Organick, *supra* note 164, at 849.

253. See generally Houseman, *supra* note 1, at 1669-1709. See also Kruse, *supra* note 179, at 430.

the social and legal issues makes it difficult to allow students *ownership* and *control* over their client's matters.²⁵⁴ Identification of the real issues and prioritization of the strategies to address them might require specialized knowledge and experience that students lack.²⁵⁵ This is in addition to the long-term nature of the relationship and the issues involved.²⁵⁶ It is hardly possible that students would be able to witness the entire problem-solving process in one semester or two; they might, therefore, tend to believe that they did not have a fulfilling clinical experience.²⁵⁷ Here, the role played by the clinical supervisor attains immense significance.²⁵⁸ The supervisor must be in a position to put things in perspective;²⁵⁹ she must show the big picture to the student and identify the student's role in it.²⁶⁰ Supervisors also add the experience quotient to the community lawyering endeavor.²⁶¹ In some circumstances, they might also need to become directly involved with the client's causes.

Despite the difficulties and hurdles of the community lawyering clinic, Kruse argues: "[I]f the goal is for [students] to leave law school with a personal and professional responsibility to act as problem-solvers for social justice issues, then there is no substitute for actively engaging them in trying to solve some of those problems as law students."²⁶²

E. *The Need for Community Lawyering Through Law School Clinics in India*

India is at a typical developmental juncture at the beginning of the 21st century.²⁶³ It is growing in an unprecedented manner along with China—it is growing the way the United States grew in the 19th century.²⁶⁴ Yet, despite this growth, the traditional problems that have been crippling the country have still to be fully addressed.²⁶⁵ India continues to have one of the highest percentages of poor people in the world.²⁶⁶ More often than not, the country's economic and

254. Kruse, *supra* note 179, at 430.

255. *Id.* at 431-32. However, Kruse argues that this lack of experience can sometimes be advantageous in enabling students to choose from alternative courses of action. *Id.*

256. *Id.* at 431.

257. *See id.* at 431-33.

258. *Id.* at 441.

259. *Id.* at 442-43.

260. *Id.* at 433.

261. *Id.* at 441.

262. *Id.* at 433.

263. *Id.* at 441.

264. *See* Mira Kamdar, *India and the New American Hegemony*, 19 *CONN. J. INT'L L.* 335, 339-40 (2004).

265. *See generally supra* notes 106-13; Heller, *supra* note 86, at 484-519.

266. *See* Supriya Routh, *Providing Legal Aid: Taking up the Issue of Student Practice*, 1 *JURID. REV.* 59, 61 (2008).

developmental goals come into conflict with its social goals.²⁶⁷ It becomes very difficult to converge the interests of various groups situated at different socio-economic levels.²⁶⁸ For some groups of people, development cannot be compromised and the fallout of such development has to be borne by some people.²⁶⁹ For some other groups, the fallout of such development turns their lives upside down.²⁷⁰ The Narmada River Dam in Gujarat illustrates the conflict between development and community social justice.²⁷¹ The government wants to heighten the water level in the dam,²⁷² purportedly to generate electricity and water for farmers.²⁷³ However, the Narmada Bachao Aandolan (“NBA”), the advocacy group representing people displaced by the dam, contends that such a project would only benefit the elite business class of some states.²⁷⁴ The compensation provided to the people displaced has done little to address their land, livelihood, resettlement, and rehabilitation concerns.²⁷⁵ The NBA has taken several litigative and non-litigative initiatives to stall the construction and development of the dam, but the court verdict stood against their efforts.²⁷⁶

Likewise, in Singur, people were displaced when the West Bengal state government, exercising *eminent domain*, acquired their land for industrial purposes.²⁷⁷ Although victims were compensated,²⁷⁸ it has been contended that the

267. See generally Tirtosudarmo, *supra* note 131 (analyzing the frustrating effect of violent international ideological and physical conflict on sustainable development goals in post-colonial nations); Shani, *supra* note 131 (exploring the development of multiple conceptions of citizenship in the face of profound social divisions among the Indian polity); Heinen & Shrivastava, *supra* note 131 (developing detailed demographic and socio-economic profiles of residents subject to the effects of wildlife conservation regimes in Assam, India, in order to present a basis for microsite planning approaches of future development); Arun, *supra* note 131 (discussing the evolution of the modern Paraiyar caste identity in the face of social developments such as education and access to legal remedies).

268. See Tirtosudarmo, *supra* note 131, at 6, 7.

269. See Maggie Black, *The Day of Judgment*, NEW INTERNATIONALIST (July 1, 2001), <http://www.newint.org/features/2001/07/01/keynote/>.

270. *Id.*

271. *A Brief Introduction to the Narmada Issue*, FRIENDS OF RIVER NARMADA, <http://www.narmada.org/introduction.html> (last visited Jan. 16, 2011).

272. *Large Dams on the Narmada River*, FRIENDS OF RIVER NARMADA, <http://www.narmada.org/nvdp.dams/> (last visited Sept. 9, 2011).

273. *A Brief Introduction to the Narmada Issue*, *supra* note 271; see also Black, *supra* note 269.

274. See Black, *supra* note 269.

275. Press Release, Tata Inst. for Soc. Sci., Graduating TISS Students Declare Support for Bhopal Victims and Narmada Dam Oustees (May 6, 2006), <http://news.bhopal.net/2006/05/06/graduating-tiss-students-declare-support-for-bhopal-victims-and-narmada-dam-oustees/>; see also Jai Sen, *Delhi Demos Bulletin 41*, INDIA INST. FOR CRITICAL ACTION: CENTRE IN MOVEMENT (Oct. 4, 2006), http://www.cacim.net/twiki/tiki-read_article.php?articleId=53 (reporting on the Sardar Sarovar Dam and Narmada Bachao Aandolan); Mathew John, *Interpreting Narmada Judgment*, 36 ECON. & POL. WKLY. 3030 (2001) (discussing the inadequacy of the Indian Supreme Court’s response to the NBA’s case with respect to the entitlement and suffering claims of the Narmada Dam oustees); Maggie Black, *Resettled by Registered Mail*, NEW INTERNATIONALIST (July 1, 2001), <http://www.newint.org/features/2001/07/01/domkhedi/>.

276. See Black, *supra* note 269; John, *supra* note 275; *Protest Against India Dam Ruling*, BBC NEWS (Oct. 25, 2000), http://news.bbc.co.uk/2/hi/south_asia/990173.stm.

277. Mritiunjoy Mohanty, *Singur and the Political Economy of Structural Change* (Indian Inst. of

compensation was inadequate and did not appropriately address the concerns of the people who had been displaced.²⁷⁹ In Singur, the government was able to acquire the land,²⁸⁰ whereas the people of another West Bengal community, Nandigram, revolted against any such land acquisition.²⁸¹ Violent protests by Nandigram villagers against setting up a chemical hub in their area resulted in police shooting that reportedly killed fourteen villagers.²⁸² The constituencies mentioned above are an outcome of India's developmental quest, driven by free market ideals of comparative advantage and economic growth.²⁸³ There are, however, other constituencies and their problems that are not shaped by free market ideals.²⁸⁴

Bhopal gas victims are one community that faced suppression and injustice because of their lack of political power and bargaining capacity, not to mention litigative uncertainties.²⁸⁵ A poisonous gas leak from a plant owned by Union Carbide Corporation in Bhopal killed thousands while they slept on the night of December 3, 1984.²⁸⁶ The Bhopal gas disaster is still a live issue today.²⁸⁷ Concerns are being raised over the economic, social, and medical rehabilitation of the generations of victims crippled by the incident.²⁸⁸ Rather than aiding

Mgmt., Working Paper Ser. No.601, 2007), available at <http://www.macrosan.org/pol/feb07/pdf/Singur.pdf>; see also *India: Clashes Over Land for Car Plant*, N.Y. TIMES (Aug. 21, 2008), http://www.nytimes.com/2008/08/22/world/asia/22briefs-CLASHESOVERL_BRF.html.

