

ROLE OF LEGAL AID CLINIC IN ERADICATING CHILD TRAFFICKING: ACCESS TO JUSTICE

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Abstract—The Paper highlights that from 1990 onwards Legal Education has evolved and many law Colleges, University with their own law department have legal aid clinic functioning in full-fledged manner. More numbers of Law colleges and departments are opening across India. Human Trafficking specially child trafficking has also increased in leaps and bound since Independence. The Education system in India believes in an interdisciplinary approach, as mentioned in National Education Policy, 2020. This paper focuses on how children can be protected, prevented from being trafficked and how legal Aid Clinic with the help of law students can be instrumental in sensitizing common people through awareness programs. This paper gives an overview of Role of Legal Aid Clinic in dealing with Human Trafficking issues and how they are doing so far in access to justice.

Keywords: Legal Education, Child Trafficking, Legal Aid Clinic, Human Rights, Child Rights.

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I. INTRODUCTION

The UN General Assembly on December 10, 1948 passed the Universal Declaration of Human Rights (UDHR), Article 7 and 10 of the declaration provided for the equality of all people before the law and equality of fair hearing before the tribunal.¹ In addition, the declaration says that everyone has the right to protection from discrimination and to effectively address the issue of rights. Even in Article 14 of International Covenant on Civil and Political Rights, 1976 which also emphasis on access to court and tribunal as equal rights.²

The access to justice is hallmark of a just society of a civilized nation. The state grants everyone access to legal assistance in order to effectively restore violated rights. In addition, such access to legal assistance should not depend on the financial situation of the person who needs it. Access to Justice has been problematic for developing and least-developing nations for decades. College legal Aid clinics are an important subject in the provision of legal services in any country. Law clinics can play a significant social transformation in the society. The main purpose of clinic is to provide legal assistance to low-income people without any financial burden on them and to develop the practical skills of the students which they need in their practical work after graduation in dealing with various cases in courts. The objective was to make more humane approach of Legal Education.

Clinical Legal Education provides law students with hands-on work experience, develops local legal capacity, and helps protect human rights around the world. Law Clinics train lawyers and law students in the spirit of social justice and public service and provide much-needed legal services in under served communities. The clinical law movement is thriving in many countries around the world, particularly the United States, where law school graduate attendance is mandatory.

The researchers had looked into the history of clinics for legal aid way back in 1851, started from France, when the then government passed the law for the citizens of their country, those who are in need of it. India has been the frontrunner in envisaging the idea of it after it has got its independence, the Government of India and Judiciary played a vital role since, 1952 by emphasizing on legal aid for poor in various conferences. The year 1980, is a chequered history in legal field for India as the then Justice P N Bhagwati, acted as Chairman of Legal Aid Implementation Committee, which acted as safety

¹ Universal Declaration of Human Rights, 1948, <https://www.un.org/sites/un2.un.org/files/udhr.pdf> (last visited on June 25, 2021).

² Optional Protocol, Assembly Resolution 2200a (xxi) Of 16 December 1966, Entry into Force 23 March 1976, UNOHCHR, <<https://www.ohchr.org/documents/professionalinterest/ccpr.pdf>> (last visited on June 25, 2021).

valve for providing Legal Aid to have's not. The Lok Adalat was in action for providing justice to its citizen. The objective was to reduce pendency of cases and justice is served to the people in proper ways. It was a herculean task for the judiciary to do, but it has successfully achieved.

Constitution of India, the visionary document act as a Law of the Land, which is the ultimate authority for protecting the rights of its citizens. Part IV of the Indian Constitution provides for the goal to achieve by the states, although it was originally unenforceable rights. Article 39A, is one of such articles which provides for promotions of justice on the basis of equal opportunity to its citizen and free legal aid to its citizens nonetheless of socio-economic background. The Article act as a pledge to be fulfilled with its letter and spirit for the class of citizens who are denied access to justice on the basis of economic and social condition.³

An epoch-making contribution was made to the legal field in the year 1987 when, the Legal Service Authority Act was passed in the parliament with an objectivity of giving momentum and statutory sanction, but it was lately enforced in the year 1995. The Act was implemented in toto in whole country, the National Legal Service Authority or commonly referred as NALSA being at its apex. The body mainly framed policies and principles according to the vision of constitutional ethos, where legal aid service can be accessed to individual as well as to the masses at large.⁴

According to the vision of the NALSA there were certain steps were taken which was implemented according to the objective of legal aid, it was looked after by the central authority.

