

Dying to Dine: A Story of the Suicidal Indian Farmers

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The Week, a well-respected magazine in India carried a special report in May 2008, reporting an increasing trend of suicides amongst farmers.¹ The latest reports indicate that approximately more than 25,000 incidents of suicides have occurred in India with a steady increase in numbers.² The suicides paint a bleak picture of India, a country that takes pride in achieving self-sufficiency in food production from starvation and famine.³ *The Week's* report concludes that the “[p]roper price for [our] products” is required to avert further crisis in the agricultural sector.⁴

Meanwhile, the *Economist* reported in its April 2008 issue of a “Silent Tsunami”: “A wave of food-price inflation,” the article highlighted, “is moving through the world, leaving riots and shaken governments in its wake.”⁵ The food crisis of 2008, the *Economist* asserted, has revealed market failures at every link of the food chain.⁶

In fact, there is a crisis in the agricultural sector. Several factors are causing this. First, overall government spending on agricultural

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¹ *Reports of Suicides of Farmers in Vidarbha, India*, WEEK, May 2008, at 22. Elsewhere the magazine discussed the death of farmers in Guntur, Andhra Pradesh, India owing to loss of chili crops. *Id.* at 31.

² Girish Mishra, *Why Suicides by Farmers?*, ZMag, Dec. 20, 2005, <http://www.zmag.org/znet/viewArticle/4785>.

³ NAT'L COMM'N ON FARMERS, MINISTRY OF AGRIC., GOV'T OF INDIA, SERVING FARMERS AND SAVING FARMING 1 (2006), available at <http://krishakayog.gov.in/revdraft.pdf> (discussing that “import of food-grains in India increased year after year and touched a level of 10 million tonnes in 1966, largely under the PL 480 programme of the United States of America” and highlighting that the High Yielding Varieties Programme in 1966 resulted in a major breakthrough in productivity and resulted in “Wheat Revolution”).

⁴ See WEEK, *supra* note 1.

⁵ *The Silent Tsunami*, ECONOMIST, Apr. 17, 2008, at 13, available at http://www.economist.com/opinion/displaystory.cfm?story_id=11050146.

⁶ *Id.*

research has decreased. World-wide spending on farming as a share of total public spending in developing countries has fallen by half between 1980 and 2004, although governments in developing countries finance agricultural research.⁷ Interestingly, the same sentiment was reflected in the Report of the National Commission on Farmers, a 2004 body that was set up by the Government of India to assess the national agricultural crisis.⁸ Since 1985, the Government of India directly reduced public sector investment in agriculture along with the rural development budget, which included expenditures on agriculture, special areas program, irrigation and flood control, and village industry, by sixty percent and as a consequence, the report notes, it indirectly caused further reduction in public investments in agriculture.⁹

Second, increased privatization of agriculture in developing countries has resulted in reduced public sector support of agriculture. For instance, the *Economist* highlights that in the 1980s, governments reduced green-revolutionary spending, either out of complacency or because they preferred to involve the private sector, which turned out to be monopolize agricultural markets.¹⁰ In India too, the simultaneous privatization of agriculture along with the reduction in public sector support of agriculture resulted in a loss of government support to farmers at a time when private companies worked hard to monopolize markets.¹¹

Third, dumping, which is a product of agricultural subsidies in the rich world,¹² in combination with the failure of the developing world to push the Doha agenda, has destabilized local markets in several developing nations, causing the current increase in food prices.¹³

The realities of the food crisis form the background to the discussion of India's endeavor to tackle the issues relating to agriculture with special emphasis on the nation's efforts to promote farmers'

⁷ *The New Face of Hunger*, *ECONOMIST*, Apr. 17, 2008, available at http://www.economist.com/opinion/displaystory.cfm?story_id=11049284.

⁸ See NAT'L COMM'N ON FARMERS, *supra* note 3 (the Commission, headed by Professor M.S. Swaminathan, submitted a total of four reports each of which asserts the increasing costs and risks associated with farming and calls for a comprehensive national policy for farmers); see also ANITHA RAMANNA, FARMERS' RIGHTS IN INDIA: A CASE STUDY 9 (2006), available at <http://www.fni.no/doc&pdf/FNI-R0606.pdf>.

⁹ See Mishra, *supra* note 2.

¹⁰ See *ECONOMIST*, *supra* note 7.

¹¹ See generally Mishra, *supra* note 2.

¹² See *ECONOMIST*, *supra* note 7 (noting that huge farm surpluses from the rich world that were dumped on markets resulted in depressing prices and returns on investment).

¹³ See Mishra, *supra* note 2; see also S. Ragavan, *To Sow or Not to Sow: Dilemmas in Creating New Rights in Food*, in *AGRICULTURAL BIOTECHNOLOGY AND INTELLECTUAL PROPERTY: SEEDS OF CHANGE* 318 (J. Kesan ed., 2007).

rights under the Protection of Plant Varieties and Farmers' Rights Act, 2004 (PPVFA).¹⁴ The story of the PPVFA is interesting because the legislation represents India's fulfillment of its international obligations by introducing breeders' rights while simultaneously recognizing farmers' traditional rights. Thus, Part I of this article outlines the steps India took to promote farmers' rights as part of enacting a legislation to protect breeders' rights to fulfill its obligations under Article 27(3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).¹⁵ After discussing the three types of protection regimes, this part then outlines the interaction between the three protection regimes that characterize the unique nature of the PPVFA, with particular emphasis on farmers' rights. Part II addresses the central thesis of this paper. This part highlights that while it is important that small farmers are not deprived of their traditional rights, helping farmers cannot be limited to creating or protecting existing rights. It necessitates preserving markets, which goes beyond the simple question of farmer versus breeder. Thus, this part outlines the various strategies (not solutions) that India can adopt to create markets for its farmers in the context of the overall issues currently prevalent in international agricultural trade.

I. PROTECTING FARMERS IN THE BREEDER CONTEXT

Traditionally, India has a demonstrated reluctance to privatize agriculture because of its stated constitutional goal to balance economic rights (of the innovators) with social rights (of the poor who cannot afford the protected varieties). Thus, prior to the 1980s, India established significant restrictions on private sector investment and seed imports.¹⁶ Part of India's reluctance was dictated by the importance of agriculture to its overall economic development. An estimated seventy percent of the population depended on agriculture,

¹⁴ Protection of Plant Varieties and Farmers' Rights Act, No. 53 of 2001; INDIA CODE, available at <http://indiacode.nic.in/fullact1.asp?tfnm=200153>. The President of India assented to the PPVFA in 2001.

¹⁵ Agreement on Trade Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197, available at http://www.wto.org/english/docs_e/legal_e/27-trips.pdf [hereinafter TRIPS]. The TRIPS agreement, signed as part of the agreements that established the WTO, introduced minimum standards of intellectual property rights to the multilateral trading system for the first time. The WTO is the only global organization dealing with the rules of trade among nations. The WTO was created by the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations. See Introductory Note, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125; see also Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144.

¹⁶ RAMANNA, *supra* note 8.

and in 2002 alone agricultural trade contributed to an output of 2925 billion Rupees (\$61 billion U.S.)¹⁷ although the total contribution from agriculture as a percentage of GDP is low.¹⁸

India took its first steps towards liberalization in the early 1980s when it allowed foreign seed companies to enter the market. By 2001, a World Bank Study estimated that India housed more than 500 private seed companies (the largest with an annual turnover of about \$3 million U.S. at official exchange rates), twenty-four of them with links to multinational seed companies, and many with their own hybrid development programs.¹⁹ Since then, the share of private sector in gross capital formation has steadily increased in India.²⁰ India's efforts to introduce plant breeders' rights, which is part of the pattern that resulted in privatizing the agricultural sector, is generally perceived as an outcome of the pressures from India's membership to the WTO, as well as the entry of foreign corporations into the market. The prevailing wisdom dictates that even if privatization of agricultural trade is largely beneficial overall, it shifts farming towards larger holdings which inevitably marginalizes poor farmers. The PPVFA is India's solution to balance the effects of creating private rights by outlining clear boundaries of the public/private divide. Thus, the PPVFA, discussed below in Part I, is a *sui generis* model with three specific protection regimes created to balance the interests of all players in the national agricultural trade.²¹

A. *The Three Types of Protection Regimes Under the PPVFA*

The PPVFA, discussed below, creates three protectable varieties of seeds, which are:²² (a) New variety, which protects breeder's rights, (b) Extant variety, which protects biodiversity materials, and (c) Farmers' variety, which is a sub-classification of the extant variety which protects varieties that result from farmers' creativity either collectively or individually.

¹⁷ *Id.*

¹⁸ Deepak Kumar, *Private Sector Participation in Indian Agriculture: An Overview*, EFFECTIVE EXECUTIVE, July 2005, at 19, 19-20, available at <http://129.3.20.41/eps/urb/papers/0506/0506006.pdf>.

¹⁹ Indep. Evaluation Group, World Bank, *The Seed Industry in South Asia* (2001), available at <http://lnweb18.worldbank.org/oed/oeddoclib.nsf/b57456d58aba40e585256ad400736404/aaa847661f5c30d1852567f5005d8c3d?OpenDocument&Highlight=0,India>; see also RAMANNA, *supra* note 8, at 2.

²⁰ See Kumar, *supra* note 18, at 20.

²¹ The term *sui generis* refers to systems engineered to meet the unique needs of a particular country or nation. See Ragavan, *supra* note 13, at 325-28.

²² See The Protection of Plant Varieties and Farmers' Rights Act, 2001, No. 53 of 2001 preamble; INDIA CODE, available at <http://indiacode.nic.in/fullact1.asp?tfnm=200153>.

1. New Variety

A variety would be eligible for protection as *new* provided it is novel, distinct, uniform, and stable.²³ The new variety classification promotes private rights in plant breeding. Hence, the protection threshold for this classification is similar to the requirements outlined under the Union for Plant Variety Protection Treaty (UPOV), whose objective is to promote breeder friendly plant protection regimes.²⁴ Of the threshold requirements under the PPVFA, novelty of a new variety will be satisfied if the variety has not been “sold or otherwise disposed of” in India more than a year prior to filing or outside India for more than four or six years, depending on the type of plant.²⁵ Importantly, a variety being well known on the application date, by methods other than by sale or disposal, shall not affect novelty under the statute.²⁶

The distinctiveness bar requires the application variety to be clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.²⁷ Further, the explanation highlights that the filing of an application for granting breeders’ rights or the entering of a variety into any official register renders it as a matter of common knowledge. (Note that the common knowledge of the application material itself seems to be inconsequential to the distinctiveness requirement under the statute).²⁸ Notably, under the PPVFA, an application material that is not clearly distinguishable from biodiversity varieties, but is distinguishable from varieties that have been applied for registration or entered into any official registry, could pass the test of distinctiveness and become eligible for protection. Similarly, it is unclear how biodiversity materi-

²³ *Id.* § 15.

²⁴ The term UPOV refers to the Union for Plant Variety Protection, a convention that was first signed in 1961 and later amended in 1972 and 1991. International Convention for the Protection of New Varieties of Plants, Dec. 2, 1961, 33 U.S.T. 2703, 815 U.N.T.S. 109 [hereinafter UPOV 1961], available at <http://www.upov.int/export/sites/upov/en/publications/conventions/1961/pdf/act1961.pdf>; revised Oct 23, 1978, 33 U.S.T. 2703, 1861 U.N.T.S. 282 [hereinafter UPOV 1978], available at <http://www.upov.int/export/sites/upov/en/publications/conventions/1978/pdf/act1978.pdf>; revised Mar. 19, 1991, S. TREATY DOC. NO. 104-17, UPOV Pub. No. 221 [hereinafter UPOV], available at <http://www.upov.int/export/sites/upov/en/publications/conventions/1991/pdf/act1991.pdf>. See generally Srividhya Ragavan & Jamie Mayer, *Has India Addressed Its Farmers’ Woes? A Story of Plant Protection Issues*, 20 GEO. INT’L ENVTL. L. REV. 97 (2007).

²⁵ See The Protection of Plant Varieties and Farmers’ Rights Act, 2001 § 15(3)(a).

²⁶ *Id.* § 15(3) proviso.

²⁷ See *id.* § 15(3)(b).

²⁸ See Ragavan, *supra* note 13, at 328-330 (discussing how common knowledge is treated under UPOV).

als that have not been applied for registration or entered into any official registry will serve as a prior art reference to compare with application materials (since comparison can only be made with materials that are either registered or were part of an official application for registration).²⁹ Stability relates to the varieties' ability to retain its features despite generational propagation, and uniformity refers to the homogeneity of the essential characteristics.

Examination guidelines, established under the PPVFA, set out the principles used for testing the distinctiveness, uniformity, and stability (DUS Guidelines) of a variety, which is used to determine its registration status.³⁰ A candidate will be considered a variety if it results from a given genotype (or a combination of genotypes)³¹ and is consistent and repeatable in a particular environment.³² The examination generates a definition of the variety using its relevant characteristics³³ like plant height, leaf shape, and flower and fruit characters.³⁴ The characteristics should also exhibit sufficient variations to be distinct (e.g., male, female, long, short, etc.).³⁵ Any breeder, farmer, group, or community of farmers may apply for registration of a new variety.³⁶

2. Extant Variety

The extant variety register serves as a compilation of matters known and existing in the public domain. Thus, the extant variety encompasses: (a) a variety about which there is common knowledge, (b) a variety in the public domain (including the farmers' variety), or (c) any variety included under Section 5 of the Seeds Act, 1966.³⁷

The objective for introducing the extant variety is manifold. First, the introduction of farmers' variety and extant variety is meant

²⁹ See The Protection of Plant Varieties and Farmers' Rights Act, 2001 § 15 (3)(b).

³⁰ See General Guidelines for the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions, Protection of Plant Varieties and Farmers' Rights Authority, Department of Agriculture and Cooperation, Government of India, reprinted in 1 PLANT VARIETY J. INDIA 127 (2007), [hereinafter DUS Guidelines]. Based on Paragraph 2.2 and 2.3 of the General Guidelines, Specific Guidelines for DUS testing of several crop varieties have been developed and are now available at <http://www.plantauthority.gov.in/Draftcropguide.htm> (last visited July 6, 2009).

³¹ DUS Guidelines, *supra* note 30.

³² *Id.*

³³ See The Protection of Plant Varieties and Farmers' Rights Act, 2001 § 15(3)(b) (highlighting that distinctiveness is examined by comparing relevant characteristics).

³⁴ See DUS Guidelines, *supra* note 30, R. 5.2.2 at 9.

³⁵ *Id.*

³⁶ See The Protection of Plant Varieties and Farmers' Rights Act, 2001 § 16(1)(d).

³⁷ *Id.* § 2(j).

to balance breeders' rights with rights of other players in agricultural trade. Second, being a compilation of matters already known and existing, the *extant variety* typology seeks to protect traditional knowledge and indigenous rights.³⁸ Third, the extant variety classification indirectly creates a higher bar to determine distinctiveness of a new variety. Considering that India is a country with rich biodiversity materials,³⁹ the lower standards of distinctiveness of the plant protection regime (per se as well as in comparison with the nonobviousness requirements of the utility patent regime) creates a dangerously thin divide between public and private domains.⁴⁰ Hence, countries like India, lacking well-documented systems for identifying matters in the public domain, require cautiousness to prevent matters embodying low levels of distinctiveness from being elevated to a private domain status.⁴¹ The extant variety classification indirectly serves to create a higher threshold for determining distinctiveness for new varieties. Fourth, the extant variety classification takes care of India's obligation under the Convention on Biological Diversity (CBD), to which it is a signatory. The Convention requires member states to take adequate steps to preserve biological and genetic materials.⁴² Unfortunately, privatization of agriculture tends to erode genetic diversity as farming communities adapt to hybrid varieties.⁴³ Yet, there are traits in traditional varieties that are useful to humanity. Hence, sovereign nations have a duty to preserve traditional genetic materials. The extant variety classification, by creating a log of ge-

³⁸ *Id.* § 14(b).

³⁹ See S. Nagarajan, S.P. Yadav & A.K. Singh, *Farmers' Variety in the Context of Protection of Plant Varieties and Farmers' Rights Act, 2001*, 94 CURRENT SCI. 709 (2008).