278. Mohanty, *supra* note 277, at 2-3, 7.

279. *Compensation for Singur Farmers Inadequate: Commerce Secy*, INDIAN EXPRESS (Sept. 4, 2008), <http://www.indianexpress.com/news/compensation-for-singur-farmers-inadequate-commerce-secy/357217/>; see also Mohanty, *supra* note 277, at 7-8.

280. See generally Mohanty, *supra* note 277; *Tatas to Keep Singur Land for Now: SC*, TIMES OF INDIA (June 29, 2011), <http://www.timesnow.tv/articleshow/4377249.cms>.

281. Martha C. Nussbaum, *Violence on the Left: Nandigram and the Communists of West Bengal*, DISSENT MAGAZINE (2008), <http://dissentmagazine.org/article/?article=1157>. See also generally Tanika Sarkar & Sumit Chowdhury, *The Meaning of Nandigram: Corporate Land Invasion, People's Power and the Left in India*, 54 FOCAAL EUR. J. OF ANTHROPOLOGY 73 (2009).

282. See Nussbaum, *supra* note 281.

283. See generally Sarkar & Chowdhury, *supra* note 281.

284. See Sumit Ganguly, *India in 2008: Domestic Turmoil and External Hopes*, 49 ASIAN SURVEY 39, 42-47 (2009).

285. See generally Sheila Jasanoff, *Bhopal's Trials of Knowledge and Ignorance*, 42 NEW ENG. L. REV. 679 (2008); R. Clayton Trotter et al., *Bhopal, India and Union Carbide: The Second Tragedy*, 8 J. BUS. ETHICS 439, 445-49 (1989).

286. Trotter et al., *supra* note 285, at 439-41.

287. See *Bhopal Gas Victims Demands Adequate Relief*, THE HINDU (Feb. 22, 2011), <http://www.thehindu.com/news/cities/Delhi/article1480859.ece>; J. Venkatesan, *Supreme Court to Examine Plea for Higher Bhopal Leak Compensation*, THE HINDU (Feb. 28, 2011), <http://www.thehindu.com/news/states/other-states/article1498285.ece>; *The Bhopal Disaster: The Slow Pursuit of Justice*, ECONOMIST (June 26, 2011), <http://www.economist.com/node/16439185>.

288. *The Bhopal Disaster: The Slow Pursuit of Justice*, *supra* note 287; see also Press Release, Int'l Campaign for Justice in Bhopal, *Bhopalis Launch 800-km March for Justice*; *Announce Global Stir* (Feb. 20, 2008), http://legacy.bhopal.net/blog_pr/archives/2008/02/bhopalis_launch.html; *Bhopal Gas Victims Demand Rehabilitation and Medical Care*, *supra* note 287.

victims, the cumbersome litigation process has been an obstacle to many victims' realization of justice.²⁸⁹

These examples aside, instances of riot, earthquake, and other natural and man-made disasters occur at regular intervals in the country.²⁹⁰

Then there are the traditional constituencies who are impoverished, marginalized, excluded, discriminated against, and exploited because of their lack of political power.²⁹¹ It is these communities who are protected by the constitutional guarantees.²⁹² However, despite these equal rights guarantees, *dalits* are still deprived of their basic right to food, water, education, housing, and clothing.²⁹³ A country whose population includes more than twenty-five percent *dalits* discriminates against one in every four persons on the basis of her birth,²⁹⁴ which is constitutionally prohibited.²⁹⁵

Discrimination against women makes a mockery of the fundamental constitutional guarantee of non-discrimination on the basis of *sex*.²⁹⁶ Shockingly, medieval practices of female feticide and female infanticide are still social characteristics of one of the world's emerging economic powers.²⁹⁷ Birth,

289. *Bhopal Victims' Legal Victory*, THE HINDU (Dec. 11, 2001), <http://www.hindu.com/thehindu/op/2001/12/11/stories/2001121100040100.htm>.

290. See generally INT'L INITIATIVE FOR JUSTICE, THREATENED EXISTENCE: A FEMINIST ANALYSIS OF THE GENOCIDE IN GUJARAT (2003), available at <http://www.onlinevolunteers.org/gujarat/reports/iijg/2003/chapter4.pdf>; Khaitan, *supra* note 137, *Gujarat Riot Victims Court Case Against the VHP and BJP: Precedents and Implications*, THE TELEGRAPH (June 21, 2005), <http://communalism.blogspot.com/2005/06/gujarat-riot-victims-court-case.html>; India: *Gujarat Earthquake Victims to Receive More Support to Rebuild Lives*, RELIEFWEB (May 2, 2002), <http://reliefweb.int/rw/rwb.nsf/db900SID/ACOS-64CK56?OpenDocument>; Haribhai B. Shah, *Gujarat High Court Appoints a Ombudsman to Oversee Relief Operations*, PUCL BULLETIN (2001), <http://www.pucl.org/reports/Gujarat/2001/ombudsman.htm>.

291. See *supra* notes 106-13 and accompanying text; Heller, *supra* note 86.

292. INDIA CONST. arts. 15, 16, 17, 23, 24, 39, 39A, 43, 46.

293. Nishikant Waghmare, *Equal Rights and Opportunities*, COUNTER CURRENTS (Nov. 5, 2007), <http://www.countercurrents.org/waghmare051107.htm>.

294. *Id.*

295. INDIA CONST. art. 15. The psychological orientation of the country towards untouchability forbids any emancipatory initiative from succeeding. The bias is so great that menial and scavenging jobs are reserved only for *dalits*, and the scheduled castes and tribes, according to declared government initiatives. Further, such reservation of scavenging jobs for the *dalits* is claimed to be a social justice initiative on the part of the government; thus, the underlying discriminatory and derogatory treatment of the *dalit* community has become acceptable to the nation as a whole. Amit Chamaria, *What Reservation Implies*, COUNTER CURRENTS (Feb. 26, 2008), <http://www.countercurrents.org/chamaria260208.htm>.

296. INDIA CONST. art. 14 (declaring that "[t]he State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."); *id.* at art. 15 (prohibiting discrimination on the grounds of sex by stating that "[t]he State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition." The Constitution also provides for protective discrimination for women, children, and other vulnerable sections of the population.); *id.* at art. 16.