- a. The Lok Adalats started disposing up the cases.
- b. Public awareness of Legal Aid facility and Schemes were given priority.⁵
- c. Correctional Home were also under the purview of Legal Aid.
- d. Civil Societies, NGOs and other accreted organizations were also spreading legal awareness

This is how the concept of legal aid clinic envisaged and took momentous in large country like India, and how it is core to access to justice as mentioned in the Indian Constitution. The Legal Aid Clinic in India needs an overhaul and time span research is needed to be done for looking into the impediments of

³ Introduction and History of NALSA, <<http://nalsa.gov.in>> (last visited June 25, 2021).

⁴ *Ibid.*

⁵ *Ibid.* See also, "Legal Aid in India", <<http://www.Legalserviceindia.Com/Article/L340-Legal-Aid-In-India.html>> (last visited June 25, 2021).

Legal Aid Clinic vis-à-vis access to justice concept.⁶ In *Madhav Hayavadanrao Hoskot v. State of Maharashtra*⁷, the supreme court of India for the first time recognised Free Legal Aid as a Fundamental Right. In *Khatri (2) v. State of Bihar*⁸, it was held that the state has a constitutional obligation to provide the free legal aid to the accused at the expense of the state. Later, on in another case of *Suk Das v. UT of Arunachal Pradesh*⁹, the supreme court of India quashed the conviction of the accused as he was unrepresented by lawyer.

The concept of ‘Access to Justice’ is not new to us. The term ‘Access’ is least complicated to understand, it depends upon the degree which a person is having an opportunity but the word ‘Justice’ is having many connotations in different discipline and in different context in a given situation.¹⁰ The paper is referring to ‘legal justice’ which facilitates the degree of fair measurement where common people could access to formal justice delivery system of law.¹¹ In 2013, UN High Commissioner for Human Rights also endorsed the idea of access to justice for children.¹² India, being a large country where children are the most vulnerable.¹³ Human Trafficking has been an age-old problem for India since *pre* independence. Legal Aid Clinic can be a tool in eradication and sensitization of people to the causes and prevention of child trafficking in rural parts of India. As a researcher we have to think beyond the box giving a way forward to address the issue of child trafficking and any other social issues related to justice. The Legal Aid Clinic in the law colleges can make a difference by deducing or renovation of new approach of Access to justice concept.

II. RESEARCH METHODOLOGY

The researchers have made both doctrinal and non-doctrinal approach while dealing with the research questions. The researchers have tried to put a historical analysis and collected data by purposive convenience sampling methods. The data has been collected by electronic questionnaires form the respondents (law colleges) situated across India. It has been sent to more than 80 Law

⁶ Dr Jeet Singh Mann, Impact Analysis of the Legal Aid Services Provided by the Empaneled Legal Practitioners on the Legal Aid System in City of Delhi, UGC Sponsored Project, National Law University, Delhi, 2014, <<http://nludelhi.ac.in/download/2017/dec-2017/ugc%20Research%20Award%20in%20Law%202014.pdf>> (last visited on September 6, 2021).

⁷ (1978) 3 SCC 544 : 1978 AIR SC 1548.

⁸ (1981) 1 SCC 627 : (1981) 2 SCR 408.

⁹ (1986) 2 SCC 401 : 1986 AIR SC 991.

¹⁰ William Lucy, “Access to Justice and the Rule of Law”, 40 (2) Oxford Journal of Legal Studies, Summer (2020), 377–402, <<https://doi.org/10.1093/ojls/gqaa012>>. (last visited on September 6, 2021)

¹¹ Ibid.