⁴⁰ *Id.* at 709 ("The prior art [for an application material] refers to publicly available existing knowledge that is relevant to an invention for which a patent applicant is seeking protection. If the prior art is too closely related to the claimed invention, the application may be rejected on the grounds of lack of an inventive step. The registration officers are required to check for the absence of prior art before awarding a patent.").

⁴¹ *Id.* at 710 ("India must document and legally protect the farmers' varieties (FVs) and use them globally as a trade strategy. The FVs therefore can be equated with the prior art provision of The Patents (Amendment) Act, 2005. Providing necessary legal framework will ensure that already known FVs are not encroached as 'New Variety.'").

⁴² Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79. The CBD was signed at the United Nation's Conference on Environment and Development in 1992 and came into force on December 29, 1993. The CBD addresses the need for an international framework to beneficially exploit and conserve biodiversity. Thus, the CBD is the international treaty conceived as a tool to promote sustainable development. The Convention has three important objectives: first, the conservation of biological diversity; second, promoting sustainable use of biodiversity components; and, lastly, sharing benefits from biodiversity resources in exchange for transfer of technology. See *id.*

⁴³ See generally Nagarajan, Yadav & Singh, *supra* note 39.

netic materials, minimizes some of the known market effects of privatization.

An extant variety may be registered by a breeder, farmer, a community of farmers, a university, or a public sector.⁴⁴ Although a breeder can register an extant variety, she or he is not entitled to exclusive rights over the variety.⁴⁵ Section 28 of the PPVFA provides that the Government, as the owner of the extant varieties, enjoys the rights to determine their production, sale, marketability, distribution, importation, or exportation.⁴⁶

Government ownership over the materials ties in with the objective of protecting biodiversity by empowering the government to negotiate with entities that require biodiversity materials for creating biotechnology innovations.⁴⁷ Considering that the extant variety register is a log of materials in the public domain, the registration requirements are not rigorous. Extant varieties need not be novel, and the requirements of distinctiveness, uniformity, and stability are regulated by administrative notifications.⁴⁸ The examination guidelines for the registration of extant varieties are yet to be finalized. The Government of India constituted an Extant Variety Recommendation Committee (EVRC) to develop appropriate procedures for examining

⁴⁴ See The Protection of Plant Varieties and Farmers' Rights Act, 2001, No. 53 of 2001 § 14; INDIA CODE, available at <http://indiacode.nic.in/fullact1.asp?tfnm=200153>.

⁴⁵ *Id.* § 28. The proviso to Section 28(1) omits the word "exclusive" to determine the breeder's rights. The language implies that the breeder can never have *exclusive* rights to extant variety (as opposed to other varieties). To that extent, the rights of the breeder seem limited by the statutory language. Further, the definition of extant varieties in section 2(j) includes "any other variety which is in public domain." *Id.* § 2(j). However, materials in the public domain cannot become a subject of monopoly private rights of a breeder (or any other private individual or body because of the nature of the IP rights). Such a reading of the provision is bolstered by the fact that the PPVFA does not specify anywhere that *breeder's rights* over an extant variety exclude materials that are in the public domain. Thus, the statutory language explicitly specifies that a breeder cannot be the first creator of an extant variety — if she is, then it is a new variety — otherwise, it is just material in the public domain with lack of adequate distinctiveness to qualify as a protectable variety. However, a breeder can get some rights over an extant variety for use during a specific period (although this is not exclusive).

⁴⁶ *Id.* § 28. The definition of extant variety includes "matters in the public domain." Hence, if there is any perpetual ownership over it, it has to be of the government — such ownership would be consistent with the provisions of the Convention on Biological Diversity, 1992.

⁴⁷ See Merck-InBio Plant Agreement (May 2002), available at <http://www.american.edu/ted/MERCK.htm>, (allowing the government of Costa Rica to negotiate agreements with Merck for exploitation of biodiversity materials).

⁴⁸ The Protection of Plant Varieties and Farmers' Rights Act, 2001 § 15(2); see also Nagarajan, Yadav & Singh, *supra* note 39, at 710 (highlighting that "the criteria of Distinctiveness, Uniformity and Stability (DUS) to be adopted for the EV may marginally vary from those specified for new varieties.").

applications to register an extant variety.⁴⁹ The PPVFA allows applicants the right to exploit extant varieties (biodiversity material) for up to fifteen years from the date of publication.⁵⁰ Registering a plant as an extant variety would enable researchers to work with it but also prevent attempts to protect it by exploiting the lack of general awareness of the material.⁵¹ The disadvantage with the extant variety register is its reliance on the general public to create the register. Presumably, some species in the public domain remain can go unnoticed and hence, unregistered.

3. Farmers' Variety

"Farmers have taken up crop-improvement activities by selecting useful traits, out of the periodically accruing natural variation."⁵² Hence, "farmers' variety" is a traditionally cultivated variety evolved collectively by the farmers "in their fields, or is a wild relative or land race of a variety about which the farmers possess the common knowledge."⁵³ The farmers' variety is distinguishable from the larger extant variety, since the latter encompasses biodiversity or genetic materials.⁵⁴ Being a sub-set of the extant variety, the farmer's variety is ineligible for intellectual property or *sui generis* protection. The advantage in creating the farmer's variety is to encourage farmers to register varieties they have cultivated for years to prevent misappropriation.

In creating the farmers' variety, the PPVFA distinguishes itself from the traditional IP based statutes by recognizing community rights. The PPVFA defines "farmers" as those who "cultivate crops by

⁴⁹ See Ministry of Agric. Notification, Protection of Plant Varieties and Farmers' Rights Regulations, 2006, Gazette of India, Extraordinary, pt. II, § 3(i) (Dec. 7, 2006), available at <http://faolex.fao.org/docs/pdf/ind68512.pdf>; see also Nagarajan, Yadav & Singh, *supra* note 39, at 710 (noting that a notification was issued regarding the constitution of the EVRC); Protection of Plant Varieties and Farmers' Rights Authority, India, Committee, <http://plantaauthority.gov.in/committe.htm> (last visited July 1, 2009) (highlighting the names of the EVRC members).

⁵⁰ See The Protection of Plant Varieties and Farmers' Rights Act, 2001 § 24(6)(ii). By defining extant varieties as including "matters in the public domain," the statute treats extant varieties as equivalent to biodiversity materials. Since the statute does not create a difference between matters within the public domain but not necessarily biodiversity materials, the existing definition includes biodiversity materials within the larger framework of extant varieties.

⁵¹ See generally Ragavan, *supra* note 13, at 329; see also News Release, ETC Group, Hollow Victory: Enola Bean Patent Smashed At Last (Maybe) (May 6, 2008) (discussing patenting of Enola Bean and the issues that arise therefrom).

⁵² See Nagarajan, Yadav & Singh, *supra* note 39, at 709.

⁵³ See The Protection of Plant Varieties and Farmers' Rights Act, 2001 § 2(l).

⁵⁴ See *supra* note 50.

cultivating the land,” and those who supervise cultivation directly or indirectly through other people, or anyone who “conserves and preserves, severally or *jointly*, with any other person . . . [plant varieties] through selection and identification of their useful properties.”⁵⁵ Farmers usually follow a selection criterion of “stability, risk avoidance, low dependence on external inputs and attributes related to storage, cooking and taste.”⁵⁶ Such selection leads to qualitative characters like aroma, weather withstanding abilities, etc.⁵⁷ Selection, coupled with the unlimited transfer of knowledge that has traditionally characterized farmers, leads to a general conclusion that those characters should be emphasized to identify the farmer’s variety.⁵⁸ The continuous evolution of the traditional systems of cultivation resulted in farming techniques that promoted consumer friendly non-hybrid varieties.⁵⁹ In order to specifically identify and protect the farmer’s varieties, the EVRC is assigned the task of developing DUS examination guidelines after duly considering the traditional selection criterion and the traditional systems of cultivation. Of course, the general rule should not discount perceivable differences, if present.⁶⁰

B. Interaction Between the Three Varieties

1. Common Knowledge: The Connecting Thread

The PPVFA envisages distinct protection regimes for each of the three varieties that it creates by using *common knowledge* as the differentiating feature. That is, new varieties are those for which there is no common knowledge. Extant varieties are those that enjoy general common knowledge. A variety subject to farmers’ common knowledge is the farmers’ variety. Yet, the statute does not provide a definition of common knowledge. The PPVFA, however, provides an explanation of *common knowledge* to determine the distinctiveness of a new variety.⁶¹ Under the PPVFA, a variety will be considered distinctive if it is “clearly distinguishable by at least one essential char-

⁵⁵ See The Protection of Plant Varieties and Farmers’ Rights Act, 2001 § 2(k).

⁵⁶ Nagarajan, Yadav & Singh, *supra* note 39, at 710.

⁵⁷ *Id.*

⁵⁸ See *id.*

⁵⁹ See generally Ctr. for Indian Knowledge Systems, www.ciks.org (last visited July 1, 2009) (discussing traditional methods of cultivation with particular emphasis on the selective techniques used by farmers).

⁶⁰ See Nagarajan, Yadav & Singh, *supra* note 39, at 710.

⁶¹ See The Protection of Plant Varieties and Farmers’ Rights Act, 2001, No. 53 of 2001 § 15; INDIA CODE, available at <http://indiacode.nic.in/fullact1.asp?tfnm=200153>.

acteristic from any other variety whose existence is a matter of common knowledge.”⁶² Borrowing from UPOV, the PPVFA renders only varieties that have undergone the application process for granting breeders’ rights or have been entered into any official registry as a matter of common knowledge.⁶³

The statutory definition of common knowledge contributes to a low standard of distinctiveness. For instance, common knowledge of the application material does not affect the distinctiveness of the variety — application material that is well known or itself a matter of common knowledge (including by prior registry or application for PBRs) can pass the test of distinctiveness, provided the material is distinguishable from another that is a matter of common knowledge. Similarly, application materials that are indistinguishable from commonly cultivated or well-known materials are not a bar to distinctiveness. Both commonly cultivated and well-known varieties (even if commonly known) that are indistinguishable from other well-known species will continue to qualify as “distinct” so long as they can be distinguished from varieties that are not known by registry or by application for breeders’ rights. Perhaps it is in consideration of this defect that the General DUS guidelines formulated under the PPVFA require common knowledge to be determined by factors such as commercialization of propagating or harvested material of the variety, or publication of a detailed description and existence of living plant material in publicly accessible plant collections.⁶⁴ The DUS guidelines track the UPOV guidelines, which were amended after several criticisms⁶⁵ that common knowledge excluded even materials about which there was published information.⁶⁶ It is worth pointing out at

⁶² See *id.* § 15(3)(b).

⁶³ See UPOV, *supra* note 24, art. 7; see also The Protection of Plant Varieties and Farmers’ Rights Act, 2001 § 15(3)(b) explanation (“The filing of an application for the granting of a breeder’s right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder’s right or to the entering of the said other variety in the official register of varieties, as the case may be.”).

⁶⁴ See DUS Guidelines, *supra* note 30, R. 6.2.2 at 19.

⁶⁵ See Ragavan & Mayer, *supra* note 24, at 106 (discussing the issues in UPOV with reference to common knowledge).

⁶⁶ UPOV, *General Introduction to the Examination of Distinctness, Uniformity, and Stability, and the Development of Harmonized Descriptions of New Varieties of Plants*, § 5.2.2.1, UPOV Doc. TG/1/3, Apr. 19, 2002 [hereinafter UPOV Guidelines], available at http://www.upov.int/en/publications/tg-rom/tg001/tg_1_3.pdf (requiring common knowledge to “be determined by considering among other things, commercialization of propagating or harvested material of the variety, or publishing a detailed description, existence of living plant material in publicly accessible plant collections); see also DUS Guidelines, *supra* note 30, at R. 6.2.2 (embodying the same words as the UPOV guidelines).

this stage that while common knowledge is relevant to identify a variety with which application material is compared to determine distinctiveness, it is inconsequential to determining novelty.

The DUS examination guidelines highlight that the considerations for determining common knowledge apply “equally to all types of variety, whether protected or not.”⁶⁷ It is, however, unclear whether additional limitations would apply to determine common knowledge for extant and farmers’ varieties in India. Considering that the PPVFA defines *common knowledge* as an explanation (as opposed to a general definition) to determine distinctiveness of a new variety, it implies that the common knowledge as applied to determine extant and farmers’ variety may be different. Furthermore, given that the DUS Guidelines highlight that the considerations to determine common knowledge are non-exhaustive,⁶⁸ perhaps additional considerations can apply to determine farmers’ or extant varieties. Unless the term common knowledge were applied more broadly, it would limit materials qualifying as “extant” or “farmers’ variety” in a manner defeating the purpose of creation of these varieties. Since UPOV does not concern itself with extant or farmers’ varieties, such a reading of common knowledge would fit well with the existing UPOV mechanism as well. But it leaves the EVRC with the burden of having to carefully create the appropriate distinctions.

2. Achieving Biodiversity Protection & Protecting Farmers’ Rights

The PPVFA’s *sui generis* stamp is showcased by the various exceptions that it carves out from the breeder’s rights to either protect the traditional rights of farmers, or protect biodiversity.⁶⁹ The following discussion highlights some of these efforts.

a. Protecting Biodiversity

The PPVFA requires every application for registration of a new variety to include a denomination of the variety and describe: (a) the geographical origin of the material, and (b) all information regarding the contribution of the farmer, community, or organization in the development of the variety.⁷⁰ Moreover, section 40 requires the applicant to disclose information “regarding the use of genetic material

⁶⁷ See DUS Guidelines, *supra* note 30, R. 6.2.2 at 19.

⁶⁸ *Id.*

⁶⁹ See *e.g.*, Suman Sahai, *India’s Plant Variety Protection and Farmers’ Rights Act*, BRIDGES, Oct. 2001, at 11, available at <http://ictsd.net/downloads/bridges/bridges5-8.pdf>.

⁷⁰ See The Protection of Plant Varieties and Farmers’ Rights Act, 2001, No. 53 of 2001 § 18(1)(e); INDIA CODE, available at <http://indiacode.nic.in/fullact1.asp?tfnm=200153>.

conserved by any tribal or rural families in the breeding or development of such [new] variety.”⁷¹ Further, the application must affirm that all genetic or parental material used to develop the variety has been lawfully acquired.⁷² The information in the application has three benefits. First, it promotes benefit sharing (where the new variety is created from an existing variety); second, it automatically generates *prior art* to conduct the DUS testing; and third, it creates a clear wall between materials in the public and private domain.

b. Right to Benefit Sharing

“Benefit sharing” is a concept by which a proportion of the benefits accruing to a breeder of a new variety are shared with qualifying claimants who could be indigenous groups, individuals, or communities.⁷³ Qualification to share benefits depends on (a) the extent and/or nature of use of genetic material in the development of the new variety, and (b) the commercial utility and demand in the market of the new variety.⁷⁴ Individual farmers and communities can submit a claim for benefit sharing in response to the Director’s invitation to claim benefit sharing to the registered variety. The Director will then, after due hearing, determine if benefit sharing is available and the extent of sharing between the breeder and community or individual as the case is.

The money thus collected towards benefit sharing and as royalties are credited into a statutorily created fund, termed “the gene fund,” established by the Central Government.⁷⁵ The funds thus deposited into the gene fund are due to farmers and the communities. The funds shall be applied towards compensating the farmers and the community (where benefit sharing applies), for other identified expenditures, and for specific schemes that support conservation and sustainable use.⁷⁶ The benefit sharing arrangement is meant to encourage farmers to conserve and improve traditional genetic materials, land resources, and communities and to preserve biodiversity materials.⁷⁷

⁷¹ See *id.* § 40.

⁷² *Id.* § 18(1)(h).

⁷³ *Id.* §§ 2(b) & 26.

⁷⁴ *Id.* § 26(5).

⁷⁵ See *id.* § 45.

⁷⁶ *Id.* § 45(2).