297. See generally Satish B Agnihotri, *Survival of the Girl Child: Tunnelling Out of the Chakravayuha*, 38 ECON. & POL. WKLY. 4351, 4351-52 (2003) (discussing the gender gap increase in India as a result of the abortions of unwanted female children); S.H. Venkatramani, *Female Infanticide: Born to Die*, 31 INDIA TODAY

however, is just the beginning of such discrimination; in every social institution—education, marriage, employment—women are victims of discrimination and exploitation.²⁹⁸ All of these forms of social discrimination are entrenched in and arise from the biased chauvinist mentality of Indian society as a whole.²⁹⁹ There are likewise a great number of other disadvantaged and marginalized communities of people in the form of unorganized workers, agricultural laborers, uneducated and unemployed villagers, and so on.³⁰⁰

The natures of these communities are different, and so are the issues that they generate. Some issues are permanent,³⁰¹ some are transient³⁰² in nature,³⁰³ and some conflict with other welfare measures.³⁰⁴ Some of these groups are historically and traditionally disadvantaged,³⁰⁵ some became victims of the situations they fell into,³⁰⁶ and other are excluded and exploited by the state polity.³⁰⁷ Nevertheless, what is common to these various communities is that their problems are not strictly legal³⁰⁸—they are simultaneously political issues.³⁰⁹ These political issues require generation of power on behalf of the communities and using that power to better their positions in society.³¹⁰ They also require making their presence felt and letting the political elite take stock of their presence and include them in the political, economic and social development of the country.³¹¹ Creating and positioning such political power demands initiative on the part of community lawyers.³¹²

Thus, the requirement of community lawyering cannot be overemphasized in India or, indeed, in other developing countries. The purpose of this section of the article was not to chart the development of contentious situations involving marginalized communities. Rather, without claiming to be exhaustive, this

26, 26, 28 (1986) (describing the Kallar practice of female infanticide due to the heavy burden of raising a daughter and providing a dowry).

298. See Stree Mukti, *Abuse On Women—Whose Fault?*, COUNTER CURRENTS (Feb. 28, 2008), <http://www.counter currents.org/streemukti280208.htm>; SUNITA KISHOR & KAMLA GUPTA, GENDER EQUALITY AND WOMEN'S EMPOWERMENT IN INDIA 19-53 (2009), available at <http://www.measuredhs.com/pubs/pdf/OD57/OD57.pdf>.

299. See generally Mukti, *supra* note 298 (expressing outrage at the blame placed on women for violence they have suffered).

300. See *supra* notes 106-13; Heller, *supra* note 86.

301. See generally Ganguly, *supra* note 284, at 42-47; *supra* notes 106-13.

302. See generally *supra* notes 277, 281.

303. Ganguly, *supra* note 284.

304. See *supra* notes 276-77.

305. Ganguly, *supra* note 284, at 42-47; see also *supra* notes 106-13.

306. See generally Ganguly, *supra* note 284.

307. See *supra* notes 275-78.

308. INDIA CONST. arts. 15, 16, 17, 23, 24, 39.

309. *Supra* notes 106-13; see also Heller, *supra* note 86.

310. See generally *id.*

311. *Id.*

312. See generally Narrain et al., *supra* note 136; Khaitan, *supra* note 137.

section wanted to identify some issues which could be ideally addressed by community lawyering initiatives.³¹³ This section also discussed whether community lawyers were part of these abovementioned socio-political community movements or not.

The answer to this question is in the affirmative, but it is a qualified affirmative.³¹⁴ Yes, lawyers have always been involved with such community agendas. However, qualification is necessary to clarify that such community lawyering initiatives have thus far only been individual endeavors to better society.³¹⁵ Individual lawyers practicing in higher courts choose their causes for themselves.³¹⁶ Choosing of community causes depends upon the lawyer's inclination, preferences, priorities and understanding of the issues.³¹⁷ A lawyer's own motivation, along with individual choice, shapes his community lawyering activities. The nature of community lawyering is extremely individualistic in India.³¹⁸ It is devoid of any broad-based support or national network of lawyers.³¹⁹ Community lawyers in India are not products of institutional infrastructure; they are themselves created by their own experiences.³²⁰ Such lawyers typically also belong to the higher economic stratum of society.³²¹ This absence of broad-based support and initiative for community lawyering in the country can be attributed to the absence of any such orientation during the law school experience.³²² The quest for socially relevant legal education³²³ has yet to be fulfilled; the social relevance of legal education is still not a priority in most Indian law schools.³²⁴ Law schools

313. Narrain et al., *supra* note 136; Khaitan, *supra* note 137.

314. *See generally* Krishnan, *supra* note 136.

315. *See generally id.* at 349. *See also* Narrain et al., *supra* note 136.

316. Krishnan, *supra* note 136, at 367.

317. *Id.*

318. *See generally id.*

319. *See generally id.* at 350.

320. *See generally id.* at 363, 365.

321. *See id.* at 369.

322. *See generally id.* at 350.

323. Whereas Upendra Baxi gave content to the term "socially relevant legal education," N.R. Madhav Menon has given the term its popularity. To Professor Baxi, facilitation of socially relevant legal education involves the following: pedagogic improvement, i.e. moving from the lecture method to the interactive method; improvement of textbooks and casebooks to facilitate critical thinking by students; qualitative improvement of post-graduate education in law; and converging legal education with concern for the community and care for the under-privileged. Baxi observes: "legal education, with all its limitations is basically related to contemporary social problems; and some experience of social realities, outside the classrooms, libraries and courts will enrich students' awareness of the role and limits of law as an instrument of planned social change." Upendra Baxi, *Towards a Socially Relevant Legal Education: A Consolidated Report of the University Grant Commission's Workshop on Modernization of Legal Education* 9-31 (Univ. Grants Comm'n Reg'l Workshops in Law Working Paper, 1977), available at <http://www.ugc.ac.in/pub/report/1.pdf>.

324. Even though the leading law schools in India pay lip service to the goal of "social justice," and "socially relevant legal education," a perusal of their curriculum and recruiting process points to the fact that "social relevance" of legal education, in the sense of rendering service to the community, is only marginal to the concerns of the law schools in India. This assertion could be discerned from an indicative list of curriculum and recruiting materials of some of the leading law schools in the country. *See generally* THE WEST BENGAL NAT'L

do not bother to devise mechanisms to inculcate social justice values in students through experiential learning.³²⁵ However, the necessity of socially relevant legal education is reemphasized by the National Knowledge Commission's recent Report prepared by the Working Group on Legal Education.³²⁶

The Working Group on Legal Education observes:

Legal education must be socially engaged. This means that legal education programs must compulsorily expose students to the problems of poverty, social exclusion, social change and environmental degradation through clinical legal education, legal aid programs and through seminars and debates that sensitize and expose students to issues of social justice. Working with the poor through one or other program must become a mandatory part of the curriculum.³²⁷

The typical requirements of the nation can only be met by producing lawyers oriented towards social justice and social equilibrium. What can, then, be a better place to inculcate such values than the law school? Law schools can serve to produce a breed of lawyers who can use law as a means of social engineering by uplifting impoverished and marginalized groups in society. Clinical legal education can play a significant role in giving shape to the ideal of socially relevant legal education.