¹² Annual Report of the United Nations High Commissioner for Human Rights on Access to Justice for Children (2013).

¹³ India is in TEIR II state according to Trafficking in Persons Report, 2021 (June), available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf> (last visited on September 6, 2021).

colleges across India. The paper is based on the responses of 29 colleges. The study has been done to explore the working condition of Legal Aid Clinics across India and how they are addressing the issue of Child trafficking in their local areas. As Child trafficking and child labour has been in rise for many decades.

III. COMPARATIVE STUDY OF THE LEGAL AID CLINICAL MOVEMENT

In India, many Law Colleges began participating in legal assistance programme across India the legal aid programme gained momentum in the sixties. It was thought and perceived that Law Colleges can play a predominant role to play in the provision of legal services through Legal Aid Clinics across India.¹⁴ In the end of 1960s¹⁵, clinical legal training programme were made across India. In 1969, clinic for Legal Services was set up by the joint attempt of Professors and students of University of Delhi.¹⁶ The faculties made a commendable job while giving voluntary services to the institute and integrate clinics although the services or legal aid were not the part of the curriculum. The clinic was primarily setup to give prisoner legal services those who are languishing for years as under trial. Few legal assistance camps were also organised by the Aligarh Muslim University in Mid of 1980s.

In India, the first University to introduce a course on Clinical Legal Education was Banaras Hindu University in the year 1970. In the University of Jodhpur, too around 1983-84 Legal Aid Clinic was formed with the objective of circulation of information about social welfare scheme and legislation, it also started giving aid to cases in matrimonial disputes and accident claims.¹⁷ National Law School of India University, Bangalore, was the first law school in India to incorporate both compulsory and optional clinical courses in their pedagogy. Around 1992, three compulsory clinical courses were introduced. There were also many efforts given by other Colleges across India, without formal establishment of Legal Aid Clinics, they arranged various Camps for Legal Literacy and some colleges also arranged the N.S.S. units for dissemination of awareness on social welfare policy and legal awareness.

Various literature reviews suggest that legal aid clinic as we see now does not existed in this sense, but Professor like D. Meyer had already made an

¹⁴ Frank S. Bloch and Iqbal S. Ishar, "Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United State", 96 *Mic. J. Int'l. L.*, 431-422 (1990).

¹⁵ N.R. Madhava Menon, *Legal Aid and Legal Education: A Challenge and an Opportunity : Essays on Clinical Education for the Law Student in a Service Setting*, 25 (University of Delhi, New Delhi, 1986). See also Frank S. Bloch, and Iqbal S. Ishar, *supra* note 4.

¹⁶ *Id.* at 17.

¹⁷ S.S. Sharma, *Legal Aid to the Poor: The Law and Indian Legal System*, 234 (Deep & Deep Publications, New Delhi, 1993).

analogy among clinical and criminal exercise and delivered unique lessons for students, throughout which they independently attempted to “diagnose” and advise methods to “cure” a criminal problem.¹⁸ Initially, such capabilities had been imparted to college students in normal audiences those who are in civil regulation practitioners, however their improvement required a fresh look for a different, and in the direction of actual expert exercise shape of study was required. Accordingly, with inside the mid-1940s, D. Meyer created the primary clinic, the prototype of a current legal aid clinic. However, the professor’s initiative become now no longer broadly supported, the primary “legal aid clinic” become obsolete and the concept of the professor was not remembered now a days. So, the first legal aid clinics, was a shape of a mixture of tutorial and realistic purposes, emerged in Germany in the early 20th century.¹⁹