⁷⁷ See *id.* § 39 (outlining that a farmer engaged “in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund”).

c. Right to Reward⁷⁸

The right to reward is closely associated with the right to benefit sharing. Once benefit sharing is established, the farmer or the community is entitled to the reward, provided a contribution is given to the creation of a new variety.⁷⁹ The National Gene Fund, another distinguishing feature of the PPVFA, provides the rewarding mechanism. The proceeds from the Gene Fund can be used to reward individual farmers or to support biodiversity conservation efforts.⁸⁰ Biodiversity protection has been stymied by a lack of systematic efforts towards conservation and protection of traditional farming mechanisms. The rewarding mechanism creates an incentive for farmers to preserve traditional systems and funding for areas depleted from bio-prospecting.⁸¹

Additionally, the PPVFA identifies specific rights that accrue to the farmers. They are:

d. Right to Register Varieties⁸²

The right to register varieties is in itself an important recognition for farmers' role in agriculture.

e. Rights to Re-Sow (Seed)⁸³

Farmers can retain their traditional right to save and re-use seeds from their harvests.⁸⁴ A farmer may "save, use, sow, re-sow, exchange, share or sell his produce," including non-branded seed, even if it is a protected variety.⁸⁵ To facilitate the use of this right, the statute requires new varieties to not contain terminator technology.⁸⁶ The caveat to re-saving is that the farmer cannot use the

⁷⁸ RAMANNA, *supra* note 8, at 10.

⁷⁹ See The Protection of Plant Varieties and Farmers' Rights Act, 2001 §§ 24, 26.

⁸⁰ *Id.* § 45.

⁸¹ *But see, e.g.*, Srividhya Ragavan, *The Global South As The Key To Biodiversity And Biotechnology — A Reply To Professor Chen*, [2002] 32 *Envtl. L. Rep. (Envtl. Law Inst.)* 10,358 (2002) (arguing that biodiversity exploitation agreements, like the *In-Bio Merck* agreement, lacks funds specifically earmarked for larger community development, biodiversity conservation and/or sustainable development); *see also* RAMANNA, *supra* note 8, at 11 (highlighting that the gene fund is designed to promote overall sustainable development).

⁸² RAMANNA, *supra* note 8, at 10-12.

⁸³ *Id.*

⁸⁴ See Sahai, *supra* note 69.

⁸⁵ See The Protection of Plant Varieties and Farmers' Rights Act, 2001, § 39(1)(iv).

⁸⁶ *Id.* § 18.

breeder's brand name when reselling second generation produce.⁸⁷ In recognizing the right to re-sow, PPVFA deviates from UPOV and supports the traditional right of farmers.⁸⁸ The right to re-sow has been controversial because farmers treat re-sowing as their natural right,⁸⁹ while breeders insist that farmers re-using protected varieties take away a part of their rightful compensation for the second generation seeds.⁹⁰ By introducing the right to brown-bag, the PPVFA removes the most crippling impediment to introducing formal plant variety protection in developing nations.⁹¹

⁸⁷ *Id.* § 39(1)(iv). (“[A] farmer shall be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act: provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.”).

⁸⁸ The 1991 UPOV does not per se recognize the general right to re-use protected seeds. See Ragavan & Mayer, *supra* note 24, at 118.

⁸⁹ In developed nations, seed companies or large farm owners own large tracts of land, mechanically harvest seed, process, bag, tag, and sell their seeds. In developing nations like India seed companies tend not to own large seed farms. Instead, they enter into seed production contracts with small farm owners to produce all seeds, including hybrid seeds, with rights to supervise the field operations. In turn, the seeds produced by the farmers are purchased back by the seed company by giving a price incentive over the grain price, which the farmers would not otherwise fetch for their harvest. This arrangement gives the seed companies several benefits by reducing issues from having to maintain farm assets and reducing risks from seed production. Similarly, the seed producing farmer gets government subsidies for electricity, water, and several other agro-inputs, which the seed company will not normally otherwise get if they own a large seed farm. The tariff rate for industry is avoided and thus out-sourcing seed production is attractive to the seed company. This is called locally “subsidy siphoning.” Seeds thus procured from the farmers are cleaned, graded, treated, tested, bagged, and sold back, at a premium price. This, therefore, encourages some farmers to assume that re-sowing is not illegal because it is after all they who produced that seed that was value added by the company. E-mail from S. Nagarajan, Chairperson, Protection of Plant Varieties and Farmers’ Rights Authority, India to author (July 18, 2008) (on file with author). In essence, the Chairperson opines that the Material Transfer agreements create easy access to genetic materials as well as the traditional knowledge on the respective genetic materials. The low threshold for clearing the distinctiveness requirement allows minor innovations to be protected as plant patents, which is largely done by ignoring the contributions of the holders of the genetic materials. These patented plants (super crops) are sold back to the place of origin of the genetic materials at a premium price.

⁹⁰ See generally Vasudha J. Mehta, *UPOV, India and the World — Common Knowledge and Uncommon Wisdom*, ALG INDIA NEWSL., n.d., available at <http://www.algindia.com/publication/article2300.pdf> (last visited July 1, 2009).

⁹¹ Denying the right to re-sow would result in private corporations displacing farmers as the country's major seed producer. In countries like India where the farming population is considerable, accounting for eighty-seven percent of Indian seed production, it is important to make welfare exceptions to maintain the balance between trade and welfare. See Suman Sahai, *India's Plant Variety Protection and Farmers' Rights Act, 2001*, CURRENT SCI., Feb. 10, 2003, at 409.

f. Right to Compensation for Spurious Seeds⁹²

The statute requires breeders to disclose the expected performance of the seeds to enable farmers to be compensated should marketing claims fail. The objective is to ensure that quality is not compromised in the zeal to market new varieties.

g. Right to Compulsorily License

In order to protect public interest at large, the PPVFA imposes on the breeder the obligation to provide an adequate supply of seeds or material of the variety to the public at a reasonable price.⁹³ Otherwise, the statute allows the government to compulsorily license the exclusive right given to the breeder and enable third parties to produce, distribute, or sell the registered variety for reasons of public interest.

Professor Anita Ramanna⁹⁴ highlights three other rights of farmers' in the PPVFA. These are: first, the right to compensation for undisclosed use of traditional varieties⁹⁵ provided a claim is filed and proof of lack of disclosure is established; second, a right to free registration, opposition, and renewal of varieties;⁹⁶ third, protection from innocent infringement.⁹⁷

II. ARE INDIA'S ACTIONS ADEQUATE?

India's unique regime to protect farmers' rights is a commendable step in the right direction. It ensures that farmers' rights are not trampled in promoting breeders' rights. The bigger question for India is whether the steps taken in the form of the PPVFA and other statutes, like the Biological Diversity Act,⁹⁸ are adequate to alleviate the current crisis in agriculture. As an overall policy to promote agriculture,⁹⁹ the immediate concern for developing nations like India is to look at the agricultural trade in entirety as opposed to treating farm-

⁹² See The Protection of Plant Varieties and Farmers' Rights Act, 2001 § 39(2); see also RAMANNA, *supra* note 8, at 12.

⁹³ See The Protection of Plant Varieties and Farmers' Rights Act §§ 47-53.

⁹⁴ See RAMANNA, *supra* note 8, at 12-14.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*; see Ragavan & Mayer, *supra* note 24, at 116.

⁹⁸ The Biological Diversity Act, 2002, No. 18 of 2003; INDIA CODE, available at <http://indiacode.nic.in/fullact1.asp?tfnm=200318>.

⁹⁹ Several countries have addressed or faced issues relating to national food questions. See, e.g., *A Different Sort of Emergency*, *ECONOMIST*, Apr. 19, 2008, at 52, available at http://www.economist.com/opinion/displaystory.cfm?story_id=11058143 (Bangladesh); see also

ers' rights separately. Promotion of farmers in the context of agricultural trade requires India to prioritize market issues. Consumer access to food and creating a market for the produce of local farmers are the most imminent requirements to address the existing food crisis.

Different countries have started dealing with the issue of food crisis at national levels. Some countries have responded by cutting taxes on imported food.¹⁰⁰ The Ivory Coast, for example, halved value-added tax after its food riots. Ethiopia scrapped VAT on food.¹⁰¹ Indonesia lifted import controls on soybeans in January after food prices sparked the biggest protests there for years.¹⁰² India constituted a study in 2003 to assess the situation of farmers known as the *Situation Assessment Survey of Farmers* (SAS). The SAS examined more than 50,000 farmer households and pointed out that, among other things, the annual expenditure on cultivation in some states is higher than annual income from cultivation, which leads to the second issue of creating adequate markets for the farmers.¹⁰³

Solutions to open market access for farmers from poor countries should be long term and address the problem at an international level. While promoting breeders' rights will lead to innovative hybrid varieties,¹⁰⁴ farmers (who embrace such hybrid varieties and harvest a higher yield) cannot benefit unless their produce can be sold in the markets. Unfortunately, the current levels of subsidies of all nations, particularly the developed nations, have closed these markets.¹⁰⁵ The term "subsidies" refers to the financial support that governments provide to offset or balance the losses farmers or traders suffer, or are likely to suffer, in agricultural commodities.¹⁰⁶ Generally, there are

The Ravening Hoards, *ECONOMIST*, Apr. 19, 2008, at 54, available at http://www.economist.com/opinion/displaystory.cfm?story_id=11058402 (China).

¹⁰⁰ See *Reviving the Ration Card*, *ECONOMIST*, Apr. 19, 2008, at 33, available at http://www.economist.com/world/international/displaystory.cfm?story_id=11049320 (highlighting that twenty-four of fifty-eight countries tracked by the World Bank responded to the food crisis by cutting taxes on imported food).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Keith Bradsher & Andrew Martin, *World's Poor Pay Price as Crop Research is Cut*, *N.Y. TIMES*, May 18, 2008, at A1, available at <http://www.nytimes.com/2008/05/18/business/worldbusiness/18focus.html?pagewanted=1&hp> (highlighting that despite the rights regime, there are issues that relate to funding for agricultural research).

¹⁰⁵ See generally *ECONOMIST*, *supra* note 5 (highlighting that as yet another government distortion — subsidies to biofuels in the rich world — have resulted in increase in food prices and that, moreover, governments have exaggerated the problem by imposing export quotas and trade restrictions, raising prices again); see also Ragavan, *supra* note 13, at 347-49 (discussing how subsidies results in dumping); Mishra, *supra* note 2.

¹⁰⁶ See Ragavan, *supra* note 13, at 347-49.

several forms of government financial contributions — governments may support the income of the farmers or make up for shortfalls in commodity prices.¹⁰⁷ Subsidies promise a certain percentage of profit or income to the farmers, and thus largely protect the farmers by eliminating the risks associated with the marketability of the commodity.¹⁰⁸ As for poor countries, subsidies of the rich world prevent their products reaching the market on the one hand and encourage dumping on the other.¹⁰⁹

Reduction of subsidies was a commitment negotiated by developing countries to allow market access to their agricultural commodities as part of their trade agenda. Developing nations have been disappointed that developed countries have reneged on the subsidies commitment creating two important trade impediments: first, lack of market access to export agricultural commodities of the developing nations and second, depression of the world commodity market prices resulting in dumping into the less developed parts of the world, affecting the livelihoods of local farmers.¹¹⁰

In 1997, the loss to developing countries from agricultural subsidies of the developed nations amounted to \$24 billion U.S.¹¹¹ A study conducted in 2002 by the OECD estimated that “world welfare cost of distortions in high income countries amounts to \$82 billion annually determined using 1997 prices, while the developing world would gain about \$26 billion per year based on 1997 prices from the removal of distortions.”¹¹² Several studies address the relationship between subsidies and their effect on developing nations.¹¹³ It is time for emerging economies like India to prioritize agricultural negotiations.

The current pent-up frustration of the developing world on the economically unreasonable stance of the developed world with regard to agriculture has not yet translated into viable agricultural negotiations. At an international level, the agricultural subsidies negotiations, first launched in the WTO in 2000, became part of the Doha

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ John C. Beghin, David Roland-Holst & Dominique van der Mensbrugghe, *How Will Agricultural Trade Reforms in High-Income Countries Affect the Trading Relationships of Developing Countries?* 39 (Iowa State University, Department of Economics, Staff General Research Papers 10665, 2003), available at <http://ideas.repec.org/p/isu/genres/10665.html>.

¹¹¹ See Press Release, International Food Policy Research Institute, *Wealthy Countries' Trade Policies Sap the Economies of Developing Nations* (Aug. 26, 2003), available at <http://www.ifpri.org/pressrel/2003/pressrel20030826.pdf>.

¹¹² See Beghin, Holst & van der Mensbrugghe, *supra* note 110, at 40.

¹¹³ See generally Ragavan, *supra* note 13.

agenda in 2001.¹¹⁴ The negotiations meant to “establish a fair and market-oriented trading system through fundamental reform.”¹¹⁵ The objective was to correct and prevent restrictions and distortions in world agricultural markets.¹¹⁶ The Doha Ministerial Declaration mandate for agriculture targeted three important areas: reduction of domestic support, phasing out of export subsidies, and improvements in market access.¹¹⁷ Meanwhile, a group of developing countries, including India, circulated the G20 proposal emphasizing subsidy and tariff reduction for developed countries with fewer demands on developing countries.¹¹⁸ The differences between the developed and the developing world on the issue resulted in the failure of the Cancun Ministerial Meeting.¹¹⁹ Further negotiations attempts in 2004 and 2005 failed although the Hong Kong Ministerial Declaration reaffirmed the Doha Commitments.¹²⁰ Meanwhile, despite the prevailing world-wide issues relating to agricultural commodities, the United States Congress is furiously working to pass yet another disastrous bill that will aid American farmers and dole money out for items like land conservation, rural development, and even racehorse breeding, which promises to further close markets to poorer farmers across the globe.¹²¹ Emerging economies, particularly India, have repeatedly stressed the need to eliminate export subsidies and reduce the domestic support of rich nations.¹²² But developing countries have failed to reach an agreement on agriculture issues despite the imminence of the issues and the prevailing concerns.¹²³

¹¹⁴ World Trade Org., *The Doha Declaration Explained, Agriculture*, http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm#agriculture (last visited July 1, 2009).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ CHARLES HANRAHAN & RANDY SCHNEPF, CONG. RESEARCH SERV., *WTO DOHA ROUND: AGRICULTURAL NEGOTIATING PROPOSALS (2005)*, available at <http://fpc.state.gov/documents/organization/57217.pdf>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ World Trade Organization, *Ministerial Declaration of 18 December 2005, WT/MIN(05)/DEC*, available at http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm.

¹²¹ See Heather Timmons, *Indians Find U.S. at Fault in Food Cost*, N.Y. TIMES, May 14, 2008, at C1, available at <http://www.nytimes.com/2008/05/14/business/worldbusiness/14food.html> (discussing India's response to the U.S. policy options that affect world food prices).

¹²² Martin Khor & Hira Jhamtani, *G20 Ministers Reaffirm "Agriculture Central to Doha Round," India and Brazil State Positions*, THIRD WORLD NETWORK, Dec. 14, 2005, <http://www.twinside.org.sg/title2/twninfo323.htm>.

¹²³ BHAGIRATH LAL DAS, RESEARCH & INFO. SYS. FOR DEVELOPING COUNTRIES, *THE WTO'S DOHA NEGOTIATIONS: AN ASSESSMENT*, RIS-DP No. 132 (2008), available at http://www.ris.org.in/dp132_pap.pdf.

India along with other developing countries, particularly Brazil, took a leadership position in the negotiations that resulted in creating exceptions to pharmaceutical patents under conditions of a public health emergency.¹²⁴ It is time for developing nations, particularly an emerging economy like India, to take a tough stand against trade distorting agricultural subsidies. The following discussion merely focuses on what India should do as part of its strategy to push its agenda forward.

A. Solicit Consolidated Support of a Large Number of Developing and Developed Countries

In the Cancun Ministerial Conference in 2003 developing countries took a united stand against the moves of the major developed countries and rejected negotiations on any of the “Singapore issues” (investment, competition, government procurement, and trade facilitation, issues which were introduced in the WTO process in the Singapore Ministerial Conference in 1996) until agriculture issues were fully addressed.¹²⁵ Similarly, during the course of the negotiation process in agriculture, various developing-country groups like the G20, G33, ACP countries, and the Least Developed Countries (LDCs) have come together to issue statements.¹²⁶ Developing economies should work to consolidate support of a large number of WTO members.