As was previously discussed, community lawyering is the most complicated form of lawyering. Because of this, it can introduce students to a diverse range of educational experiences, if these are garnered within a clinical framework. The two-pronged purposes of clinical legal education will benefit the community

UNIV. OF JURIDICAL SCIS., NUJS 2010 BROCHURE 13-14, 28-29 (2010), available at <http://nujs.edu/downloads/admission2010/nujs-2010.pdf> (last visited Feb. 28, 2011) (the curriculum (list of compulsory and elective/optional subjects) and recruiting materials of Indian law schools); NAT'L LAW SCH. OF INDIA UNIV., PROSPECTUS 2010 55-65, 72 (2010) [hereinafter NLSIU], available at <http://www.nls.ac.in/resources/NLSIUBulletin2010.pdf> (last visited Oct. 7, 2011); NAT'L ACAD. OF LEGAL STUDIES & RESEARCH UNIV., PROSPECTUS 2010, 13-14, 18 (2010), available at <http://www.nalsar.ac.in/pdf/Prospectus%202010.pdf> (last visited Oct. 7, 2011); *LL.B. Course Structure*, LAW SCH. BANARAS HINDU U., <http://www.bhu.ac.in/lawfaculty/website/LawWebsite/academics/lb.html> (last visited Oct. 7, 2011). This list is only an indicative list amongst the 900 odd law schools in India. The number of law schools are too numerous to comprehensively cite their curriculum. However, since all the law schools follow the BCI mandated Syllabus with minor differences, there are similarities in approach with respect to the law curriculum. See *Legal Education*, B. COUNCIL OF INDIA, <http://www.barcouncilofindia.org/about/legal-education/> (last visited Oct. 7, 2011); BAR COUNCIL OF INDIA, RULES OF LEGAL EDUCATION (2008), available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf>; *List of Law Colleges Maintained by the Bar Council of India*, *supra* note 162, at 98.

325. See *supra* note 324 and accompanying text.

326. "The National Knowledge Commission ("NKC") was established by the Prime Minister of India in 2005 to recommend and undertake reforms in order to make India a knowledge-based economy and society." As part of the Commission, a Working Group on Legal Education had been constituted. See generally NAT'L KNOWLEDGE COMM'N, *supra* note 163, at 1.

327. *Id.* at 20.

while imparting pragmatic and purposive educational values to students.³²⁸ Although clinical community lawyering has universal appeal, in the Indian context it could have phenomenal success if appropriately formulated and sincerely executed. Law schools can become institutions facilitating social justice for underprivileged communities.

Since the connotations of community lawyering exist along a continuum, sufficient flexibility should mark any curricular formulation. This flexibility, of course, should be exercised within the parameters of community lawyering, which are determined by the features separating community lawyering from other kinds of advocacy efforts. Establishment of relationships with the community, a client-centered approach to decision making, the invocation of legal as well as non-legal strategies of community empowerment, and creation of political power within communities are the typical features of community lawyering that separate it from lawyering on behalf of individual clients.³²⁹

Clinical community lawyering programs in U.S. law schools can be used as models for community lawyering clinics to be established in the Indian scenario.³³⁰ In this regard, it is important to consider the nature of the individual law school. Since the legal education system in India is marred by divisions and contradictions, the nature of the institutions imparting legal education varies depending *inter alia* on the institution's geographical location, infrastructure, degree system (three or five years) and governance.³³¹ Community lawyering programs must be customized to the nature of the institution. A successful community lawyering program of a traditional law college may not be appropriate for the national law schools.

328. See generally Lopez, *supra* note 2; Barry et al., *supra* note 166.

329. See generally Brescia et al., *supra* note 1, at 834-37, 848-62; Houseman, *supra* note 1, at 1684-85, 1704-09.

330. The law school clinics in the United States specifically deal with specialized subject matter. Clinics range from tribal law clinics to domestic violence clinics, from intellectual property clinics to labor law clinics. The community lawyering programs in U.S. law schools differ significantly among themselves, as permitted by curricular flexibility. This spells, in part, the success of the community lawyering clinics in the United States where law schools are free to devise their own programs appropriate to their characteristics and agendas. See generally *Pacific McGeorge Legal Clinics*, UNIV. OF THE PAC., MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Academic_Programs/Experiential_Learning/Pacific_McGeorge_Legal_Clinics.htm (last visited Sept. 11, 2011); *Mills Legal Clinic of Stanford Law School*, STAN. LAW, <http://www.law.stanford.edu/program/clinics/> (last visited Sept. 11, 2011); *Indian Legal Clinic*, ARIZ. ST. UNIV., SANDRA DAY O'CONNOR C. OF L., <http://www.law.asu.edu/Default.aspx?alias=www.law.asu.edu/ilc> (last visited Sept. 11, 2011); *Intellectual Property and Entrepreneurship Law Clinic*, UNIV. OF CONN., SCH. OF L., <http://www.law.uconn.edu/content/intellectual-property-and-entrepreneurship-law-clinic> (last visited Sept. 11, 2011); *The WilmerHale Legal Services Clinic*, HARV. LAW SCH., <http://www.law.harvard.edu/academics/clinical/lsc/clinics/dv.htm> (last visited Sept. 11, 2011).

331. See RULES OF LEGAL EDUCATION, *supra* note 324; *Reform of Legal Education in India: Note on Proposed Directions for Reform*, B. COUNCIL OF INDIA, <http://www.barcouncilofindia.org/wp-content/uploads/2010/07/LegalEducationReformRecommendations.pdf> (last visited Feb. 28, 2011). See generally Jane E. Schukoske, *Legal Education Reform in India: Dialogue Among Indian Law Teachers*, 1 JINDAL GLOBAL L. REV. 251, 264 (2009).

Before delving into these micro issues of formulation, the article would like to consider the overall clinical legal education scenario in India and fit community lawyering within the existing legal scheme. It would like to further suggest measures to improve the overall clinical legal education scenario in the country, with particular focus on community lawyering.

F. Pros and Cons of Teaching Community Lawyering in Indian Law Schools

Any contemplation of Indian community lawyering clinics would have to address the nature of the legal education system in India. In India, a first law degree could be obtained within either three or five years.³³² This essentially divides the legal education system in the country into two: first, there is the three-year law course after three years of a 'graduate' (post-secondary) program;³³³ and, second, there is the five-year law program after twelve years of pre-secondary schooling.³³⁴ Then there is the debate between the traditional university "law department"/"law college" legal education and the national law schools.³³⁵ Thus, the legal education system in India is hardly uniform. It would be immensely difficult to have a generalized policy mechanism for the legal education system as a whole, because the legal education system itself cannot be generalized.

The Bar Council of India ("BCI") recognizes the law schools throughout the country.³³⁶ It is the standard-setting and curriculum-prescribing authority as far as legal education is concerned.³³⁷ Apart from the classroom teaching component, the Council also prescribes compulsory practical papers as partial requirements for the fulfillment of the LL.B. degree.³³⁸ These four practical papers are: "Moot Court Exercise and Internship," "Drafting, Pleading and Conveyancing," "Professional Ethics & Professional Accounting System," and "Alternate Dispute Resolution."³³⁹ Looking at the BCI's prescribed scheme, it is evident that the purpose of the practical papers is to foster litigation skills among law students so

332. See RULES OF LEGAL EDUCATION, *supra* note 324, at Rules 2(vi), 4. It has been contended, however, that China has the most fractured legal education system. The Chinese legal education system ranges from the university-based legal education system to the self-study network run by the Chinese Law Society. See Cheng Han Tan et al., *Legal Education in Asia*, ASIAN J. COMP. L. 1, 3-5 (2006).

333. RULES OF LEGAL EDUCATION, *supra* note 324, at Rule 5 (referring to the three-year program following twelve years of pre-secondary school education, which in the United States, would be called an undergraduate program).

334. *Id.*

335. This debate centers around a number of issues, from the purpose of legal education to the scope of the faculties in these two different set-ups. There are also wide gaps between resources and infrastructure available to the different categories of law schools. See N. R. Madhava Menon, *The Future of Law Teaching Institutions*, THE HINDU (July 30, 2002), <http://www.hindu.com/thehindu/edu/2002/07/30/stories/2002073000100200.htm>; Schukoske, *supra* note 331, at 264-68.