Various literature which are available on legal development on movement towards clinical education was around middle of 20th century in USA. More than 30 clinics for legal education were already set up in the department of higher education around USA runed by students, under the guidance of Law Professors and Advocates, and they were providing free legal counseling to lowered income group people. The George Washington and Columbia University were the first among all to establish a structured law clinic for their students. Around 1960 to 1970s the legal aid clinic was in full swing in USA. Even, the American Bar Association (ABA) advocated that the university must provide clinical education as a additional method to know law and to implement it. The ABA published “Standard Rules of Student Legal Practice” in 1969, which is applied throughout the country. The objective of the rule was to provide students a vision that legal services can be provided to low-income clients and it also give encouragement to professors of law to expand their horizon in clinical education so they can equip themselves with required skill of advocacy.²⁰

The Legal Aid Clinics are also budding is different parts of continents like Africa, Central and Western Europe, South and East Asia and Latin America. In South Africa, in 1978 the Rockefeller Foundation’s gave their immense support in developing of clinical pedagogy of legal education and the first law clinic was established and from 1989, it was compulsory for all law school graduates to do practical training in a law clinic at the University of the Witwatersrand. Today, legal aid clinical has been developed in almost all across the world. European Network of Clinical Legal Education (ENCLE) was setup in Europe with the objective of setting legal aid clinic. In Ukraine, a

¹⁸ Serhii Kivalov, “Legal Clinics as an Important Element of Human Right for Free Legal Aid”, *Revista de Derecho*. Vol. 8 (2019), pp. 169-186. ISSN: 1390-440X;eISSN: 1390-7794, <<https://doi.org/10.31207/ih.v8i0.221>> (last visited on June 26, 2021).

¹⁹ *Ibid.*

²⁰ *Ibid.*

public organization named “Association of Legal Clinics” was setup to promote legal aid clinic too.

By going through various literatures, the researcher has categorised type of Legal Aid Clinics around the world. If there is a comparative study of clinics were made, they can be categorised as follows: (i) A law clinic that is based in court by the department of a higher education institution in which the problems of the citizens are sort out by senior students, including college professors and retired judges associated with the clinics. (ii) Bureau of Legal Aid, it is a public funding legal aid clinics giving free legal aid to low-income citizens (based in Netherlands), this model is also applicable in India. In India, District Legal Service Authority (DLSA) provided for free legal aid to the poor those who cannot afford lawyers by their own expenses. (iii) classical law clinics are examples where they have been created by the higher education or institution for practical training of their student. (India, USA, Bangladesh, Germany). The literatures also suggest of (iv) citizen centric bureaus, where government provide free clinics in local areas (now days this practice prevails in many parts of India), the state of west Bengal itself in the year 2021 launched a program known as ‘Duare Sarkar’ which means government at your doorsteps. The programme was a huge success where participation was more and citizen centric governance.

After the advent of Law Schools in India, there is an altogether makeover of Legal Education in India, now a days more numbers of students are fulfilling their dreams to study law and there making their footstep print in various elite institution by their works. Even in Supreme Court of India, many outstanding lawyers have come up with national law school’s backgrounds. In recent past, few years there were various landmark judgments given by the Supreme Court of India, where this young Turks from law schools have pleaded. As a developing country and upcoming superpower our Legal Education system needs a over haul of clinical methods of teaching in every law college of India. There are only, few traditional universities where they are putting their scientific temper in innovation of legal aid clinics.

Law clinic establishment requires a professional, full-time faculty: they can browse a clinical course by giving training, offer steerage and looks after the management of students. The characteristic options of such a clinic can be categorised as: (i) Having cooperation with civil society groups; (ii) the host institution must stand by the side of the students; (iii) Annual Funding of the clinics and if required external funding may be sort for; (iv) High quality of research output must be the priority. There is also requirement of balance between the faculty and students in running the clinic successfully, the researcher has categorised few characteristics although they are not exhaustive in nature, such as (i) Leadership of Faculty and students must be jointly; (ii) Faculties with competencies must be engaged in this clinics; (iii) there must be

coordination between the institution and the clinics; (iv) if conditions prevail, students can also provide assistance to the citizens independently.

The Legal Aid Clinics in various college and universities across India, if can be coordinated then it would be a game changer for transforming clinical legal education in India. There are lots of human rights violation and connotational rights violation cases across India is happening. The legal Aid Clinic can provide legal assistance and they can make a network among themselves and works towards fulfilment and aspiration of constitutional ethos, making this society a just society.