B. Establish Clear Policies

India and other emerging economies should promote research that ultimately creates a package of proposals that would alleviate the clogging in international agricultural trade. There are very limited studies focusing on the kind of policy options in agricultural trade that will help developing nations.¹²⁷ Lal Das points out that sometimes developing countries have specific interests.¹²⁸ Most of the time, Das adds, they do not contradict with the existing agenda of other developing nations. For instance, Das points out that

the G33 developing-country grouping lays stress on Special Products (SP) and Special Safeguard Mechanism (SSM) in

¹²⁴ See generally World Trade Org., <http://www.wto.org> (last visited July 1, 2009) (discussing the role member states played in the negotiations).

¹²⁵ See LAL DAS, *supra* note 123, at 5.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

agriculture, the G20 on reduction of agricultural tariffs and subsidies in the developed countries, the NAMA 11 on rational reduction of industrial tariffs so that the developing countries' development process is not hampered, the Small and Vulnerable Economies (SVEs) on special consideration to them on reduction of industrial tariffs, some developing countries with fairly open industrial sectors want reduction of industrial tariffs all around, etc.¹²⁹

More studies are required to highlight the differences between the developed and the developing nations as well as between the policy goals of various developing nations. Emerging nations should use the awareness of such differences to step up and negotiate towards achieving clear policy agendas. Leaders in the group like India and Brazil should promote more research on agricultural trade, privatization, and creation of private rights in food related innovations, which will be critical to evolve appropriate policies.

C. Fund for Integrated Research

Any research that is promoted by developing countries should take careful cognizance of international treaties and efforts that promote conflicting ideologies. The burden is on developing countries to promote an agenda that balances international trade and intellectual property initiatives with appropriate measures to restore traditional farming rights and practices. For instance, the CBD promotes sharing of genetic resources while UPOV, 1991 lowers the threshold for protection new varieties, thus creating a loophole which can enable minor developments in plants to enjoy intellectual property protection. Similarly, the objectives of both the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)¹³⁰ is yet to be reconciled with the objectives of World Trade Organization's efforts to protect innovative plant breeding. The status of innovative plants that result directly from either information or effort using the benefits of provisions in the CBD or ITPGRFA remains unclear. The rights of non-breeder actors that help in plant innovation are yet undefined. The presence of Material Transfer Agreements (MTAs) further complicates the situation. For instance, discussions on material transfer agreements from the developed world tend to focus on the importance of intellectual property rights protection over the final innovation. As such, there are no compliance

¹²⁹ *Id.*

¹³⁰ International Treaty on Plant Genetic Resources for Food and Agriculture, Mar. 11, 2001, U.N. Reg. No. I-43345, available at <ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf>.

guidelines that ensures that use of genetic resources or general knowledge are adequately documented as prior-art to prevent private rights on minor innovations in the future. The zest to protect the intellectual property rights of the end product ignores any traditional rights (usually unrecognized in the West) of farmers or indigenous communities who may sometimes serve as important contributors to the end-innovation. The concerns outlined by the Director of PPVFA, India, outlines the developing country sentiments succinctly:

The MTAs brings in the intellectual rights on the genes mined from extant varieties to develop a super crop variety by large seed companies. These super crop varieties are sold back to the farmers of developing countries by multinational corporations at a higher price under the pretext of “Technology fee.” The useful genes in the extant varieties that accord resistance to various stresses are prospected, and parked in good agronomic background as new super crop varieties. The technology rich nations use these gene resources to frame the super varieties, conveniently ignoring the need to pay compensation to those farmer(s)/communities who supplied these genes along with the traditional knowledge on the features of these useful traits.

Delineating the rights between genetic and innovative materials will be critical for generating a workable model to promote agriculture and protect the environment. Amidst issues of delineating rights between genetic and innovative materials lies the third spectrum of trade issues (outlined below) that cannot be ignored. Importantly, the adverse effects of the unresolved questions substantially affect developing countries because of the nature of agricultural practices and their in-built variations from western agricultural practices. Consequently, the onus is squarely posited on developing countries to study and develop appropriate policies that address their concerns effectively.

D. Co-Relating Agriculture with IP Rights

Emerging economies should tie the agriculture agenda to issues relating to intellectual property rights; after all, the trade regime is a negotiated contract between the various members. Members signed on to the multilateral system with clear expectations of some benefits and to fulfill certain obligations for the larger good. Such benefits formed the consideration of the agreement especially when viewed in the context of the objectives of the WTO agreement. Viewed from that angle, at the Uruguay agreement developing nations agreed to estab-

lish minimum standards of IPRs provided developed nations reduced barriers to agricultural trade. The breach of obligations relating to reduction of subsidies by the developed nations is tantamount to the failure of the trade regime. Hence, emerging economies should threaten to suspend intellectual property obligations until agricultural negotiations are concluded. Brazil when faced with the AIDS crisis, successfully negotiated cost reduction of medication after threatening to compulsorily license the patent.¹³¹ Similarly, in the Upland Cotton Dispute, Brazil threatened to suspend its patent obligations unless the United States implemented the decision of the appellate body.¹³² The advantage in taking such a stance is that it would bring in the other lobbies within the developed nations, pharmaceutical industry in this case, and will pit them against the agricultural lobbies. It will also force the developed nations to negotiate considering all of the other issues that affect trade instead of dealing with each issue singularly.

E. Implementing Existing Rulings

Developed nations have been slow or even refused to implement rulings of the WTO Dispute Settlement Body (DSB) that adversely affects them like the *Upland Cotton Dispute* and the *EC Sugar Dispute*,¹³³ which found the existing levels of subsidies for cotton and sugar to be in violation of trade rules and/or prior agreement of the members. Developing nations should use the DSB to force retaliation. Developing countries should point out how the WTO works to pressurize developing countries into trade sanctions using the DSB, but the same body refuses to allow retaliation when a weaker member is economically affected because a richer nation refuses to comply with its ruling. For example, in the *Upland Cotton Dispute*, the DSB refused to either authorize Brazil's retaliation or to take action itself to penalize the U.S. for not implementing the appellate body's decision. Brazil had to resort to pressurizing the U.S. government to at least

¹³¹ Official Note, National STD/Aids Program, Brazilian Ministry of Health, Ministry of Health Announces Compulsory Licensing of Nelfinavir Patent, Aug. 22, 2001, available at <http://www.cptech.org/ip/health/c/brazil/nelf08222001.html>; see also Miriam Jordan, *Brazil To Break Roche Patent On AIDS Drug*, WALL ST. J., Aug. 23, 2001, at A3.

¹³² See generally Summary, World Trade Org., Dispute Settlement: Dispute DS267: United States — Subsidies on Upland Cotton (March 3, 2005), available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm; *DSB Update: EC – Sugar, US – Cotton*, BRIDGES, Mar. 18, 2008, at 1, available at <http://www.ictsd.org/weekly/04-03-18/story1.htm>.

¹³³ See generally Summary, World Trade Org., Dispute Settlement: Dispute DS265: EC — Export Subsidies on Sugar (April 28, 2005), available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds265_e.htm.

modify its programs, but to no effect.¹³⁴ Instead, developed countries including the United States have continued to renege on their agricultural commitments, while continuing to seek greater concessions from WTO members to increase its market access throughout the world.

F. Bilateral Negotiations

Developing nations should call on bilateral agreements of developed nations that go against their prior commitments at the WTO. Shifting focus to bilateral or regional deals as an alternative to the multilateral regime has allowed the developed nations to bypass obligations that they undertook voluntarily by nullifying the WTO obligations. Meanwhile, the central loss for developing and least-developed nations lies in having to face the entire electorate to explain why none of the Uruguay promises have materialized after expending time, investment, and resources.

III. CONCLUSION

The current food crisis provides the best time for developing countries to step up and correct the inherent defects in the trading system and help farmers find a market. Farmers' rights are not just theoretical rights on paper — those rights should translate into market access. Emerging economies like India should work towards gaining a leadership position to secure market access for their deserving farmers.

¹³⁴ See World Trade Org., *supra* note 132.

Legal Education Reform in India: Dialogue Among Indian Law Teachers

*Jane E. Schukoske**

The National Knowledge Commission (NKC), constituted in 2005 as a high-level advisory body to the Prime Minister of India, calls for change in the approach to legal education. The NKC stated:

Legal education should . . . prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. Further, there is need for original and path breaking legal research to create new legal knowledge and ideas that will help meet these challenges in a manner responsive to the needs of the country and the ideals and goals of our Constitution.¹

The NKC report calls for education of Indian lawyers to be ready for law practice in the global legal environment *so that Indian lawyers can serve India's needs* — those of all its citizens, businesses, government, and NGOs. That is, global readiness is forecast as an integral part of general legal practice of the future, rather than as the domain of a small cadre of international law specialists. “Path-breaking legal research to create new legal knowledge and ideas” must also be understood to include representation of India’s poor people, to improve their access to justice. Access to justice includes access not only to dispute resolution but also access to education, means for meeting basic needs and other human rights.

This article outlines legal education reform debate occurring around the world and the developments in India and is designed to be useful to legal educators in India to respond to the NKC’s recommen-

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¹ Nat'l Knowledge Comm'n, *Compilation of Recommendations on Education*, (Oct. 15, 2007), <http://www.knowledgecommission.gov.in/recommendations/legaleducation.asp>.

dations. These intersecting reform trends in other parts of the world include: (1) reframing of curricular content to integrate cross-border and international dimensions of practice; (2) greater emphasis on problem-solving, negotiation, and transactional practice to balance the traditional law school curricular focus on litigation; (3) connection of theory and practice through clinical legal education; and (4) use of new technologies for learning.² A pervasive theme found within the last three trends is the need to place greater emphasis on values and ethics.

The article then turns to the legal education context in India, with over 900 institutions offering law courses, and highlights reforms efforts in Indian legal education. Government bodies, including the Bar Council of India, Law Commission of India, and University Grants Commission, have convened expert panels that have recommended legal education reforms, some of which have been implemented and some of which are pending. Eminent professors have admirably guided such efforts. However, it appears that greater dialogue among the vast numbers of Indian law teachers is needed:

- to envision the role that lawyers can play in bringing about a more just society within India and in strengthening India as a country globally;
- to identify and implement improvements needed in pedagogy and curriculum; and
- to improve the infrastructure supporting legal education itself, in particular, teacher training, professional development and teaching materials, and community service materials.

Sharing ideas through legal research and scholarship is important to initiate the dialogue. Specific treatment of strengthening support for law teachers for conducting legal and socio-legal research will be the subject of a subsequent article. This article poses broad questions for law teachers to consider and seeks to inspire the Indian law teachers to collaborate more closely, using new readily available technologies, to contribute more interactively to legal education reform.

I. LEGAL EDUCATION PARADIGM: DOMESTIC LAW PRACTICE HAS TRANSNATIONAL DIMENSIONS

In daily life, activity that transcends borders is highly visible in the marketplace, in communications (Internet, satellite television broadcast, mobile phone networks), in our multi-national and multi-cultural communities (including a variety of workers, students, family members, tourists, and refugees), and in our global challenges (en-

² The article primarily draws on literature from North America, and draws selectively on materials available through electronic databases for other world regions.

vironment, economy, human development and human security). For decades, some lawyers have specialized in international business transactions, immigration, and international human rights. Over the last three decades, legal educators have recognized that increasingly law practice involves parties, events, and transactions in more than one country, legal tradition, and culture. There is spirited debate and experimentation in the legal education community on how to coherently infuse perspectives and skills into the law school curriculum and pedagogy to equip students for law practice in our increasingly interdependent world.

Law schools across the world are sharing their approaches to legal education in light of the swift change in law practice resulting from the current wave of globalization. The International Association of Law Schools³ facilitates interaction among legal educators on the study of multiple legal systems and legal cultures in law school through its global conference activity⁴ and faculty recruitment postings.⁵ National-level,⁶ regional-level,⁷ and cross-region⁸ professional bodies provide platforms for discussion of the international dimensions of legal education.

Legal scholars have named new paradigms to reflect the reality of globalization and its implications for legal practice. In addition to continued discussion of long-standing study of international and com-

³ “The International Association of Law Schools (IALS) is a non-profit organization founded in 2005 with a membership of educational institutions, associations, and legal educators from throughout the world. Its members are committed to the proposition that the quality of legal education in any society is improved when students learn about other cultures and legal systems and the diverse approaches to solving legal problems employed in those legal systems.” Int’l Ass’n of Law Sch. (IALS), <http://www.ialsnet.org> (last visited Mar. 11, 2009).

⁴ See Conference Papers from IALS, Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World, <http://www.ialsnet.org/meetings/enriching/index.html> (last visited Mar. 19, 2009); IALS, Effective Teaching Techniques About Other Cultures & Legal Systems, (May 30, 2008) (conference proceedings, Montreal, Canada), <http://www.ialsnet.org/meetings/assembly/MasterBookletMontreal.pdf>.

⁵ See IALS Meetings, <http://www.ialsnet.org/meetings/index.html> (last visited Mar. 19, 2009).

⁶ See, e.g., Am. Ass’n of Law Sch. Annual Meeting, http://www.aals.org/events_annual_meeting.php (last visited Mar. 19, 2009) (list of papers and podcasts from annual meetings); Australasian Law Teachers Ass’n, <http://www.alta.edu.au/> (last visited Mar. 19, 2009); Canadian Ass’n of Law Teachers, http://www.acpd-calt.org/English/annual_meetings/default.htm (last visited Mar. 19, 2009); U.K. Ctr. for Legal Educ., <http://www.ukcle.ac.uk/index.html> (last visited Mar. 19, 2009).

⁷ See, e.g., Australasian Law Teachers Ass’n, *supra* note 6; European Law Faculties Ass’n, <http://www.elfa-afde.org/> (last visited Mar. 19, 2009).

⁸ E.g., Mortimer Sellers, *The Internationalization of Law and Legal Education*, in *THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION* 1, 1 (Jan Klabbers & Mortimer Sellers eds., 2008) (discussing the European-American Consortium for Legal Education).

parative law, legal scholars term the contemporary phenomenon “transnational law,”⁹ “world law,”¹⁰ “transsystemia,”¹¹ and “global law.”¹²

Professor William Twining identifies five developments in law which are changing with globalization: (1) increased emphasis on “established transnational fields, such as public international law, regional law, international trade and finance (including *lex mercatoria*’ and Islamic banking and finance), and environmental law[;] [n]ew transnational fields are emerging, such as Internet law, procurement, and transitional justice”; international criminal law and development; (2) legal dimensions of global issues, such as “. . . environmental issues, radical poverty, the common heritage of mankind, migration, war, international crime, terrorism, pandemics and the media”; (3) transnational dimensions of core subjects such as contracts, criminal law, family law, intellectual property and labour law; (4) diffusion of law through migration and the interface of religious and customary practices with law; and (5) the need for practitioners to look beyond the law of the jurisdiction in which they practice.¹³ Professor Twining observes, “Comparative law is increasingly more like a way of life than a marginal subject for a few specialists.”¹⁴ As is apparent from Professor Twining’s list of developments in law, the

⁹ “Transnational law’ . . . include[s] all law which regulates actions or events that transcend national frontiers.” Harold J. Berman, *The Role of International Law in the Twenty-First Century: World Law*, 18 *FORDHAM INT’L L.J.* 1617, 1618 (1995) (quoting PHILLIP C. JESSUP, *TRANSNATIONAL LAW* 2 (1956)).

¹⁰ In the *Fordham International Law Journal* article cited *supra* note 9, the eminent international law scholar Professor Harold J. Berman argues for a term, “world law” to “combine inter-state law with the common law of humanity, on the one hand, and the customary law of various world communities, on the other.” *Id.* at 1622.

¹¹ “Transsystemia,” the teaching of more than one legal system at once, began at McGill University Faculty of Law, which, due to its presence in the French-speaking province of Quebec within Canadian law in the English language, invented the method. Peter L. Strauss, *Transsystemia — Are We Approaching a New Langdellian Moment? Is McGill Leading the Way?*, 56 *J. LEGAL EDUC.* 161, 169-70 (2006); *see also* Catherine Valcke, *Global Law Teaching*, 54 *J. LEGAL EDUC.* 160, 175 (2004) (the aim of the McGill pedagogy is to “encourage [students] to develop ‘a multiplicity of legal identities’”).