336. RULES OF LEGAL EDUCATION, *supra* note 324, at Rule 3, ch. III.

337. See *id.* at chs. II, IV, sched. II.

338. See *id.* at sched. II(4)(a).

339. See *id.* at sched. II(6), pt. (II)(B).

that they may become successful court practitioners.³⁴⁰ Such an outlook completely ignores the role of lawyers as social engineers in the wider social context. Be that as it may, the BCI practical paper syllabus is haphazardly implemented in Indian law schools.³⁴¹ A tendency to shift the onus prevails throughout the system.³⁴² Unsystematic implementation negates even the very limited purpose of the practical papers.

However, there is a huge scope for attaining the twin purposes of clinical legal education through the judicious and innovative use of the BCI-prescribed practical papers. The idea of community lawyering can play a significant role in realizing the potential of these papers.³⁴³ A closer look at the BCI syllabus for these papers would suggest that most of the papers are actually not designed to give students the required experiential learning opportunities.³⁴⁴ This curriculum is only an extension of the classroom teaching component. Students do not actually have to do anything by themselves—they are to be mere observers in most cases.³⁴⁵

While the purpose of the paper on “Moot Court Exercise and Internship” seems to aim at preparing students for court proceedings, this is a simulation paper, devoid of research with real-life clients.³⁴⁶ Although students get to observe “real cases” in court, they hardly get an opportunity to participate in such cases.³⁴⁷ Student representation of real clients is not a phenomenon of the Indian legal system.³⁴⁸ However, such representation can go a long way to furthering the purposes of clinical legal education while serving the causes of impoverished communities.³⁴⁹

Likewise, the paper on “Drafting, Pleading and Conveyancing” should allow students to grasp independent drafting either for courts or contracts.³⁵⁰ This paper

340. For an analysis of the BCI syllabus regarding practical papers and its implementation by the law schools of India, see 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, 195-206 (2006).

341. *Id.* at 181, 196-97.

342. *Id.* at 196-97.

343. *Id.*

344. The four clinical papers are designed to be mostly taught in class. See *RULES OF LEGAL EDUCATION*, *supra* note 324, at sched. II(6), pt. II(B).

345. Students are required to “observe” trials and interviews as part of the clinic course on “Moot court exercise and Internship.” See *id.* at sched. II(6), pt. (II)(B)(24).

346. *See id.*

347. *See id.*

348. Bloch & Prasad, *supra* note 340, at 198-99; see also Routh, *supra* note 266, at 67-69.

349. For a discussion on student representation in the Indian context and a claim for such representation see generally Bloch & Prasad, *supra* note 340, at 197-98.

350. See *RULES OF LEGAL EDUCATION*, *supra* note 324, at sched. II(6), pt. II(B).

is also taught in class through simulation.³⁵¹ Again, students are deprived of working for real clients and drafting real pleadings, agreements or by-laws.³⁵²

The paper on “Professional Ethics & Professional Accounting System” is taught from a prescribed class text.³⁵³ This part of the practical curriculum also includes a classroom component, teaching substantive rules of good conduct for lawyers.³⁵⁴ There is no attempt to inculcate ethics in students by making them work in actual situations with real people.³⁵⁵ Dilemmas and conflicts about strategic choices made by lawyers during their work compel them to weigh ethics with the practical requirements of real-life situations. Ethics are not rules; they are concepts which can best be internalized during the hardships of actual practice. Students are, however, taught in class about when a lawyer’s conduct becomes misconduct.³⁵⁶

Finally, the purpose of the curriculum on “Alternate Dispute Resolution” is to give the students a range of non-litigative experiences.³⁵⁷ A significant part of the paper is the classroom teaching component, in addition to simulation exercises.³⁵⁸ The course does mention “practical exercise” as an evaluative tool; there is no specific guideline on the same.³⁵⁹ The new BCI syllabus has substituted the course “Public Interest Lawyering, Legal Aid and Para-Legal Services” with the Alternative Dispute Resolution course.³⁶⁰ Incidentally, “Public Interest Lawyering, Legal Aid and Para-Legal Services” used to be the only clinical course wherein students were required to undergo experiential learning.³⁶¹

Thus, the BCI syllabus of practical papers is fractured and compartmentalized—most of the material is taught in the classroom like other substantive law classes.³⁶² A much better job could be done by the universities and the law schools with the practical papers if a holistic and purposive view of the same were taken.

Instead of preserving the categorical distinctions between the practical papers, law schools can attempt to meet the requirements of these papers by devising real client clinical structures and placing each of the practical paper requirements within such structures. To develop the idea further, let me use a community development clinic model as example. Community lawyering

351. *Id.*

352. *See id.* at sched. II, pt. II(B)(21).

353. *See id.* at sched. II(6), pt. II(B)(21).

354. *Id.*; *see also* Bloch & Prasad, *supra* note 340, at 210-11.

355. *See* Bloch & Prasad, *supra* note 340, at 210-11.

356. *See* RULES OF LEGAL EDUCATION, *supra* note 324 at pt. II(B)(22), sched. II(6).

357. *See id.* at pt. II(B)(23), sched. II(6).

358. *Id.*

359. *Id.*

360. *See id.*; Bloch & Prasad, *supra* note 340, at 180, 211-12.

361. Bloch & Prasad, *supra* note 340, at 180.

362. *See* RULES OF LEGAL EDUCATION, *supra* note 324, at pt. II(B)(23), sched. II(6).

initiatives use legal as well as non-legal mechanisms to attain their goals.³⁶³ They are characterized by collaboration with client communities, partnering with clients, networking with individuals and institutions and forming bargaining units, generating political power, and a plethora of other strategic initiatives.³⁶⁴ This is a long-term business.³⁶⁵ As has been pointed out previously, in a community lawyering clinic, students assist *pro se* litigants, teach the community, pursue legislative reform, and perform a range of other conventional and non-conventional lawyering jobs.³⁶⁶ All these community lawyering functions purported to be carried out by students involve the skills that BCI's prescribed practical papers intend to impart.³⁶⁷ However, the difference is that, instead of being taught in class, students learn these skills by working in the community and by doing things themselves.³⁶⁸ I will discuss in the next section how, by innovative use of the community lawyering process, the practical requirements of the LL.B. syllabus can be purposefully achieved.

Having contended for the use of community lawyering in clinical legal education, I would like to acknowledge the potential difficulties in implementing such a process in India. The legal education structure of the country itself poses problems in devising an appropriate clinical education curriculum in general, as I discuss below. Such formulation becomes even more difficult in the context of community lawyering.

The two categories of law schools in India (traditional university departments and autonomous law schools) are characteristically different.³⁶⁹ Whereas the national law schools thrive on resources and infrastructure, the traditional law colleges often lack the basic minimum infrastructure to impart law degrees.³⁷⁰

363. See Lopez, *supra* note 2, at 309.

364. See *id.*

365. See *id.*

366. See *id.*; Kruse, *supra* note 179, at 408-09. Kruse argues that the functions performed by community law clinic students are actually identical to those of the social justice lawyers constantly struggling for the causes of their clients: "These efforts mirror those of legal service providers, who daily confront the challenge of doling out a limited commodity of lawyers to a growing number of poor and socially marginalized persons in need of legal assistance. Through fundraising, activism, triage, heightened caseloads, pro bono networks of volunteer lawyers, and "unbundled legal services" like legal advice hotlines, legal services organizations try to piece together some combination of strategies to reach out to unrepresented persons who desperately need lawyers to handle the most basic of life's problems." See also Ashar, *supra* note 16, at 1895-1907, 1915-16.