Child Trafficking is an ongoing phenomenon in South Asian region, India is in bad shape in protecting its child from the prey of traffickers. Government of India, is putting all out effort in eradicating and preventing the trafficking per se. As a researcher, legal aid clinics across India specially in the areas of vulnerable can provide as legal assistance to the victims and its family. Many, literature suggests that aftermath of Covid-19, children of India has become more vulnerable to trafficking.²¹

IV. STUDY OF LEGAL AID CLINIC

In India, Law Colleges and Universities those who are involved in imparting clinical education are growing in numbers, but the problem remains at planning and management issues, as the programmes are less visible and voluntary in nature. There is lack of passion among students and faculties are not supervising them. There is lack of financial upper hands to the clinics and there is serious dearth of trained professional clinical law teachers in India. The Legal Education in India must look into the aspect of training teachers those who are in service as professional legal aid clinic faculties.²² Infrastructural wise there is lacking or gap, the institution or authority does not pay attention to this aspect of pedagogy. The traditional method of teachers believes in classroom teaching rather know the law clinically and solving it under the supervision of expert.

The Bar Council of India (BCI) is the statutory apex body to regulate and promote legal education in India, in 1998, clinical education was made mandatory by for all Law Schools and Law Departments offering legal education, it also made that Legal Aid Clinics has a sanction to academic credit. Later, on 2008 the BCI issued revised rules on “Standards of Legal Education and

²¹ Sushmita Ghosh, “Covid-19 Made Poor More Vulnerable to Child Trafficking, Say Ngos”, *India Today*, June 8, 2021.

²² For example, Renukacharya Law College in Bangalore conducted several legal literacy camps. See also, M.G. Narasimha Swamy, *Legal Aid and Legal Education: A Challenge and an Opportunity: Essays on Clinical Education for the Law Student in a Service Setting* 72 (Madhava Menon, ed., University of Delhi, New Delhi, 1986).

Recognition of Degrees in Law” and made changes by replacing the paper on legal aid clinic with Alternative Dispute Resolution. The rules made provisions for making Legal Aid Clinic as an integral part of law school programme.²³ The clinic were established with a visions that it would be supervised by a senior faculty member having coordination to final year students to run legal aid clinics in the institution and having a panel of lawyers and NGOs those who will work with the vision of access to justice.²⁴ The rules, were silent in providing any academic credit to the students or not. In India too, clinical legal education is having objective with serving legal aid to the poor. The Legal Education Programme in India is to promote access to justice.²⁵ Recently, many things have changed after the pandemic Dr. Nachiketa Mittal had established the Virtual Law School. Dr Mittal is now establishing Virtual Legal Aid Clinic which will be run with the help of lawyers from across the country.²⁶ Recently, the Bar Council of India, notified for inclusion of Mediation & Conciliation and Arbitration as compulsory paper which is also part of clinical legal education.²⁷

For the purpose of this paper questionnaires was prepared and sent to Law Schools and Law Departments across India and 29 responses were received from 29 Law Schools in India to assess the role played by various law universities and law school/colleges in India to eradicate child trafficking. From those responses analysed in figure 1.1, it was found that the root cause of Child trafficking has been poverty, apart from its other factors are also associated with it such as access to girl child education, the stereotype thought process of Indian society has been an additional factor that more girl child was vulnerable to trafficking. The additional factors are also counted as a cause of Child trafficking such as domestic abuse, domestic violence, child marriage, marriage related issues, alcoholic parents etc.

²³ Gurjeet Singh, “Revamping Professional Legal Education: Some Observations on Revised LL.B. Curriculum of Bar Council of India”, vol. 41, No. 2, JILL, 237 (1999), <<http://www.jstor.org/stable/43951716>>. (last visited on September 12, 2020)

²⁴ Bar Council of India, Notification letter BCI:D: 1518:2008 (LE/RULES-PART-IV), December 24, 2008.