¹² *See, e.g.*, Valcke, *supra* note 11, at 164 (criticizing the usage “global law” as “just a flashy label” for “a mix of international and internal state law” and advocating that law schools channel their “foreign,” “comparative,” “international,” and “transnational” courses into coherent pedagogical strategies); William Twining, *Implications of “Globalisation” for Law as a Discipline* (April 13, 2009) (forthcoming manuscript, on file with author) (criticizing the “hyperbole” of the word “global” and using the word as “genuinely world-wide” as distinguished from “other levels of ordering, such as international, supra-national, transnational, regional, diasporic and sub-national”).

¹³ Twining, *supra* note 12 at 8; *see id.* at 8-11.

¹⁴ *Id.* at 11.

magnitude of the knowledge content and skills involved in globalization of the legal profession is vast.

Legal educators are grappling with the implications of reframing the understanding of law practice from state and/or national to cross-border, regional, and global. Law schools in the United States have introduced international/comparative components into conventional courses and increased the number of comparative law courses, study abroad experiences, and international clinical legal experiences.¹⁵ Models of incorporating the international and transnational element in American law school curriculum, research, and service have been characterized by Professor Larry Cata Backer as traditional models (integration, involving refocusing of the law school from the national to the transnational; aggregation, presenting international and transnational issues as a specialty area of study; and segregation, involving a center or other institutional base for international and transnational programmes); the immersion model, in which the law school collaborates with a network of law schools abroad; and the multi-disciplinary departmental model, in which a university establishes a school or department of international transactions or international affairs.¹⁶

Recognizing the interest of lawyers educated abroad in enhancing their skills to compete in the global legal arena, American law schools offer Master of Laws degree programmes for foreign-trained lawyers on U.S. law and the U.S. legal system. The American Bar Association identifies fifty of such programmes.¹⁷ These programmes are designed to equip foreign lawyers with perspectives, knowledge and professional communications skills to represent clients transnationally and are an outgrowth of the prominence of U.S. law firms in the international legal market.¹⁸

As the importance of cross-border work is taken to heart, law teachers are formulating more nuanced learning objectives and strat-

¹⁵ See, e.g., James P. White, *A Look at Legal Education: The Globalization of American Legal Education*, 82 IND. L.J. 1285 (2007) (discussing three aspects of globalization and legal education: summer abroad programmes, joint degrees between international law schools, and cross-border practice).

¹⁶ Larry Cata Backer, *Internationalizing the American Law School Curriculum (in Light of the Carnegie Foundation's Report)*, in INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION, *supra* note 8, at 49, 76-98.

¹⁷ Am. Bar Ass'n, U.S. Legal Studies Programs for Foreign Lawyers or International Students, Post-J.D. Programs, <http://www.abanet.org/legaled/postjdcprograms/postjdc.html> (last visited Apr. 4, 2009).

¹⁸ Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT'L & COMP. L. 143, 146 (2006) (analyzing the role of U.S. law schools in educating foreign law graduates and reporting on research on such programmes).

egies. Brief exposure to another legal system through study abroad has been distinguished from in-depth study of the mode of reasoning of another legal system besides the system in which the law school is located.¹⁹ To practice law transnationally, law graduates need the ability to adapt to different cultures and to communicate effectively with lawyers of other jurisdictions and legal traditions.²⁰ Among the strategies discussed for developing cross-cultural skills is the study of a foreign language.²¹

One emerging paradigm is that of “global law schools” which aim to convey fresh perspectives on law in the realities of the twenty-first century by bringing together faculty and students from multiple countries to engage in teaching, learning and research.²² A global law school has been described as “a center of thought, where a broader range of opinion is found than in local law schools, with a multinational faculty and student body, and a programme to produce lawyers capable of success worldwide.”²³ Some law schools, including those

¹⁹ See Valcke, *supra* note 11, at 181.

²⁰ See Simon Chesterman, *The Globalisation of Legal Education*, 2008 SING. J. LEGAL STUD. 58, 66 (2008) (observing that “. . . faculties will seek ways to ensure that their graduates are both intellectually and culturally flexible, capable of adapting not merely to new laws but to new jurisdictions”); Ida Abbott, *Fostering Cultural Competence Is Necessary — And Profitable*, COMPLETE LAW., Dec. 9, 2008, <http://www.thecompletelawyer.com/international-business/north-america/fostering-cultural-competence-is-necessary—and-profitable-390.html/2>; Dawn Wagenaar, *Global Thinking Goes Beyond Location*, COMPLETE LAW., Nov. 21, 2008, <http://www.thecompletelawyer.com/international-business/global-thinking-goes-beyond-location-429.html>.

²¹ Vivian Grosswald Curran, *The Role of Foreign Languages in Educating Lawyers for Transnational Challenges*, 23 PENN. ST. INT’L L. REV. 4 (2005) (advocating the study of foreign language by American law students to enhance understanding of another legal culture).

²² See John E. Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329 (1996) (describing the three components of New York University School of Law’s pioneering “global law school” designed to provide students and faculty with fresh perspective as team-teaching by American and international faculty, hosting of international graduate law students, and rethinking of curriculum and research in light of globalization); see also David S. Clark, *Transnational Legal Practice: The Need for Global Law Schools*, 46 AM. J. COMP. L. 261, 269 (1998); Valcke, *supra* note 11, at 175 (citation omitted) (the aim at some law schools “is to get students to also think like *foreign* lawyers”). Jindal Global Law School, Sonapat, Haryana, India, the sponsor of the Jindal Global Law Review, has the mission of imparting global perspectives and skills to its students and encouraging research and collaborations with partner law schools around the world. Its vision is posted on its website at <http://www.jgls.org/opjindal/vision-philosophy.asp> (last visited July 2, 2009).

²³ Alexander H.E. Morawa & Xialolu Zhang, *Transnationalization of Legal Education: A Swiss (and Comparative) Perspective*, 26 PENN. ST. INT’L L. REV. 811, 817 (2008) (discussing efforts to incorporate transnationalization into legal education and describing the approach to globalization in the law programme at University of Lucerne School of Law in Switzerland).

leading the global law school movement,²⁴ have established double-degree programmes across national jurisdictions. A challenge facing these global law schools is how to incorporate into legal education deep concern, knowledge, and skills to provide access to all segments of society, not only for those multi-national companies and individuals operating in a global context, but also access to justice for the marginalized for whom the global marketplace brings few if any direct benefits.

Regional legal education planning can facilitate the preparation of lawyers for cross-border legal interactions. For example, the European Law Faculties Association has explored the use of master's degree study in a coordinated way to prepare law graduates for practice in a neighboring member state in Europe.²⁵ Conceivably, it can also provide a tool for addressing socio-legal problems common to a region.

As universities and law schools set goals for internationalization, the university administration can track measures of activity to assess the degree of engagement. Canadian scholar Jane Knight, a leader in international education, has identified activities which universities can use for planning campus internationalization.²⁶ While these measures do not assess whether learning goals are being met, they can provide a law school community with some strategies for infusing perspectives from other countries and legal systems. Educators are also sharing planning tools for developing inter-university agreements with institutions abroad to expand educational opportunities

²⁴ Chesterman, *supra* note 20, at 63 (calling the move from exchange programmes to double-degree programmes across national jurisdictions "the first mark of globalization as distinct from transnationalisation").

²⁵ Frans Vanistendael, *BA-MA Reform, Access to the Legal Profession and Competition in Europe*, 21 PENN. ST. INT'L L. REV. 9, 19 (2002) (discussing the need for legal education to train lawyers competent to protect consumers of legal services and for greater access and mobility in the profession to handle the reality that Europe is a single market).

²⁶ JANE KNIGHT, HIGHER EDUCATION IN TURMOIL 47-50 (2008) (identifying measures for key areas of internationalization of universities as its consideration in the institutional planning processes; faculty and staff involvement through international exchange, training, and projects, and professional development workshops to promote such involvement; international expertise and achievements as criteria considered in faculty and staff appointment, promotion, tenure, and recognition; institutional academic agreements and cooperation; advisory and support services for students' study abroad; student exchange programmes; internships or placements, field trips, and work-abroad programmes; advisory and support services for international students; number of international students on campus; integration of international, inter-cultural perspectives in the curriculum and teaching/learning process; foreign language study in the curriculum; international courses and programmes; research and scholarly activities; international development projects; cross-border academic programmes; university organizational structures that support implementation of internationalization plans; and financing of international efforts).

for their students and faculty.²⁷ An Inter-Association Network on Campus Internationalization has been formed in 2009 to provide resources for campus administrators.²⁸

II. LEGAL EDUCATION PARADIGM: LAWYERS NEED PROBLEM-SOLVING, NEGOTIATION, AND TRANSACTIONAL PRACTICE SKILLS

Another thread of current international discussions about legal education reform in the framework of globalization and contemporary life focuses on the need for law graduates to be equipped with a broad range of lawyering skills when they enter the profession. While society will always need litigators, the heavy emphasis on litigation in the traditional law school curriculum warrants fresh thinking in a globalized world in which transnational matters are best managed through advance planning and agreement.²⁹ Development of problem-solving skills, involving invention of creative options for reaching solutions, also enhances the ability of lawyers to grasp the policy aspects of law and to contribute to policy-making in their home countries.

Analysis of lawyering tasks in a 1992 report by the American Bar Association (the “MacCrate Report”) revealed the fact that much of the work of a lawyer relates to analysis of the facts of a client’s case, research of the applicable law, counseling on options open to the client, structuring of transactions, and negotiation of disputes before or outside of court.³⁰ In the United States, a 2007 high-profile report (the “Carnegie Report”) has called for legal education strategies in

²⁷ See MARTIN J. TILLMAN, COOPERATING WITH A UNIVERSITY IN THE UNITED STATES: NAFSA’S GUIDE TO INTER-UNIVERSITY LINKAGES (2007) (providing an approach to assessing justification and capacity for inter-university linkages and to negotiating sustainable agreements).

²⁸ See Res. for Campus Internationalization, <http://campusinternationalization.wordpress.com/> (last visited April 29, 2009).

²⁹ Roy T. Stuckey, *Preparing Students to Practice Law: A Global Problem in Need of Global Solutions*, 43 S. TEX. L. REV. 649 (2002) (advocating reform of legal education across the world to include more instruction about law practice, development of problem-solving skills, and supervised practice before full bar licensure).

³⁰ See TASK FORCE ON LAW SCH. & THE PROFESSION, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (MACCRATE REPORT) (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> (The MACCRATE REPORT, informally named for the chair of the panel, articulated “a vision of skills and values that a new lawyer should seek to acquire” composed of ten fundamental lawyering skills (problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative-dispute resolution procedures, organization and management of legal work, and identification and resolution of ethical dilemmas) and four values (competence, commitment to justice, improvement of

which the cognitive, the practical and the ethical-social dimensions of lawyering would be addressed holistically.³¹ The report calls for integration of these three elements of the law school curriculum:

1. The teaching of legal doctrine and analysis, which provides the basis for professional growth.
2. Introduction to the several facets of practice included in the rubric of lawyering, leading to acting with responsibility for clients.
3. A theoretical and practical emphasis on inculcation of the identity, values and dispositions consonant with the fundamental purposes of the legal profession.³²

American scholar Larry Cata Backer advocates that law schools consider the conceptual framework of the Carnegie Report in developing their approach to legal internationalization.³³ One pedagogical means of achieving this holistic learning is through clinical legal education.

III. LEGAL EDUCATION PARADIGM: CLINICAL LEGAL EDUCATION CONNECTS THEORY, PRACTICE, AND PROFESSIONAL VALUES

Clinical legal education, grounded in the pedagogy of “learning by doing,” engages law students in community-based legal work or simulations under faculty or other attorney supervision. Implemented in various ways around the world, clinical legal education is constituted by three key elements: professional skills training, learning through experience, and imparting professional values of providing access to social justice.³⁴ Law students in all regions of the world are undertaking access to justice work in a variety of clinical

the profession, and continuous learning and pursuit of employment consonant with personal and professional goals).

³¹ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, 191, 194 (2007) (examining models of U.S. legal education and calling for systematic changes leading to better integration of theory, skills development and ethical judgment in law school education). The research team produced this report on professional legal education under the auspices of the Carnegie Foundation for the Advancement of Teaching, Stanford, California, United States.

³² *Id.*

³³ Backer, *supra* note 16, at 105-12.

³⁴ Frank S. Bloch, *New Directions in Clinical Legal Education: Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL'Y 111, 121 (2008) (arguing that the clinical legal education is a movement with the potential to improve access to justice around the world).

projects.³⁵ Law school clinical programmes have been structured to address a broad array of domestic and international legal issues.³⁶ Individual faculty members and students from many countries around the world interact through the Global Alliance for Justice Education (GAJE)³⁷, which is a forum for the movement for global clinical legal education to bring greater access to justice to the poor.³⁸

A group of clinical legal educators in the United States, in a volume entitled *Best Practices For Legal Education*, advocate greater emphasis on outcome-focused education, in which there is both a shift in the balance between substantive law content and skills development in the law school curriculum and a shift from focus on assessment of content mastery to focus on the learning of professional skills for lifelong learning required to adapt to future changes in the law and practice.³⁹ The learning outcomes, developed by law school faculty in consultation with the bar and bench and consistent with the law school's mission, can serve as a guide to course goals and assessment.⁴⁰ *Best Practices* adopts as model outcomes a statement prepared by the Law Society of England and Wales of the core general characteristics and abilities needed by lawyers:

1. Demonstrate appropriate behavior and integrity in a range of situations, including contentious and non-contentious areas of work.

³⁵ *Id.* at 127.

³⁶ See, e.g., KINGSFORD LEGAL CTR., FACULTY OF LAW, UNIV. OF N.S.W., CLINICAL LEGAL EDUCATION GUIDE: YOUR GUIDE TO CLE COURSES OFFERED BY AUSTRALIAN UNIVERSITIES IN 2007 AND 2008 (2007), available at http://www.law.unsw.edu.au/centres/klc/doc/ClinicalLegalEducationGuide_2007_08.pdf; Open Soc'y Justice Initiative, Legal Aid and Community Empowerment Clinics, <http://www.justiceinitiative.org/activities/lcd/cle> (last visited Apr. 4, 2009) (describing projects in Africa, Europe, East and Southeast Asia, the Middle East, and Central America "promoting skills and opportunities for human rights and law reform advocacy among future and young lawyers"). See generally U.K. Ctr. for Legal Educ., What Forms Can Clinic Take?, <http://www.ukcle.ac.uk/resources/trns/clinic/two.html> (citing examples of simulation and live-client clinics) (last visited June 30, 2009). For an example of a clinic designed to respond to legal needs in the emerging field of cyberlaw, see Berkman Ctr. for Law & Soc'y at Harvard Univ., Cyberlaw Clinic, <http://cyber.law.harvard.edu/teaching/clinical> (last visited Mar. 22, 2009).

³⁷ GAJE is an association of legal educators that was formed to "promote justice through education by bringing together persons from many countries and every inhabited continent in the world, who exchange perspectives and work collaboratively from a variety of legal, educational and organizational settings." Global Alliance for Justice Educ., Constitution of the Global Alliance for Justice Education (Dec. 9, 2001), <http://gaje.org/Constitution.htm>.

³⁸ Bloch, *supra* note 34.

³⁹ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 3 (2007) (sharing collaboratively developed "best practices" for legal education and calling for new ways of "conceptualizing and delivering learner-centered legal education").

⁴⁰ *Id.* at 49.