367. See generally Bloch & Prasad, *supra* note 340, at 197; RULES OF LEGAL EDUCATION, *supra* note 324, at sched. II(6).

368. See generally Bloch & Prasad, *supra* note 340, at 197.

369. See Menon, *supra* note 335.

370. See Recommendations from the Nat'l Knowledge Comm'n to the Prime Minister of India 16 (Oct. 15, 1997) [hereinafter Recommendations to Prime Minister], available at <http://www.knowledgecommission.gov.in/downloads/recommendations/LegalPM.pdf>; NAT'L KNOWLEDGE COMM'N, *supra* note 163, at 5, 16-17, 20-21, 24-25.

This lack of infrastructure is a manifestation of the resource *crunch* of these law colleges.³⁷¹

The nature of clinical education demands substantial, full-time involvement by law faculty members.³⁷² In a meaningful clinical education scenario, the faculty-student ratio must also be kept very low, so that faculty can effectively supervise student work.³⁷³ This is difficult in India, first because many law schools in the country are faculty deficient.³⁷⁴ Secondly, most law schools cannot afford to appoint full-time clinical faculty members.³⁷⁵ Faculty are expected to teach at least two to four substantive law classes every academic year, depending on the institution where they teach. Classroom teaching justifies a professor's position. Law schools with clinical curricula require their existing faculty members to spare some time for the clinic.³⁷⁶ Some law colleges invite practicing advocates and retired judges to lecture in clinic classes.³⁷⁷

The faculty crunch can become a serious handicap in devising a community lawyering curriculum. The availability of qualified and committed faculty is a prerequisite for any community lawyering program in law school.³⁷⁸ This is, however, not the sole prerequisite. The overall atmosphere and support within a law school will affect whether it can formulate a successful community lawyering program. Finally, law schools would need to invest substantial resources to successfully operate community lawyering clinics.

Despite these handicaps—resource crunches, faculty crunches, and lack of initiative—some of the law schools in the country are actually operating legal aid clinics successfully.³⁷⁹ Although the concept of community lawyering as defined in the preceding part of this paper is largely absent in these clinics, some of the characteristics of community lawyering can still be found in their operation. Prominent Indian law schools with clinical programs include West Bengal National University of Juridical Sciences,³⁸⁰ National Law School of India

371. See NAT'L KNOWLEDGE COMM'N, *supra* note 163, at 27-28.

372. See *id.* at 17.

373. See *id.*

374. See *id.* at 16, 26-27.

375. See *id.* at 27-28.

376. See generally *Department of Law*, U. DELHI, http://web1.du.ac.in/show_department.html?department_id=Law (last visited Jan. 20, 2011); *Law School BANARAS HINDU U.*, <http://www.bhu.ac.in/lawfaculty/website/LawWebsite/default.html> (last visited Jan. 20, 2011). However, a reasonably well-developed clinical program is not a feature of every law school. Most national law schools do have some clinical programs in place; but the law colleges generally follow the BCI prescription of classroom teaching for practical papers, which is done with the help of part-time teachers. These part-time teachers are mostly practicing advocates and retired judges. Some of the traditional law departments, *viz.*, Delhi Law Faculty and the Banaras Hindu University Law Department, have well-developed clinical programs in existence.

377. RULES OF LEGAL EDUCATION, *supra* note 324.

378. Recommendations to Prime Minister, *supra* note 370, at 3.

379. *Legal Services Clinic*, BAR & BENCH (June 8, 2010), <http://barandbench.com/brief/3/777/legal-services-clinic-law-students-giving-back-to-the-community>.

380. *The Legal Aid Society*, W. BENGAL NAT'L U. JURID. SCI., <http://www.nujs.edu/nujs-legal-aid->

University,³⁸¹ the Faculty of Law of Delhi University,³⁸² and Banaras Hindu University.³⁸³

Thus, it can be seen that, irrespective of the nature of the institution, many law schools do have some form of clinical initiative. However, most of the service-oriented clinics are kept outside the scope of the BCI-mandated practical papers.³⁸⁴ Further, the legal service initiatives taken by the various law schools do have some components of community development lawyering, but these programs lack structured community development agendas.³⁸⁵ Services rendered by these clinics are not part of a “process” of *community lawyering*, but are, rather, compartmentalized ventures of legal clinics.³⁸⁶

In the next part of this article, I suggest measures to structure legal service initiatives of law schools through the community lawyering process. I also propose to make community lawyering part of the academic credit program. I contend that the purposes of the BCI practical papers can be appropriately realized through the community lawyering process.

V. DEVISING A VIABLE COMMUNITY LAWYERING STRATEGY FOR INDIA: EFFICACY OF THE LEGAL CLINICS

A community lawyering process is set into motion with the establishment of a relationship with a concerned community. Establishment of relationships and forging of partnerships are the prerequisites of any community lawyering initiative. This should not pose much of a problem in the Indian context. Establishment of relationships with communities is reasonably easy because of the structure of closely-knit communities in India.³⁸⁷ In very few instances, an extra effort may be required to organize communities. If a community lawyering

society.html (last visited Oct. 31, 2011).

381. *Legal Services Clinic*, *supra* note 379.

382. *Department of Law*, U. OF DELHI, *supra* note 376.

383. *Law School*, BANARAS HINDU U., *supra* note 376.

384. See RULES OF LEGAL EDUCATION, *supra* note 324, at pt. II(B), sched. II(6). *But cf.* Bloch & Prasad, *supra* note 340 (noting differences from earlier BCI syllabus).

385. For an approach indicative of legal service and clinical programs in law school curriculum, see generally NLSIU, *supra* note 324; *Academic Programme*, NAT'L ACAD. LEGAL STUD. & RES., http://www.nalsar.ac.in/academic_programes.html (last visited Feb. 28, 2011); WEST BENGAL NAT'L UNIV. OF JURIDICAL STUDIES, NUJS 2010 BROCHURE 13 (2010) [hereinafter NUJS], available at <http://nujs.edu/downloads/admission2010/nujs-2010.pdf> (last visited Oct. 31, 2011); *Legal Aid Society*, *supra* note 380; *LL.B. Course Structure*, *supra* note 324. Also compare NLSIU, *supra* note 324 (representative of schools following BCI curriculum verbatim) with NUJS, *supra* (representative of schools that do not follow the BCI clinical curriculum mandate by offering two compulsory clinical subjects as opposed to four).

386. See *supra* note 385 and accompanying text. However, the West Bengal National University of Juridical Sciences has created a non-credit program for students through which its Legal Aid Society provides legal services to the inmates. Somdutta Bhattachrya & Kumar Rahul, *Shadhinota—A Step Towards Legal Empowerment of Inmates*, NAT'L U. JURID. SCI., available at <http://nujs.edu/downloads/shadhinota-concept-note.pdf>.