²⁵ Entry 11 Schedule III of Standards of Legal Education and Recognition of Degrees in Law.

²⁶ Apprentice Lawyer, India's first Virtual Legal Aid Clinic to be inaugurated on August 2, available at: <<https://www.barandbench.com/apprentice-lawyer/virtual-legal-aid-clinic-to-be-inaugurated-on-august-2>>, (last visited November 8, 2020).

²⁷ Bar Council of India, Notification BCI: D: 2133/2020, August 24, 2020, <<http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCI-2133-2020-dt.-24.08.20-CIRCULAR-MEDIATION-DEFENCE-STUDIES-INL-LLB-DEGREE-COURSES.pdf>> (last visited on November 8, 2020).

10 ■ ROLE OF LEGAL AID CLINIC IN ERADICATING CHILD TRAFFICKING

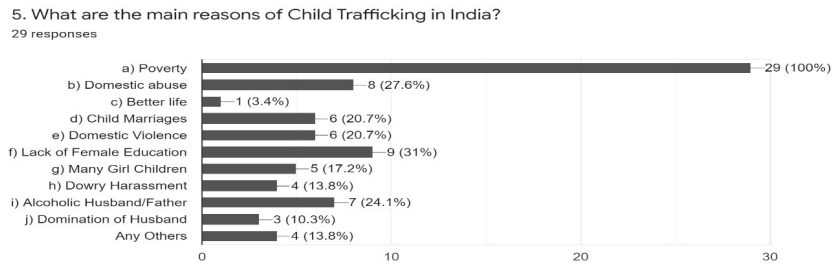


Figure 1.1

Second issue analysed in figure 1.2 was relating to the role of legal aid clinic in creating awareness among people. The main activities of these clinics dominated was counselling (65.5%), next was providing basic information on police and prisons (37.9%). The legal aid clinic has always been used only for providing general assistance in navigating the justice process. (62.1%).

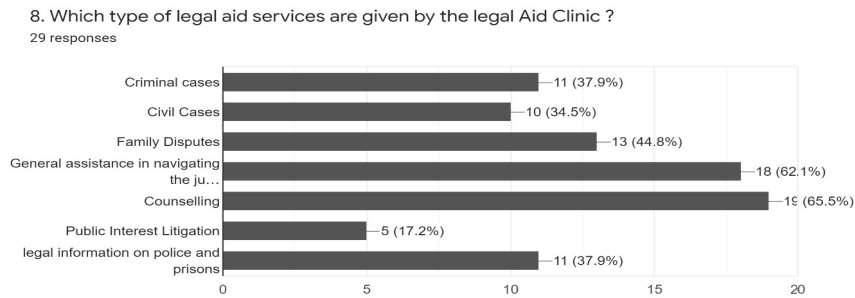


Figure 1.2

It was also observed that Legal Aid Clinics are lack in resources to conduct workshop on Human Trafficking issues, although the Legal Aid service categorically mentioned about Human Trafficking victims has a right to get access to justice.