2. Demonstrate the capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.
3. Apply techniques to communicate effectively with clients, colleagues and members of other professions.
4. Recognize clients' financial, commercial, and personal constraints and priorities.
5. Effectively approach problem-solving.
6. Effectively use current technologies to store, retrieve and analyze information and to undertake factual and legal research.
7. Demonstrate an appreciation of the commercial environment of legal practice, including the market for legal services.
8. Recognize and resolve ethical dilemmas.
9. Use risk management skills.
10. Recognize personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skill and to develop strategies that will enhance their personal performance.
11. Manage their personal workload and manage efficiently and concurrently a number of client matters.
12. Work as part of a team.⁴¹

Best Practices asserts that to apply these skills, law graduates need core legal knowledge and understanding of the law, but holds that the amount of substantive law coverage and skills development in most American law schools is out of balance.⁴² The authors endorse the philosophy stated by the Australian Law Reform Commission, commenting on the ramifications of focusing too much on substantive law, which changes dramatically over time:

Accompanied by a commitment to facilitating "lifelong learning" for professionals, Australian law schools might consider adoption of an underlying philosophy which holds that "[i]n a changing environment, the best preparation that a law school can give its students is one which promotes intellectual breadth, agility and curiosity; strong analytical and

⁴¹ *Id.* at 54.

⁴² *Id.* at 75.

communications skills; and a (moral/ethical) sense of the role and purposes of lawyers in society.⁴³

This philosophy raises the issue of how lawyers will engage in lifelong professional learning in the coming years. In addition to apprenticeship with expert attorneys and participation in continuing legal education programmes provided by bar groups, lawyers are tapping resources through the Internet.

IV. LEGAL EDUCATION PARADIGM: USE OF NEW TECHNOLOGIES

New communication technologies through the Internet offer opportunities for law students, faculty and practicing lawyers to support the learning process. The Internet provides a wealth of resources and diverse communications platforms to encourage peer interaction, collaboration and feedback from teachers and others.⁴⁴

Legal education should employ new technologies so that law students are prepared for their professional lives in which technology for research and communications will play an important role. It is important to teach students in a way that increases their comfort with technology and collaborative work.⁴⁵ Students with technological skills will be equipped to access up-to-date information and resources once they are in law practice.

Student-centered, educational technology can address criticisms of the traditional teacher-centered classroom.⁴⁶ Technology can facilitate informal communications among law students and faculty, allowing more feedback to students and greater autonomy in learning.⁴⁷

⁴³ *Id.* at 76 (citing AUSTRALIAN LAW REFORM COMMISSION, *MANAGING JUSTICE: A REVIEW OF THE FEDERAL CIVIL JUSTICE SYSTEM*, REP. NO. 89, ¶ 2.89 (1999), available at <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>).

⁴⁴ See GEORGE SIEMENS & PETER TITTENBERGER, *HANDBOOK OF EMERGING TECHNOLOGIES FOR LEARNING* (2009), available at http://umanitoba.ca/learning_technologies/cetl/HETL.pdf (discussing the fundamental changes in higher education due to conceptual and technological changes in teaching and learning and describing ways in which new tools (open courseware, blogs, social networks, audio and podcasting, and web conferencing) can be used in teaching and learning); see also *supra* notes 3-7 (online resources on legal education).

⁴⁵ DAVID I.C. THOMSON, *LAW SCHOOL 2.0*, at 138 (2008) (describing current criticisms of legal education and asserting that law schools should use new technologies to empower students to be self-directed learners prepared for future change, that the new means of sharing and creating content reinforce collaborative approaches necessary for problem-solving, that knowledge of technology is increasingly important for efficient law practice, and encouraging faculty to take the leap to experiment with new technological methods of interaction with students in law school courses).

⁴⁶ *Id.* at 137-140.

⁴⁷ *Id.*

Law teachers are experimenting with virtual (online) learning experiences, both simulated⁴⁸ and on actual⁴⁹ projects. Use of online technology entails communications by students in their professional roles and voices. A legal education pioneer in the field of virtual learning environments, Professor Paul Maharg, drafted the following set of guidelines for the virtual learning experience he created: active (participatory) learning; learning to do transactions; reflection; collaborative learning; and ethical and professional learning.⁵⁰ These guidelines incorporate the learning principles under discussion more broadly in legal education.

In addition, law professors communicate about legal education issues through blogs. For example, American law professors share information through the Law Professor Blog Network.⁵¹ These blogs provide space for sharing information and posting questions and responses to law colleagues.

⁴⁸ See, e.g., PAUL MAHARG, *TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING THE LAW IN THE EARLY TWENTY-FIRST CENTURY* (2007) (discussing collaborative learning through interdisciplinary, transactional simulations in the virtual town of Ardcalloch, Scotland); THOMSON, *supra* note 45, at 97-110 (describing the use of wikis in teaching Administrative Law, the use of a "File & Serve" system in a litigation course, and the use of "CaseMap" in teaching Legal Research and Writing).

⁴⁹ Queensl. Univ. of Tech. Sch. of Law, Virtual Law Placement, <http://www.law.qut.edu.au/about/wil/> (last visited April 17, 2009) (offering "Virtual Law Placement" in which "Students will apply legal knowledge and skills to complete a real world workplace project in a team, using online communication technologies to enable students to be virtually, rather than physically, present at the workplace and to engage with the other participants in the workplace, including the workplace supervisor of the virtual placement." Students participate in one of three projects administered by organizational partners including a charitable international social justice organization, a lawyers' alliance, and a law firm.). At Harvard Law School, students learn about and through the medium of Internet in a Cyberlaw Clinic. Berkman Ctr. for Law & Soc'y at Harvard Univ., *supra* note 36. The webpage describes the clinic as follows:

The Cyberlaw Clinic provides high-quality, pro-bono legal services to appropriate individuals, small start-ups, non-profit groups and government entities regarding cutting-edge issues of the Internet, new technology and intellectual property. Harvard Law School students enhance their preparation for high-tech practice and earn course credit for working on a variety of real-world litigation, client counseling, advocacy, legislation, and transactional/licensing projects and cases.

Id.

⁵⁰ MAHARG, *supra* note 48, at 175-76 (describing key guidelines for transactional learning for design of a virtual simulation for a postgraduate professional course called the Diploma in Legal Practice at the Glasgow Graduate School of Law in Scotland).

⁵¹ See Law Professor Blogs Network, <http://lawprofessors.typepad.com/> (containing links to a number of blogs in substantive law areas as well as Legal Writing Prof Blog, <http://lawprofessors.typepad.com/legalwriting/> and Clinical Law Prof Blog, http://lawprofessors.typepad.com/clinic_prof/) (all last visited April 16, 2009).

V. LEGAL EDUCATION IN INDIA AND REFORM TRENDS

Law teachers in India should consider to what extent the four intersecting trends in legal education reform discussed above — (1) reframing of curricular content to integrate cross-border and international dimensions of practice; (2) greater emphasis on problem-solving, negotiation, and transactional practice to balance the traditional focus on litigation; (3) connection of theory and practice through clinical legal education; and (4) use of new technologies for learning — are present in India. Are these issues viewed as relevant in India? To what extent are legal educators in India working on these issues? What innovations are occurring? What resources are available to share? A brief discussion of the Indian legal education system for those readers who are not familiar with it sets the stage for further consideration of these questions.

The Bar Council of India, the regulatory body over legal practice and legal education,⁵² plays a key role defining the curriculum at law schools.⁵³ The task of regulating legal education is mammoth, as there are over 904 approved law colleges in India.⁵⁴

The Bar Council of India recognizes two types of courses for first degrees in law, the three-year Bachelor of Law (LL.B.) degree for graduates holding an initial Bachelor's degree in any discipline, and the five-year joint Bachelor of Arts, Bachelor of Law (B.A., LL.B.) degree after twelfth standard.⁵⁵ For each of these degree programmes, Bar Council of India mandates that students take not less than twenty-eight law subjects, eighteen compulsory substantive law sub-

⁵² The Advocates Act, 1961, Section 7(1)(h) states that one of the functions of the Bar Council of India shall be “to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils.” The Advocates Act, 1961, No. 25 of 1961 § 7(1)(h); INDIA CODE, <http://indiacode.nic.in/fullact1.asp?tfnm=196125>.

⁵³ “Centre of Legal Education” is the terminology used by the Bar Council of India. Bar Council of India, Rules on Standards of Legal Education and Recognition of Degrees in Law for Purpose of Enrolment as Advocate and Inspection of Universities for Recognizing its Degree in Law Under Sections 7(1)(h) and (i), 24(1)(c)(iii), and (iiia), 49(1)(af), (ag), and (d) of the Advocates Act, 1961 Made by the Bar Council of India in Consultation with Universities and State Bar Councils § 2 (2008), available at <http://www.barcouncilofindia.org/legal-education/rules-legal-edu.php> [hereinafter Bar Council of India, Rules of Legal Education, 2008]. In this article, the terms “law schools” and “law colleges” are used interchangeably and within the meaning of “Centre of Legal Education.”

⁵⁴ See List of Approved Law Colleges (as of October 1, 2008), Bar Council of India Website, <http://www.barcouncilofindia.org/legal-education/rules-legal-edu.php> (last visited Apr. 8, 2009). Additional colleges have been approved since the last posting.

⁵⁵ Bar Council of India, Rules of Legal Education, 2008, *supra* note 53, §§ 4-5.

jects and four compulsory clinical papers (classes).⁵⁶ LL.B. students take six optional papers from three or more groups of elective topics, and for a specialized and/or honours course, a student takes an additional eight papers from one group.⁵⁷ The list of elective course groups that may be offered is robust, including Constitutional Law, Business Law, International Trade Law, Crimes and Criminology, International Law, Law and Agriculture, and Intellectual Property Law, and a university/school may add to the subjects and groups.⁵⁸ Indian law schools often limit the number of electives to less than a dozen in a given semester in view of constraints in faculty expertise and other resources.

The high degree of control over the curriculum likely stems from the fact that India relies solely on a person's degree in law from a recognised University to insure minimum competence for practice for admission and enrollment of advocates by the State Bar Councils.⁵⁹ Nonetheless, the highly mandated curriculum places Indian law schools at a competitive disadvantage in responding to the fast-changing profession of law and global trends in legal education.

Other aspects of Indian higher education bear on discussion of the four trends. Practical training and clinical legal education in India are affected by the fact that full-time law faculty cannot practice law, though a law teacher may seek permission to appear in a particular case.⁶⁰ A practising advocate may teach law but teaching is restricted to three hours per day.⁶¹ This effectively bans law practice by full-time faculty, a ban that affects teachers' ability to supervise legal aid by students. Another aspect is the role of university policies on

⁵⁶ *Id.* at sched. II, § 4. The required courses are Jurisprudence, Law of Contract, Special Contract, Law of Tort including MV Accident and Consumer Protection Laws, Family Law (two papers), Law of Crimes: Penal Code, Law of Crimes: Criminal Procedure Code, Constitutional Law (two papers), Property Law, Civil Procedure Code and Limitation Act, Administrative Law, Company Law, Public International Law, Principles of Taxation Law, Environmental Law, Labour and Industrial Law (two papers); compulsory clinical courses are Drafting, Pleading and Conveyancing; Professional Ethics and Professional Accounting System; Alternative Dispute Resolution; and Moot Court Exercise and Internship. *Id.* at sched. II, pt. II(A) & (B).

⁵⁷ *Id.* at sched. II, pt. II(C).

⁵⁸ *Id.*

⁵⁹ The Advocates Act, 1961, No. 25 of 1961 § 24(c); INDIA CODE, <http://indiacode.nic.in/fullact1.asp?tfm=196125>.

⁶⁰ *Id.* §§ 29 (advocates to be the only recognised class of persons to practice), 32 (power of Court to permit appearances in particular cases).

⁶¹ Advocates (Right to Take Up Law Teaching) Rules, 1979, § 3(1), Gazette of India, Extraordinary, pt. 2 § 3(i) (Oct. 26, 1979); Bar Council of India Rules, pt. VI, ch. II, § VII, para. 49, available at <http://www.barcouncilofindia.org/bar-council/rules-index.php> (last visited June 30, 2009) ("An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice . . .").

various matters such as syllabus creation and student assessment on their learning in a course.⁶² A syllabus is often created by a group of professors who teach the same subject.⁶³ Grading of examinations usually involves external examiners besides the professor of the subject. This context requires collaboration among teachers and constrains an individual teacher from experimentation.

Both the National Knowledge Commission (NKC) and a high-level committee governmental committee have recommended that the professional agencies, including Bar Council of India, be divested of over academic matters to allow universities to exercise control over curricular matters.⁶⁴ The NKC has also recommended creation of a rating system for law schools, changes in financing of legal education, measures to attract and retain talented faculty, curriculum development, changes in the examination system, measures for increasing research at law schools, and measures to increase the dimensions of internationalization of law schools.⁶⁵ It is beyond the scope of this article to consider all of the NKC recommendations, which are important, complex, and interrelated.

The balance of this article will briefly review legal education reform in India and focus on existing efforts and possible mechanisms for Indian law teachers to participate in achieving curricular and pedagogic reforms relevant to the Indian context that relate to the global legal education trends discussed above. Even within the current mandated curriculum, there is scope for legal educators in India to enhance teaching and student learning and play a greater role in developing an agenda for legal education reform.

⁶² S. Dayal, *Legal Profession and Legal Education*, in *THE INDIAN LEGAL SYSTEM* 168, 173 (Joseph Minnatur ed., 1978).

⁶³ See *infra* note 84.

⁶⁴ Nat'l Knowledge Comm'n, *supra* note 1; *Education Panel for According Greater Autonomy to Universities*, *ECON. TIMES*, Mar. 30, 2009, available at <http://economictimes.india.com/News/News-By-Industry/Services/Education/Education-panel-for-according-greater-autonomy-to-universities/articleshow/4334762.cms>. *But cf.* LAW COMM'N OF INDIA, 184TH REPORT ON THE LEGAL EDUCATION & PROFESSIONAL TRAINING AND PROPOSALS FOR AMENDMENTS TO THE ADVOCATES ACT, 1961 AND THE UNIVERSITY GRANTS COMMISSION ACT, 1956, at 48 (2002) (recommending creation of a UGC Legal Education Committee to represent universities for purposes of consultation with Bar Council of India as part of its mandate to coordinate and determine standards for higher education institutions), available at <http://lawcommissionofindia.nic.in/reports/184threport-PartI.pdf>.

⁶⁵ Nat'l Knowledge Comm'n, *supra* note 1.

A. Legal Education Reform in India

Reform of the Indian legal education system has been extensively studied at various times since Indian independence.⁶⁶ Recurring issues include curriculum; attendance; entrance examination; teaching methods — the lecture method, case method, problem method, and clinical legal education; final examination and other forms of student assessment; infrastructure; teaching qualifications; and quality control.⁶⁷ The need for “socially relevant legal education” to address the legal needs of the large sector of the Indian population that is socially and economically deprived has been emphasized by several authors.⁶⁸

⁶⁶ See, e.g., UPENDRA BAXI, TOWARDS A SOCIALLY RELEVANT LEGAL EDUCATION (1979) (reporting on the University Grants Commission workshop on “Modernization of Legal Education” and featuring the need for “socially relevant legal education” and improvements needed in pedagogy); SUSHMA GUPTA, HISTORY OF LEGAL EDUCATION 41-108 (2006) (reporting the history of legal education from ancient India through post-independence India); LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY (N.R. Madhava Menon ed., 1986) (discussing clinical legal education as a means of educating students and providing legal aid to the poor); LEGAL EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES (S.K. Agarwala ed., 1973) (discussing, inter alia, teaching methodology, the examination system, and international courses and perspectives); LEGAL EDUCATION IN INDIA: STATUS AND PROBLEMS (N.R. Madhava Menon, ed., 1983) (discussing, inter alia, curriculum, teaching methods, infrastructure, teaching qualifications, quality control and the then-proposed five-year B.A., LL.B. degree programme); LEGAL EDUCATION IN INDIA IN 21ST CENTURY: PROBLEMS AND PROSPECTS (A.K. Koul & V.K. Ahuja eds., 1999) (reporting the proceedings of the revived All India Law Teachers Congress held January 22-25, 1999 at University of Delhi at which 200 delegates from law colleges and universities from across India discussed legal education reforms including adaptation to globalization, strengthening support for teachers to learn new pedagogy, and use of computer-aided learning and research); see also Frank S. Bloch & M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States*, 13 CLINICAL L. REV. 165 (2006) (tracing the history of University Grants Commission, Bar Council of India, and Law Commission initiatives and advocating development of a list of professional skills relevant for Indian lawyers along the lines of the skills identified in the MacCrate Report in the United States and including professional values and skills to bring about social justice for India’s disadvantaged people); Jayanth K. Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, The Ford Foundation, and the Development of Legal Education in India*, 46 AM. J. LEGAL HIST. 447 (2004) (tracing the historical development of legal education in India since independence, including recommendations by Indian government commissions and American consultants, and the role of legal education reformer N.R. Madhava Menon in conceptualizing and establishing five-year B.A., LL.B. degree programmes at national law schools); Ved Kumari, *Clinical Legal Education: Course Content and Issues*, in LAW AND DEVELOPMENT: AN ANTHOLOGY OF TOPICAL LEGAL STUDIES 127, 138 (Subash C. Raina & Usha Razdan eds., 2003) (discussing Practical Training teaching strategies and systemic challenges including the teacher’s lack of training in pedagogy, lack of experience in law practice, and high student-teacher ratios).