387. Nandy, *supra* note 115, at 57.

initiative is taken on behalf of laborers, one might need to forge an alliance with the labor union; if such initiative is concerned with a women's rights cause, a relationship with NGOs and Women's Wings is a must; for indigenous tribes, such relationships have to be established with the relevant tribal councils, etc.³⁸⁸ For the purposes of the ongoing discussion, I will be using the example of a *village community* as a unit and as a client for community lawyering purposes. I am taking *village community* as an example instead of groups requiring special attention (i.e., indigenous tribes, women, laborers, etc.) because village communities are an integral part of Indian society and political structure.³⁸⁹ Even if an impoverished special group requiring attention is absent from a law school context, village communities are so pertinent that all law schools could formulate community development programs around such *village communities*.³⁹⁰

If a rural community is taken as a model client, the first job of the community lawyers would be to establish relationships with the villagers. This can be achieved through the village administrative units called *panchayats*.³⁹¹ A *panchayat* is a statutorily established gathering of elected village representatives who look after the welfare and problems of their respective villages.³⁹² Therefore, *panchayats* can establish bridges between community lawyers and villagers.³⁹³ Community lawyers can attend regular meetings of the village panchayat. This would enable them to forge a partnership with the panchayat and with the villagers through the panchayat.³⁹⁴

The second stage of such a partnership would be to share the concerns of the villagers and work in furtherance of addressing them. This would require legal skills on the part of the lawyers as well as non-legal initiatives. Negotiating and petitioning would be two significant tools in the armory of the community lawyers working in a village community. As the country is based on socialistic ideals, numerous welfare protective schemes and programs are in place for the emancipation of village communities.³⁹⁵ A significant issue in these communities is the lack of awareness about the different welfare schemes, which subsequently results in the exclusion of eligible groups of people.³⁹⁶ A second problem with

388. Oommen, *supra* note 115, at 229.

389. Nandy, *supra* note 115, at 57-58; Oommen, *supra* note 115, at 228.

390. Oommen, *supra* note 115, at 229.

391. Baxi & Galanter, *supra* note 117, at 343.

392. INDIA CONST. art. 40, pt. IX. See also generally Baxi & Galanter, *supra* note 117, at 341-86.

393. Baxi & Galanter, *supra* note 117, at 341-86.

394. However, sometimes one might need to avoid the *panchayat* to address the concerns of a minority of villagers, whom the *panchayat* ignores, or refuses to represent. Oommen, *supra* note 115, at 229.

395. These rural social welfare schemes include the Agricultural and Rural Debt Relief Scheme, the Credit-cum-Subsidy Scheme, the Food for Work Programme, *Indira Awaas Yojana* (the Housing Scheme), *Jawahar Rozgar Yojana* (the Income Scheme), the Rural Sanitation Programme, the Rural Water Supply Programme, and Self Help Groups. For a detailed overview, see *Social and Welfare Schemes*, INDIASTAT, <http://www.indiastat.com/socialandwelfareschemes/27/stats.aspx> (last visited Jan. 21, 2011).

396. See K.A. Raju, *Towards Access to Information in Rural India*, 20 INFO. SVCS. & USE 31, 31-33, 35-

these schemes is the corruption of the officials carrying them out.³⁹⁷ Because of rampant corruption, appropriate implementation of these programs becomes an uphill task.³⁹⁸ Further, developmental issues are a constant struggle for many village communities.³⁹⁹

Hence, one of the primary responsibilities of community lawyers working with the village communities would be to ascertain the different developmental programs available and educate the community about their rights and privileges.⁴⁰⁰ Lawyers would also be required to be in close contact with the administrative officials concerned with community affairs.⁴⁰¹ Thus, a vital function of a community lawyer would be to bridge the gap between bureaucracy and the community's needs.⁴⁰² Occasionally, lawyers might be required to take the litigation path to protect the rights of villagers and secure their developmental concerns.

Thus, a community lawyer working with a typical village community in India would likely be required to perform the following jobs: establishing relationships with the village community; ascertaining the requirements of the community; researching the different schemes and programs applicable to the community; negotiating and communicating with the responsible government officials in charge of administering the village community;⁴⁰³ drafting applications and other documents on behalf of the community; and preparing cases for the community that require research, preparation of briefs, filing of motions and other associated tasks.⁴⁰⁴

One of the important practical papers of the BCI's prescribed syllabus is Moot Court Exercise and Internship.⁴⁰⁵ The sub-components of this paper include pre-trial preparation (including client interviewing), preparation of court documents, acquaintance with court procedures and filing of court documents, observation of trial proceedings, and simulated practice of litigation.⁴⁰⁶ Except for the simulated practice of litigation, students are to "observe" the rest of the

37 (2000).

397. Nagarajan Vittal, *Corruption and the State: India, Technology, and Transparency*, 23 HARV. INT'L L.J. 20, 20-21 (2001).

398. *Id.*

399. See *supra* notes 275-77, 397 and accompanying text. For reports on the Sardar Sarovar Dam and Narmada Bachao Aandolan see Jai Sen, *Bhopalis Condemn Forcible Eviction of Narmada Hunger Strikers*, INDIA INST. FOR CRITICAL ACTION: CTR. IN MOVEMENT (Apr. 8, 2006, 18:31), http://www.cacim.net/wiki/tiki-read_article.php?articleId=13&highlight=Sardar%20Sarovar%20Dam; John, *supra* note 275; Black, *supra* note 275; *Protest Against India Dam Ruling*, *supra* note 276; Mohanty, *supra* note 277; *India: Clashes Over Land For Car Plant*, *supra* note 276.

400. See generally *supra* note 396.

401. *Id.* at 32.

402. *Id.*

403. See generally Baxi & Galanter, *supra* note 117; Oommen, *supra* note 115.

404. RULES OF LEGAL EDUCATION, *supra* note 324.

405. See *id.*, at pt. II(B)(24), sched II(6).

406. *Id.*; see also Bloch & Prasad, *supra* note 340, at 209.

requirements of the paper.⁴⁰⁷ Students do not actually have opportunities to “do” pre-trial preparation or trial-related jobs.⁴⁰⁸ Although the paper intends to impart lawyering skills to students, the methodology contemplated for imparting such skills is seriously limited. The crux of clinical legal education lies in the experiential teaching methodology—learning by doing.⁴⁰⁹ Unfortunately, the nature of the prescribed paper does not provide such opportunities to students. Since students in India are not allowed to represent clients in court,⁴¹⁰ there is a limitation on their ability to absorb court procedure while in law school.⁴¹¹ Given such circumstances, the community lawyering process can be of great value to them in internalizing pre-trial preparation and court procedure.⁴¹² If students were to prepare and file cases for their client communities while guided by an attorney and a faculty supervisor, they would learn the process through real-life experience, which would have a much greater educational impact.⁴¹³

Another BCI practical paper is on Drafting, Pleading and Conducting Conveyances.⁴¹⁴ Drafting assignments in the syllabus include civil and criminal drafting.⁴¹⁵ Drafting is another significant but comparatively simpler area in which students should be allowed to draft real documents under supervision. Most basic drafting consists, to some degree, of *boilerplate* provisions.⁴¹⁶ However, for more complex drafting, faculty should pay extra attention to students and should be prepared to undertake successive revisions of student documents. Documentation such as drafting of affidavits, deeds, and complaints is a regular requirement in a village community.⁴¹⁷ If students were allowed to perform this role, they would enthusiastically learn the way to draft and, more importantly, the community would not have to wait for a lawyer to draft these documents at exorbitant rates.