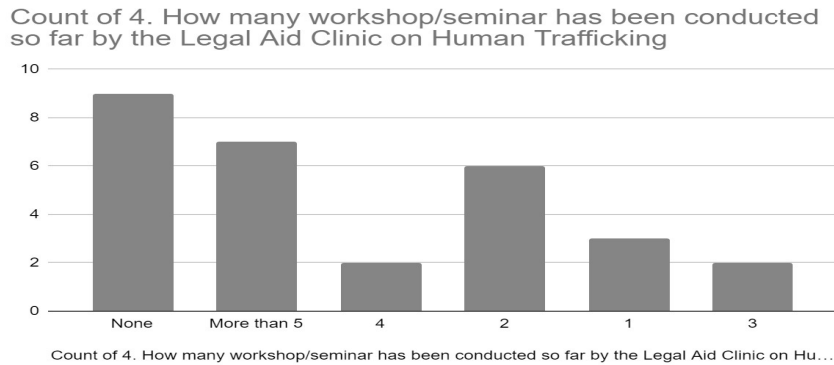


Figure 1.3

Thirdly, how these Legal Aid Clinic in the law university and law colleges across India could be strengthened. From the responses analysed in figure 1.4 there may be different parameters although it is not an exhaustive list but the research has possibly made effort in dealing with the mechanism in strengthen the issue of eradicating and protecting children from trafficking and how legal aid clinics can be utilized in access to justice based on *pre harm* model. The parameters used to strengthen the role of legal aid clinics may be in first place BCI must be strict in assessing students' feedback on learning methods of Legal Aid Clinics on Annual Inspection, Supervision by Retired Judges, Legal Aid Ranking Framework for College or University must be initiated by National Legal Services Authority. A peer review team organized by the legal aid authority or State Legal Services Authority, Interdisciplinary Teaching and Learning must be encouraged, State bar association must ensure that review team must visit every quarter to local Legal Aid Clinic in Colleges, Compulsory service for lawyer to associated with at least two legal Aid Clinic for One Year after All India Bar Exam. The Bar Council must emphasise on strengthening the legal aid clinic in all law colleges to eradicate child trafficking as there is a pivotal role to play for every law college in bringing and accessing social justice to the society.

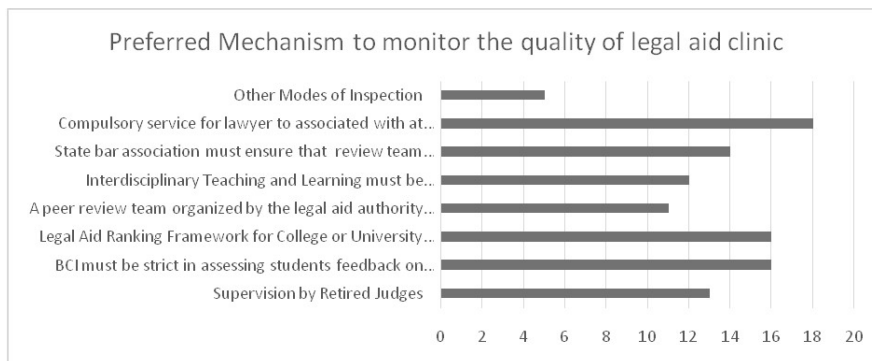


Figure 1.4

V. CONCLUSION

It can be concluded by stating that the immense potential of the law students can be streamered through the institution of Legal Aid Clinic and can be channelised to protect children from being trafficked or when these children are rescued and help them to be reintegrated into the society. Jurisprudence of Equality under the Indian Constitution is aimed at securing access of justice to the people irrespective of status.²⁸ More numbers of law teachers need to get trained to get law clinics efficiently functional. It is also need of the hour that our legal aid clinics be frequently inspected by the State Bar Council and State Legal Aid Services Authority members to make it more functional and substantive in their approach rather than only existing in paper. However, to ensure such a guarantee to more than a billion is difficult though not impossible. The approach of BCI imparting legal education must signify in giving direction to give access to justice to a greater number of people. As a result, several attempts were made to involve legal aid clinics in Law Schools in sharing this noble cause. There is requirement of law students and trained faculties to reduce the pressure on courts and come up with the mechanism where justice can be provided at doorsteps. The researcher is of the opinion that Legal Aid Clinics have potential to prevent and protect children from being trafficked across India. There are 1,857 law departments/colleges all over India²⁹ if all the legal aid clinics does what they are meant to, then it can be a game changer for protection of Human Rights as well as Access to justice can be achieved at doorsteps.

²⁸ Art. 14 of the Constitution of India and Art. 39-A provides for equal justice and free legal Aid.

²⁹ List of Law Colleges having approval of affiliation of the Bar Council of India as on 21st and 22nd December 2019. Available at: <<http://www.barcouncilofindia.org/wp-content/uploads/2010/05/list-of-law-colleges-having-approval-by-the-BCI-till-21-22-Dec-2019.pdf>>, (last visited on 9 November 2020).