⁶⁷ Law Comm’n of India, *supra* note 64, at 50, 60. See generally *id.*

⁶⁸ See BAXI, *supra* note 66; LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY, *supra* note 66; LEGAL EDUCATION IN INDIA: STATUS AND PROBLEMS, *supra* note 66; Bloch & Prasad, *supra* note 66; Kumari, *supra* note 66; Ved Kumari, *Clinical Legal*

A key breakthrough in Indian legal education has been the establishment in 1986 of a model institution, National Law School of India University in Bangalore, at which the five-year B.A., LL.B. degree programme authorized earlier was refined and showcased.⁶⁹ Other national law schools have been created on the Bangalore model, and numerous other law schools in India have adopted the five-year programme.⁷⁰ The national law schools are viewed as having improved legal education by introducing academic rigor, interdisciplinary perspectives to enable students to understand law in a social context, and clinical training.⁷¹ Professor Moolchand Sharma, an eminent law professor and then-Vice Chairman of the University Grants Commission, observed that the national law schools “brought hopes and positive results in making legal education more qualitatively and professionally attractive for young minds.”⁷² However inspiring the national law schools are, however, there is genuine concern about the quality of the hundreds of other law colleges across the country.⁷³ Chief Justice of India K.G. Balakrishnan has said that premier institutes should not only “set the standards of legal education but also work towards improving the entire chain of our legal system.”⁷⁴

An additional major shift in Indian legal education occurred when skills training, offered through four practical training papers (classes) including clinical legal education, were added to the LL.B.

Education — Issues of Justice, 24 DELHI L. REV. 78 (2002) (advocating integration of sensitization of law students through clinical legal education and legal aid to issues of justice for India’s marginalized population); see also S.P. Sathe, Community Responsive Legal Education: Trends in South Asia, Keynote Address in Reading Material for Roundtable Discussion on Community Responsive Legal Education: Trends in South Asia 11 (Nov. 27-28, 2001) (on file with author) (organized by United States Educational Foundation in India in collaboration with ILS Law College, Pune, India).

⁶⁹ The Bar Council of India issued an initial instruction for establishment of five-year B.A., LL.B. degree programmes in 1979, and by 1984, ten universities had begun the programme and thirty-nine others informed Bar Council of India that they were starting it. Letter from M.R.K. Prasad, Lecturer in Law, V.M. Salgoancar College of Law to author (citations omitted) (Apr. 19, 2009) (on file with the author).

⁷⁰ See *supra* note 54.

⁷¹ See Krishnan, *supra* note 66, at 493-94; N.R. Madhava Menon, Interview by Meenakshi Razdan, HALSBURY’S L., Apr. 2009, at 26, 28, available at <http://www.halsburys.in/emphasise-the-international-law-component.html>.

⁷² Moolchand Sharma, *An Ever-changing Battle of Writs*, in THE TIMES OF INDIA HIGHER EDUCATION: A GUIDE TO OPPORTUNITIES IN INDIA AND ABROAD 138 (2009).

⁷³ LAW COMM’N OF INDIA, *supra* note 64, at 102-03 (“We cannot . . . rest content with a few star colleges. We must be concerned with all the rest of the hundreds of law colleges located in cities and district headquarters all over the country.”).

⁷⁴ K.G. Balakrishnan, *To Meet the Global Standards: The Immediate Challenge of Our National Law Institutes*, U. NEWS, Sept. 24-30, 2007, at 25, 26 (excerpt from Convocation Address at NALSAR University of Law on July 21, 2007).

curriculum for both three- and five-year programmes in 1998-1999.⁷⁵ Legal educators have shared strategies⁷⁶ and concerns⁷⁷ about the implementation of the practical training requirements.

Recognizing the need to update the mandated law curricula in India, the University Grants Commission (UGC), which is a governmental grant-making body responsible for maintaining quality standards in institutions of higher education in India,⁷⁸ has periodically convened Curriculum Development Committees of subject experts from Indian universities for law subjects.⁷⁹ In 2001, the UGC produced comprehensive topical syllabi and readings to serve as a model curriculum.⁸⁰ The UGC Chairman stated the purposes of the model curriculum as follows:

In any country, especially one as large and varied as India, academic institutions must be allowed enough autonomy and freedom of action to frame courses according to specific needs. The recommendations of the Curriculum Development Committees are meant to reinforce this. The purpose of our exercise has been to provide a broad common framework for exchange, mobility and free dialogue across the entire Indian academic community. These recommendations are made in a spirit of openness and continuous improvement.⁸¹

⁷⁵ Bloch & Prasad, *supra* note 66, at 180.

⁷⁶ Kumari, *supra* note 66 (analyzing clinical legal education and practical training papers in India and identifying challenges to and innovations in implementation of these mandated courses); N.R. Madhava Menon, Strategies in the Implementation of Clinical Curriculum in Professional Legal Education 6 (unpublished paper presented at National Seminar on New Challenges in Legal Education, Symbiosis Society's Law College, Pune, Jan. 24-25, 2004 [hereinafter Symbiosis Seminar]) (recommending steps for planning of practical training objectives, managing clinical teaching and designing the programme, supervision and evaluation) (on file with author).

⁷⁷ Aman M. Hingorani, Clinical Legal Education: Difficulties of Law Schools in Implementing It (unpublished paper presented at Symbiosis Seminar, *supra* note 76) ("Faced with the prospects of having to impart Clinical Legal Education and Practical Training, law schools have no choice but to resort to a text-book approach towards the daunting task of imparting such training . . .") (on file with author); Menon, *supra* note 76, at 6.

⁷⁸ Univ. Grants Comm'n, Mandate, available at <http://www.ugc.ac.in/about/mandate.html> (last visited Apr. 10, 2009).

⁷⁹ UNIV. GRANTS COMM'N, CURRICULUM DEVELOPMENT COMMITTEE LAW REPORT (2001), available at <http://www.ugc.ac.in/policy/law.html> [hereinafter UNIV. GRANTS COMM'N, 2001 REPORT]; UNIV. GRANTS COMM'N, REPORT OF THE CURRICULUM DEVELOPMENT CENTRE IN LAW (1990) [hereinafter UNIV. GRANTS COMM'N, BAXI REPORT] (known as the Baxi Committee named for the Chair, Prof. Upendra Baxi).

⁸⁰ UNIV. GRANTS COMM'N, 2001 REPORT, *supra* note 79.

⁸¹ *Id.* foreword.

The voluntary nature of the model curriculum was stressed. It was presented to university Registrars

with the options whether to adopt it in toto or adopt it after making necessary amendments or to adopt it after necessary deletion/addition or to adopt it after making any change whatsoever which the university may consider right. This UGC model Curriculum has been provided to the universities only to serve as a base and to facilitate the whole exercise of updating the Curriculum soon.⁸²

The 2001 UGC model curriculum in law shared substantive law expertise and bibliographies, but does not provide guidance about possible pedagogy to employ. However, needed improvements in pedagogy have been extensively discussed in other sources.⁸³

Even with a model curriculum, there is annual need for law schools to update their teaching materials. To some extent this is accomplished by the sharing of updated course materials collaboratively developed at leading law faculties in India; a few law schools post detailed individual subject syllabi on their websites.⁸⁴

In the last decade or so, legal educators have recommended reforms in areas including practical training, clinical legal education,⁸⁵ and its social justice mission;⁸⁶ critical thinking and analytical writ-

⁸² *Id.*

⁸³ See, e.g., BAXI, *supra* note 66, at ch. IX; Law Comm'n of India, *supra* note 64, at 90-92; Reading Material, Workshop on Legal Education and Access to Justice, September 14-15, 2002, Campus Law Centre, Faculty of Law, Delhi University (Kamala Sankaran compiler).

⁸⁴ A Professor at Delhi University Faculty of Law has indicated that the syllabi updated with the latest materials from her Faculty are posted on the University website and are often used by teachers in area colleges. Interview with Poonam Saxena, Head, Law Centre II, Delhi University Faculty of Law, in Delhi (June 30, 2009) (referring to LL.B. course materials available at <http://www.du.ac.in/llb-prog.html> (last visited Apr. 9, 2009)); see also, e.g., Gov't Law College, Mumbai, Securities Law: Brief Overview of the Course Curriculum, <http://www.glc.edu/coursecur.asp#real.asp> (last visited June 30, 2009); V.M. Salgoancar College of Law, Goa, Second Year LL.B. Degree Programme Third Semester Syllabus Topics With Recommended Reference Books, <http://www.vmslaw.edu/syl3yr2.htm> (last visited June 30, 2009).

⁸⁵ See Bloch & Prasad, *supra* note 66; Krishnan, *supra* note 66; Menon, *supra* note 71, Sharma, *supra* note 72.

⁸⁶ CLINICAL LEGAL EDUCATION VI (N.R. Madhava Menon ed., 1998) (advocating enhancement of practical training through clinical legal education methodology); Bloch & Prasad, *supra* note 66; Kumari, *supra* note 68.

ing skills;⁸⁷ and provision of global perspectives and enhancement of research capacity.⁸⁸

*B. Law Teacher Involvement in Curricular, Pedagogic,
and Assessment Reform*

Collaboration by law teachers to reflect on their teaching objectives, methods, and assessment tools is necessary to bring about reform of Indian legal education. Common concerns of law teachers include professional development in teaching skills, legal educational planning, and development of teaching materials and library resources. The absence of institutional infrastructure for sustained professional interaction among law teachers impedes the pace of progress in the legal education sector. By contrast, there are models of highly effective professional associations in the business sector in India.⁸⁹

There have been waves of attempts to nurture an All India Law Teachers Association/Congress to support faculty development.⁹⁰ At

⁸⁷ Chetan Phull, Bridging the Gap Between Indian and North American Legal Education in the Boom of Legal Process Outsourcing (L.P.O.) (Sept. 1, 2008) (unpublished manuscript), available at <http://ssrn.com/abstract=1310005> (comparing legal education in India with that in the U.S. and Canada and suggesting, inter alia, that lawyering skills in legal research, legal analysis, legal writing and drafting, and oratory skills be made an integral part of legal education in India).

⁸⁸ C. Raj Kumar, *Globalisation and Legal Education*, HINDU, Aug. 6, 2007, available at <http://www.thehindu.com/2007/08/06/stories/2007080650041000.htm>; C. Raj Kumar, *Global Legal Education in India: Opportunities and Challenges*, HALSBURY'S L., Apr. 2009, at 12, available at <http://www.jgls.org/global-legal-education.pdf> (asserting the need for global perspectives in designing curriculum, selecting faculty, designing degree programmes, forming university collaborations, world-class infrastructure, and philanthropic support); see also Papers in Conference Volume, Legal Education Reforms for Transnational Practice, Commonwealth Legal Education Association Regional Conference 2002, Thiruvananthapuram, India (Dec. 28-30, 2002) (on file with author).

⁸⁹ E.g., Confederation of Indian Industry (CII), "a non-government, not-for-profit, industry led and industry managed organisation, . . . works to create and sustain an environment conducive to the growth of industry in India, partnering industry and government alike through advisory and consultative processes." CII Homepage, <http://www.cii.in/> (last visited June 30, 2009); NASSCOM, "the premier trade body and the chamber of commerce of the IT-BPO industries in India. NASSCOM is a global trade body with more than 1200 members, which include both Indian and multinational companies that have a presence in India." NASSCOM, About NASSCOM, <http://www.nasscom.org/Nasscom/templates/NormalPage.aspx?id=5365> (last visited June 30, 2009).

⁹⁰ LEGAL EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES, *supra* note 66 (containing papers from a 1973 meeting of the All India Law Teachers Association); A.K. Koul, *Legal Education in the 21st Century*, in LEGAL EDUCATION IN INDIA IN 21ST CENTURY: PROBLEMS AND PROSPECTS, *supra* note 66, at 6 (calling for professional development through the All India Law Teachers Congress as well as through UGC and Indian Law Institute "refresher courses" and annual seminars, for the establishment of a journal on legal education, and for greater synergy between the law school, bench and the bar); Krishnan Nair, *The Role of*

the All India Law Teachers Congress (AILTC) in 1999, the delegates passed a resolution that the AILTC be accorded statutory status.⁹¹ To date, these efforts have not led to a sustainable national organization of law teachers.

The creation of an institution dedicated to providing innovative law teacher training and faculty development programmes within India has long been recommended.⁹² There are two existing faculty development programmes funded by the University Grants Commission and held at universities and other institutions: orientation programmes (a twenty-eight day programme offered to teachers in multiple disciplines; it includes general teaching methods not tailored for law teaching) and “refresher courses” (a twenty one-day programme on recent developments in specific areas, including law).⁹³ Attendance at an orientation and a refresher course is often required for career promotion of a law teacher.⁹⁴ Such courses, well-designed, afford an opportunity for innovative teacher training.⁹⁵ In 2002, the Law Commission of India recommended that the Central Government start four colleges, one in each region of India, to impart professional training to law teachers.⁹⁶ In 2008, the Bar Council of India responded to professional development and other legal education-related needs by amending its rules to create a “Directorate of Legal Education.”⁹⁷ It

Academic and Professional Bodies in the Improvement of Legal Education, in LEGAL EDUCATION IN INDIA IN 21ST CENTURY: PROBLEMS AND PROSPECTS, *supra* note 66, at 320-21 (discussing roles for an All India Law Teachers Association in improving legal pedagogy and publication of scholarship about legal education).

⁹¹ A.K. Koul & V.K. Ahuja, *Preface* to LEGAL EDUCATION IN INDIA IN 21ST CENTURY: PROBLEMS AND PROSPECTS, *supra* note 66, at iii.

⁹² See BAXI, *supra* note 66, chs. III, IV & XIII (critiquing pedagogy and proposing a National Institute of Legal Education to provide extensive teacher training programmes).

⁹³ See Univ. Grants Comm’n, UGC Supported Orientation Programmes and Refresher Courses for Teachers to Be Conducted By UGC-Academic Staff Colleges (UGC-ASCs) & UGC-Refresher Course Centres (UGC-RCCs) During 2008-2009, http://www.ugc.ac.in/policy/refresher_course.html (last visited Apr. 24, 2009); Letter from M.R.K. Prasad, Lecturer in Law, V.M. Salgoancar College of Law to author (April 19, 2009) (on file with the author).

⁹⁴ Prasad, *supra* note 93.

⁹⁵ See, e.g., Objectives and Methodology, in Reading Materials, Refresher Course for Law Teachers on Theory and Practice of Clinical Legal Education, National Law School of India University, Bangalore, India (Nov. 13-Dec. 3, 1995) (objectives included planning of application of learning during the course to the participants’ law school practical training courses; methodology included role play, field visits, practice teaching, as well as lecture and discussion) (on file with the author).

⁹⁶ LAW COMM’N OF INDIA, *supra* note 64, at 96.

⁹⁷ The Directorate is to organize and conduct:

- (a) Continuing Legal Education, (b) Teachers training, (c) Advanced specialized professional course, (d) Education for Indian students seeking registration after obtaining [a] Law Degree from a Foreign University, (e) Research on professional Legal Education and Standardization, (f) Seminars and Workshops, (g) Legal Re-

has also been suggested that the Indian Law Institute⁹⁸ play a larger role in coordination of legal education programmes.⁹⁹ Given that over 900 law colleges operate across India, the volume of teacher training and faculty development needed is high, especially in a context in which education reform is desired.