The other practical paper, styled as the Professional Ethics & Professional Accounting System, purports to teach how to approach ethical dilemmas and instructs in the lawyer’s code of conduct.⁴¹⁸ The very nature of the work of a community lawyer takes the lawyer through different phases of lawyering and

407. See generally RULES OF LEGAL EDUCATION, *supra* note 324, at pt. II(B)(6), sched. II(6).

408. *Id.*

409. See Joan MacLeod Heminway, *Caught in (or on) the Web: A Review of Course Management Systems for Legal Education*, 16 ALB. L.J. SCI. & TECH. 265, 272-80 (2005); Eleanor W. Myers, “Simple Truths” about Moral Education, 45 AM. U. L. REV. 823, 833-37 (1996).

410. Routh, *supra* note 266, at 67-73.

411. See generally Myers, *supra* note 409 (comparing differences between a law student’s expectations of practical legal settings based solely on classroom learning versus that of a student in the work field).

412. *Id.* at 323-24 n.2.

413. See generally Heminway, *supra* note 409; Myers, *supra* note 409.

414. RULES OF LEGAL EDUCATION, *supra* note 324, at pt. II(B)(6), sched. II(6).

415. *Id.*

416. See *id.*

417. Raju, *supra* note 396, at 35-37.

418. RULES OF LEGAL EDUCATION, *supra* note 324, at pt. II(B)(22), sched. II(6).

ethical, social, economic, and political interactions.⁴¹⁹ Ethics inculcated and values appreciated during conflicts of choice in actual situations are more likely to become permanent characteristics of the lawyer-persona.

The final practical paper provides for training in Alternate Dispute Resolution.⁴²⁰ This paper consists of simulation exercises, case studies, and practical exercises.⁴²¹ While performing community lawyering roles, students would actually be working in accordance with their fourth practical paper to a significant extent. Moreover, community lawyering is germane with possibilities for shaping the discourse of the rest of the practical papers. The idea of practical papers would hold validity only if students were required to do something practical on their own. The way the practical papers are now devised, students have less scope to do something practical as part of the curriculum;⁴²² the papers are no different from any other courses taught in the curriculum. Community lawyering is a mechanism to emancipate subordinated communities and develop them by creating political power for community clients.⁴²³ This is done by legal and non-legal means.⁴²⁴ However, in addition to aiding marginalized communities, such lawyering discourses can improve and modernize Indian legal education.

Thus, my suggestion is to dispense with the four prescribed papers and merge them into the community lawyering initiative. The purposes of the four papers can be addressed in the different phases of the community lawyering process. Students can do their integrated practical paper in two successive semesters in either their final year of study or in the previous year. This flexibility, however, would be absent from the three-year law program. In a three-year law curriculum, such a course could be offered in the final year of study.

Before I conclude this section, I want to point out a central concern in devising a community clinic program. I have already noted the lack of qualified faculty and weakness of infrastructural resources in the law schools in India.⁴²⁵ Various commissions and committees have identified the faculty shortage problem in the law schools.⁴²⁶ The problem is not the number of faculty members available; rather, it is the quality of the faculty members with which these commissions are concerned.⁴²⁷ The Knowledge Commission has suggested

419. Houseman, *supra* note 2, at 1677-78, 1684-87, 1696, 1700, 1704-09.

420. RULES OF LEGAL EDUCATION, *supra* note 324, at pt. II(B)(23), sched. II(6).

421. *Id.*

422. *See generally id.* at pt. II(B)(6), sched. II(6).

423. Houseman, *supra* note 1, at 1689.

424. *See id.*

425. *See* NAT'L KNOWLEDGE COMM'N, REPORT TO THE NATION 2006-2009: GOVERNMENT OF INDIA 80 (2009), available at <http://www.knowledgecommission.gov.in/downloads/report2009/eng/report09.pdf>; Recommendations to Prime Minister, *supra* note 370, at 10-11, 14.

426. *See* NAT'L KNOWLEDGE COMM'N, *supra* note 425, at 80; Schukoske, *supra* note 331, at 266.

427. *See* NAT'L KNOWLEDGE COMM'N, *supra* note 425, at 80.

mechanisms to train appropriately qualified professors.⁴²⁸ However, in the context of community lawyering (or for that matter, any kind of experiential lawyering), apart from solving the problem of obtaining quality law instructors, the overall approach of law schools also needs to be changed. It is always difficult to change institutional approaches. Change needs to begin from the recognition that experiential learning (community lawyering) is central to justice education. If law schools seek to impart socially relevant legal education, there is no way but to invest in full-time quality faculty who can appropriately supervise experiential learning for law students. Thus, on the faculty front, a two-pronged approach needs to be adopted: training of qualified faculty needs to move hand-in-hand with the maturity of institutional approaches if the community lawyering initiative is to become an educational endeavor in India.

VI. CONCLUSION

I have centered my discussion on community lawyering as a law school clinical agenda. After looking into theoretical perspectives on the concept, I have identified some characteristics of community lawyering. It is the imperfect presence⁴²⁹ of these characteristics that shape community lawyering.

Having looked into the concept of community lawyering, I have asserted the pragmatic significance of the idea in the Indian context. I argued that a country in India's situation, full of social and political dilemmas and conflicting interests, would benefit immensely from the actual application of the concept. However, since the concept is not an immensely popular one in India, one needs to look for alternatives to lawyers performing such roles. What can be a better place to begin such an endeavor than in the law school itself—the very root of the creation of the lawyering community?

The BCI-prescribed practical syllabus for the LL.B. degree is actually an extension of classroom-based courses. Except for the one paper on Alternate Dispute Resolution, the syllabus lacks a focus on clinical education. However, by innovatively using the community lawyering process, the LL.B. syllabus could be shaped to the advantage of students. Rather than having the clinical component be merely an *addition* to the syllabus, the syllabus could be taught via clinical experiential learning.

However, such an innovative idea full of possibilities also has potentially immense problems. First, there is the problem of the resources required for such long-term initiatives.⁴³⁰ As has been identified by the National Knowledge

428. Schukoske, *supra* note 331, at 272-75, 279; see NAT'L KNOWLEDGE COMM'N, *supra* note 425, at 81; Recommendations to Prime Minister, *supra* note 370, at 15-16.

429. Since the concept of community lawyering eludes any static formulation, by "imperfect presence" I mean the presence of some of the characteristics of what is termed "community lawyering," "cause lawyering," or "political lawyering."

430. See generally Brescia et al., *supra* note 1.

Commission, resource constraints cripple most of the legal education institutions in India.⁴³¹ There is a huge resource disparity between the traditional university department law schools and the statutory national law universities.⁴³² Therefore, one of the first jobs for the materialization of clinical community lawyering is to infuse legal education institutions with adequate resources, and reduce the resource imbalance between the two categories of legal institutions.

A second obstacle to the implementation of community law clinics is determining when to offer clinical courses. In a five-year law program, the course could be offered in the fourth or fifth year of study, but for the three-year law program, it might be difficult to merge such a lengthy clinical program with the rest of the curriculum. However, if the entire community lawyering process is perceived as a continuous integrated process that incorporates the different dimensions of clinical legal education, it can be offered in the last year of the three-year degree program. In such a scenario, as I have argued, instead of having a multiplicity of clinical papers, universities should have one integrated community clinic program that is capable of imparting a wide variety of practical skills and training in ethics to students in addition to helping communities in dire need.

431. NAT'L KNOWLEDGE COMM'N, *supra* note 425, at 80.

432. Tamil Nadu, *Disparity Exists Between Central and State Universities*, THE HINDU (Jan. 10, 2011), <http://www.hindu.com/2011/01/10/stories/2011011050770500.htm>.