In the absence of a national-level association of Indian law teachers or an Indian institute focusing on legal pedagogy, there have been efforts by legal educators at the institutional and regional level to promote reflection on law teaching and student learning. At the level of an individual institution, some teachers at Delhi University Law Faculty have worked together to reflect on and refocus their teaching.¹⁰⁰ There are doubtless efforts at various other law faculties. In the region, the Menon Institute of Legal Advocacy Training, founded by Dr. N.R. Madhava Menon, and an informal association named the South Asian Forum of Clinical Law Teachers have staged interactive trainings for law teachers across India.¹⁰¹ Law professors and students in South Asia, including Indian professors and students, have also formed a South Asian Law Schools Forum for Human Rights

search, (h) any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India.

Bar Council of India, Rules of Legal Education, 2008, *supra* note 53, § 34.

⁹⁸ The Indian Law Institute (ILI) was

founded in 1956 primarily with the objective of promoting and conducting legal research. The objectives of the Institute as laid down in its Memorandum of Association are to cultivate the science of law, to promote advanced studies and research in law so as to meet the social, economic and other needs of the Indian people, to promote systematization of law, to encourage and conduct investigations in legal and allied fields, to improve legal education, to impart instructions in law, and to publish studies, books, periodicals, etc.

Indian Law Inst., <http://www.ilidelhi.org/> (last visited Apr. 16, 2009).

⁹⁹ S. Sivakumar, *To Mould Millennium Law Researchers and Teachers: The Role of the Indian Law Institute*, 50 J. INDIAN L. INST. 699, 705 (2008) (proposing the Indian Law Institute be authorized to serve as a nodal agency for coordinating legal education support, such as law teacher training and refresher courses, training of trainers, faculty exchange and other collaboration with legal education entities abroad, Common Law Admission Test, networking of resources and information among law schools, and support for clinical legal education).

¹⁰⁰ See BUILDING CAPACITIES: LEARNING FROM EACH OTHER (Ved Kumari ed., 2006) (a reflective and detailed report prepared by law teachers who participated in a highly interactive three-day workshop at Delhi University in 2006 on learning objectives, law teaching methods, evaluation of student learning, improving research, and balancing home and profession).

¹⁰¹ See Background Paper, Clinical Legal Education: Taking a Closer Look: First South Asian Conference of Law Teachers on Skills: Ethics Education, V.M. Salgoancar College of Law and Menon Institute of Legal Advocacy Training (December 15-18, 2005) [hereinafter Salgoancar-MILAT Conference] (on file with author); *New Law Courses at IGNOU from Next Year*, INDIAEDUNews.NET, Dec. 21, 2007, http://indiaedunews.net/Law/New_law_courses_at_IGNOU_from_next_year_2933/.

(SALS Forum)¹⁰² and collaborated during an annual multi-week “human rights summer school” held in Bangladesh under the auspices of an NGO named Empowerment Through Law of the Common People (ELCOP) headed by Dr. Mizanur Rahman.¹⁰³ The ELCOP event serves as a laboratory for teachers and students on clinical legal education. Some Indian law teachers interested in legal education trends engage with global¹⁰⁴ or bi-national¹⁰⁵ associations.

C. *Desire for Dialogue Among Law Teachers*

Some educators feel the need for broad dialogue about the legal profession, in which law teachers would play an important role. Frank S. Bloch and M.R.K. Prasad, drawing support from the 184th Report of the Law Commission of India,¹⁰⁶ have recommended development of a statement of professional values and skills for Indian lawyers in order to focus legal education reform:

Properly constructed, a set of values and skills along the MacCrate model, but adapted for modern India’s needs, can serve to support the current movement toward legal education reform. They can also provide an underlying substantive basis for institutionalizing a social justice-based clinical curriculum that is missing from the Bar Council’s Practical Papers mandate and the Law Commission’s general call for meaningful and effective educational reform.¹⁰⁷

Bloch and Prasad suggest four fundamental values and five fundamental skills relevant to the Indian context to supplement the MacCrate Report statement.¹⁰⁸ The additional values and skills pro-

¹⁰² See SOCIALLY RESPONSIVE HUMAN RIGHTS LEGAL EDUCATION: A COMPENDIUM OF CONFERENCE PROCEEDINGS AND PAPERS (2004).

¹⁰³ See Empowerment Through Law of the Common People, Human Rights Summer School, <http://www.elcop.org/hrss.htm> (last visited Apr. 9, 2009).

¹⁰⁴ Global Alliance for Justice Educ., *supra* note 37.

¹⁰⁵ For example, the Gender and Law Association (GALA), was formed with support from a U.S. government grant to American University Washington College of Law to help American and Indian law teachers share relevant teaching materials and professional interests in the area of gender justice. See GALA — Gender & Law Association, <http://www.wcl.american.edu/gender/wilp/gala/website/> (last visited June 30, 2009). Bi-national educational exchange foundations, such as the Fulbright Program, sometimes support law teacher collaboration and training. See Reading Material for Roundtable Discussion on Community Responsive Legal Education: Trends in South Asia, *supra* note 68.

¹⁰⁶ LAW COMM’N OF INDIA, *supra* note 64, at 58.

¹⁰⁷ Bloch & Prasad, *supra* note 66, at 188-89.

¹⁰⁸ *Id.* at 189-94 (The values are: Provision of fair and effective resolution of disputes; striving for social justice; promotion of alternative lawyer roles; and protecting judicial in-

vide the necessary grounding for the social justice work needed to help the large number of desperately poor people in India.¹⁰⁹

The legal education community should enthusiastically support the study of the values and skills needed for legal professionals to effectively serve India. Such a statement can provide a roadmap for the learning objectives within law courses and provide insight into the types of pedagogy and assessment that would best achieve the objectives. After identifying the skills to be taught through compulsory Practical Training papers, relevant pedagogy and assessment of student learning should be further developed.¹¹⁰ Training of law teachers in the relevant pedagogical and assessment methods should be designed and training of trainer materials developed.¹¹¹ Collaborations with colleagues abroad may be helpful in these efforts.¹¹²

Beyond the very important discussion prompted by the MacCrate Report format, there are a host of important, timely questions for law teachers in India to frame and discuss. Here are a few illustrative ones:

What are “India’s legal needs”? Specifically, the needs

- Of the large marginalized segment of Indian society that lacks access to justice?
- Of the NGOs who work on behalf of the marginalized?

dependence and accountability. The skills relevant to India mentioned in the MacCrate Report are legal research, communication, litigation and alternative dispute resolution procedures, and organization and management of legal work, generating alternative solutions and strategies, elaborating legal theory, evaluating legal theory, and identifying and evaluating other possible legal theories; methods of effectively tailoring the nature, form, or content of the written or oral communication, counseling, negotiation, and knowledge of the fundamentals of proceedings in other dispute-resolution forums. Additional skills needed in India include innovative/alternative problem-solving techniques, skills to invent new options beyond the established norms, mass communication skills, skills to analyze the socioeconomic background of legal problems, and skills in research with a sense of responsibility to serve society).

¹⁰⁹ *Id.*

¹¹⁰ Kumari, *supra* note 66 (stressing the importance of teacher training for clinical legal education and practical training papers); M.R.K. Prasad, Clinical Legal Education in India, A Model Blue Print for Offering Quality Clinical Education, Scientific Supervision, and Assessment (unpublished paper presented Sept. 23, 2007 at the Ninth Annual Australian Clinical Legal Education Conference) (discussing problems with clinical education in India and a model for evaluation of student learning of skills).

¹¹¹ See Frank S. Bloch & N.R. Madhava Menon, Bridging the Gap in Training Resources: Developing a Cadre of Trained Clinical Teachers (unpublished paper presented Nov. 25, 2005 at Salgoancar-MILAT Conference, *supra* note 101); see also UNIV. GRANTS COMM’N, 2001 REPORT, *supra* note 79, foreword.

¹¹² See Jane E. Schukoske, *Meaningful Exchange: Collaboration Among Clinicians and Law Teachers in India and the United States*, in EDUCATING FOR JUSTICE AROUND THE WORLD 233 (Louise G. Trubek & Jeremy Cooper eds., 1999)

- Of government, faced with the need for effective law enforcement, court case management to reduce the backlog and time taken to decide a case, and anti-corruption measures, among other issues?
- Of middle-class individuals affected by transnational legal issues?
- Of companies in the global marketplace?

What specific research is needed to support updating of curricula, new teaching areas and pedagogic approaches? What teaching materials and textbooks should be developed? Is there value in reviewing models developed outside India?

What regional problems might be best addressed in collaboration with law colleagues at South Asian universities within and outside India? Would regional comparisons of law and problem-solving strategies in SAARC countries be desirable?

How are new technologies being harnessed to help provide legal aid to the poor?¹¹³ How can they be used to provide better support to lawyers assisting the poor?¹¹⁴

There is clearly much collaboration by law teachers needed to respond to the call for improvement in the Indian legal education system. How can this occur?

D. *Vision of Enhanced Networking Among Indian Legal Educators*

India is known as a leader in technology and there is much technical know-how that could be tapped to advance communications among legal educators within the country. There are commercial Indian publishers that have developed databases to aid in Indian legal research, such as Manupatra¹¹⁵ and SCC Online.¹¹⁶ Some Indian law schools post their law reviews¹¹⁷ and syllabi¹¹⁸ online. We can expect these resources to expand their contents and reach over time.

¹¹³ Balakrishnan, *supra* note 74 (encouraging thought on “how technological developments can be harnessed to disseminate the knowledge of law and legal rights and obligations to the common man”).

¹¹⁴ In the United States, the Legal Services National Technology Assistance Project states its mission as follows: “NTAP fights injustice to low-income people by helping nonprofit legal aid programs improve client services through effective and innovative use of technology.” Legal Servs., Nat’l Tech. Assistance Project, About Us, <http://www.lsnatap.org/aboutus> (last visited June 30, 2009).

¹¹⁵ According to its website, “Manupatra.com is India’s largest and most comprehensive online legal & business policy database.” Manupatra, Company Information, <http://www.manupatra.com/Asp/CompanyInfo.aspx> (last visited June 30, 2009).

¹¹⁶ Eastern Book Publishers publishes legal materials through its subscription databases SCC Online, <http://www.sconline.com/> (last visited June 30, 2009).

¹¹⁷ For example, the West Bengal National University of Juridical Sciences posts its N.U.J.S. Law Review at <http://www.nujslawreview.org/law-review-journal.html> (last vis-

There is great potential for Indian law teachers to share views, teaching materials and research by creating online networks. Such shared resources receive eager attention in other parts of the world.¹¹⁹ One initiative by legal educators is the Law and Social Sciences Network (LASSNET) of the Centre for the Study of Law and Governance at Jawaharlal Nehru University, Delhi.¹²⁰ LASSNET aims

to bring together scholars, lawyers and doctoral researchers engaged in research and teaching of issues of law in different social sciences in contemporary South Asian contexts. We believe that the critical work that has emerged from different institutional locations and theoretical frameworks, has yet to find a common forum which can act as a medium for exchange of ideas, work, materials, pedagogies and aspirations for the way law, regulation and society as objects of research as well as sites of praxis have been envisaged variously. The attempt of this network is to create a forum for academics, researchers, and lawyers to interact with each other to find productive conversations with each other as well as enhance these conversations into future directions that law and social sciences scholarship in India might mature into.¹²¹

In addition to its website, LASSNET hosts a blog on which professors can share their views.¹²²

Either as a subgroup of LASSNET or as a separate entity, there is scope for Indian legal educators to share resources within the country, to collaborate on legal education pedagogy, and to communicate other issues of common concern. In light of resource limitations at many law schools, the ability to harness the power of the Internet for sharing resources relevant to India is an exciting prospect. It would

ited June 30, 2009), and National Law School of India University posts the archives of the N.L.S.I. Review <http://www.nlsir.in/index.php/archive-of-nlsir> (last visited June 30, 2009).

¹¹⁸ See, e.g., *supra* note 84.

¹¹⁹ See, e.g., Social Science Research Network, <http://www.ssrn.com> (last visited June 30, 2009) (hosting research papers and abstracts from authors in several countries); U.K. Ctr. for Legal Educ., <http://www.ukcle.ac.uk/index.html> (last visited June 30, 2009); N.Y.U. Law, Global, <http://www.nyulawglobal.org/> (last visited June 30, 2009); see also SIEMENS & TITTENBERGER, *supra*, note 44; MAHARG, *supra* note 48.

¹²⁰ See Law and Social Sciences Network, <http://www.lassnet.org> (last visited May 12, 2009).

¹²¹ *Id.*

¹²² Law and Social Sciences Network Blog, <http://lassnet.blogspot.com/> (last visited May 12, 2009).

provide a forum for law teachers from premier and other law schools to interact to, as Chief Justice Balakrishnan urged, “work towards improving the entire chain of [India’s] legal system.”¹²³

Beyond communications among law teachers, what scope is there for legal educators to use technology in teaching their students? How might technology be used to produce innovative law teaching materials and assignments relevant to India?

What potential does technology offer to provide greater access to legal information to the public? Efforts to educate the public through distance learning and community kiosks are being made in India.¹²⁴ In what ways might law schools contribute more to these efforts?

Finally, what benefits would there be to using technology to connect colleagues and students within India and the South Asian region to engage in work on issues and projects of common concern? In connecting with colleagues and students in countries outside the region?

VI. CONCLUSION

For law teachers to prepare students for practice both in the context of India’s own socio-economically complex society and in the framework of inter-related legal systems and societies, teachers must assess the learning objectives they have for their students and rethink the curriculum and pedagogy to achieve those objectives. Increasingly, law teachers around the world collaborate with colleagues at home and abroad to bring cross-cultural perspectives and social justice values to their students. International collaboration by students on projects builds the relationships and insights needed to strengthen capacity to work well together in the future.

There is lively exchange among law professors around the world about the challenges to legal education brought about by the four trends discussed in the first part of this article: transnational dimension of law practice; the need for greater emphasis on problem-solving, negotiation, and transactional practice to balance the traditional

¹²³ Balakrishnan, *supra* note 74.

¹²⁴ Indira Gandhi National Open University (IGNOU) School of Law offers open and distance learning courses in law to raise awareness about legal rights. IGNOU, School of Law, <http://www.ignou.ac.in/schools/sol/index.htm> (last visited June 30, 2009). Consortium for Educational Communication, an inter-university center funded by the University Grants Commission, broadcasts and produces educational programmes but has no listing for law. Consortium for Educational Communication, <http://www.cec-ugc.org/> (last visited June 30, 2009). Also, use of information kiosks for rural development and e-governance is underway in India. See Simone Cecchini & Monica Raina, *Village Information Kiosks for Warana Cooperatives in India*, WORLD BANK eGOVERNMENT, <http://go.worldbank.org/QV3KOF7VV0> (last visited June 30, 2009); Rajeev Chawla & Subhash Bhatnagar, *Bhoomi: Online Delivery of Land Titles in Karnataka, India*, WORLD BANK eGOVERNMENT, Dec. 20, 2001, <http://go.worldbank.org/8C55S1BDK0>.

law school curricular focus on litigation; connection of theory and practice through clinical legal education; and use of new technologies for learning. While some Indian law teachers participate in the international legal education debates, there is much scope for discussion of these issues within India to modernize and enhance the legal education system at India's hundreds of law schools and colleges.

In this era of readily available communications technologies, Indian educators can share their work and concerns, collaborate on identifying the pedagogic, curricular and assessment changes they can implement within the existing structures, and advocate for changes they feel are needed within the system. They can plan recommendations for a National Institute of Legal Education,¹²⁵ the Directorate of Legal Education¹²⁶ or other such bodies to support the training and professional development of law teachers throughout their careers and to create and update teaching materials. Such interaction will inevitably lead to needed improvements in pedagogy and law-related research collaborations.

In order for the next generation of lawyers to address India's diverse priorities — from support of its knowledge-based economy to representation of its farmers, women, children and minorities — law schools and the legal profession must guide students to address important domestic and globally shared problems. Greater discussion, planning and resource-sharing among law teachers is urgently needed to respond to these priorities.

¹²⁵ See Baxi, *supra* note 66, chs. III, IV & XIII.

¹²⁶ See Bar Council of India, Rules of Legal Education, 2008, *supra* note 53, § 34.

