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Why Judicial Education Institutions (JEI) must Focus Vulnerabilities faced on Account of Age, Economic Status, Sexual Orientation and Participation in Civil Society Movements?

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In this paper, the authoress points out relevance of some themes for present day judiciary and why judicial education (training) institutions must include some subjects in their yearly training agenda. The present judicial training system, as operational in different countries, is mostly designed and developed in content by the judges themselves. From past five years, in their rush to update and upkeep with the new technological and commercial environment that is daily unfolding, these institutions have almost sidelined the core commitment to produce a responsive judiciary. To remind the judges involved in policy making on judicial training about the need to focus on the justice as foundation for any training, author proposes some areas that cannot be negated from the training agenda for survival of democracy in future.

Keywords: *Judicial training; Judicial education institutions; Poverty; Private justice system; Social justice; Economic justice; Child sexual abuse; Sexual orientation; Utility of films for education; Training methodology*

Introduction

Guiora and Ingle observe that Mussolini and Hitler did not rise to power with the force of an army. Pre-existing democratic institutions provided ample means to establish their new political orders, and the consequences of their new political orders on societies have been thoroughly documented and endlessly discussed and analysed.[1] In future also, a threat to democracy will be more from the political and the privileged class than the foreign aggression or the terrorists. JEIs therefore will have to first decide whether they want to be blind to these threats, or whether they want to accept the challenge to prepare their judges to not take for granted the independence afforded to them due to democracy. It is up to a JEI to decide if it wishes to support the democratic ideals by raising better understanding of democracy amongst judicial fraternity. If so, then the JEI must give priority to prepare judges to remedy the injustices faced by marginalised, subordinated and underrepresented individuals and communities, for, democracy is reduced to a mere ideal on a paper where citizens are denied the justice.

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[1]Guiora & Ingle (2019).

Louis Brandeis, as quoted by Collins and Yeskel[2], said that "*you can have wealth concentrated in the hands of a few, or democracy. But you cannot have both.*" However, political masters around the world are busy in persuading citizens that both are possible with a twist that the democracy will be afforded to only those few in whose hands political masters are shifting the wealth of the nation. In such different times, ordinary citizens all over the world are experiencing helplessness as the tag of democracy is reduced to a mere operational electoral machinery in their nation. The question therefore arises as to where all this leaves the fate of publicly funded court system? What kind of ideals are to be instilled in the judiciary by the JEI? Will dispute settlement machinery undergo a change and shred its previous image of protector of citizens against the mighty government? Will the courts be reduced to mere spectators of transformation around us?

The question for reflection for JEIs therefore is - what kind of training they are going to design for their judges without forgetting that universally judges are facing a complicated career situation in which they have to forgo their personal and individual freedom to survive, sustain and grow within the system. Further, growing clout of private entities and the compromised governments have time and again made it clear that they will not tolerate any decision making process that would harm the interest of the powerful and the privileged.

What if tomorrow the private justice system replaces the publicly funded court system? Whether the majesty of the courts would be eroded due to fewer opportunities presented to use the judicial acumen to bring back the governance on the right track? As of today, all over the world, the contracts are being created between the corporates, between the parties, between the individuals, between the government and the corporates, between the government and the private citizens to exclude the jurisdictions of public funded justice system. This in turn has potential to limit the jurisdiction of the courts to enforce the criminal law on behalf of the state and to recover the taxes/revenues for the government. If this becomes a reality, there would be a greater rift between the citizens and the courts as the courts would be seen as another set of oppressors. The citizen alienation would reduce class action litigation, normal civil litigation work and thereby reduce the public trust in the justice system further snowballing into reduced number of writ petitions, appeals and interlocutory applications.

Whether the social justice trainings to judges can save the publicly funded court system from its present downward spiral and if so, then how the same can be done - is the principal theme of this paper.

Utility of Social Justice Trainings for Strengthening the Judicial Branch of a Government

The survey of trainings offered by most of the JEIs all over the world raises a big concern around the nature of the discourse delivered by JEIs. The last decade, kept JEIs from around the world, busy in integrating innovation, business growth,

[2]Collins & Yeskel (2000).

protection of corporate rights, IPR protection, trade protection, IT revolution and IT integration in the judicial education discourse. The focus on these new areas at JEIs diminished the space, if any, allocated to the study of social justice ideals. JEIs remained occupied in preparation of IT savvy judges, gadgetry smart judges, IPR and trade protectionist judges, judges with skills in court and time management, judges with mediation and negotiation skills and so on. The term 'social justice' almost disappeared from the judicial education discourse or made some rare guest appearances in the form of multi-speaker conferences and webinars.

The last decade training priorities prove that most of the JEIs have presumed the judicial interest to attend the courses dealing with technical or commercial laws and they have excluded the social justice component from their yearly training agenda. The principal aim of any social justice related training is to acquaint the judges with the impact of their judicial decisions on the society. For instance, judicial decision to protect the environment mandating permanent closure of all the factories, industries and mills from the town will have unwanted consequences on lives of employees who are working in these establishments. By such protection of environment, a situation of taking away right to livelihood is created making lives of thousands miserable, pushing them to extreme poverty. Similarly, the judicial decision to clear all the slums and hutments near the railway tracks may be a prudent decision in terms of safety and security, but will render thousands residing in those slums without a roof over their head. Safety and security cannot be attained at the cost of such grave injustice to thousands. Such conflicts may not be brought to the notice of the court, and therefore, a judge is expected to discover such conflict.

The negation of social justice as a theme from the training discourse is resulting in judicial decisions losing the sight of conflicting positions, and thereby leading to imbalances due to ignorance of alternatives. Social justice related trainings could have helped judges in judicial integration of scientific devices to curb the pollution so that the livelihood of thousands is not lost. Such trainings could have helped judges in giving directions to the governments and railways to use the CSR funds or the environment cess or the funds from the Railway budgets for relocation of slum residents near the railway tracks. There are number of railway colonies where a vertical structure could have been directed by the courts to be raised for relocation of these slum inhabitants. In this way, both the security of railway tracks and the human rights of slum inhabitants could have been protected through a single order of the court.

The present legal education curriculum in which subjects are tightly compartmentalised in the name of specialisation is producing legal professional and future judges who did not study non-compulsory courses (elective courses). As a result we have lawyer and judge who is not exposed to intersections amongst different branches of law. Judges on their own cannot be expected to churn out the linkages due to failure of legal education in reflecting upon the synergies between divergent and convergent areas of law. To obviate this state of affairs, JEIs may expose judges to interdisciplinary nature of legal norms both vertically and horizontally so that the gap in appreciating the relationship between different

branches of law is bridged. They may fit in what Olawuyi says about intersection between environment law, international law and human rights law.[3] By establishing the linkages between different branches of law and how these intersections help to attain a balance in conflict between different rights, JEIs can prepare judges to strike a balance between conflicting positions. This would require JEIs to evolve courses to study the long term impact of judicial decisions that did not balance the conflicting positions.

The two years of pandemic isolation followed by an impending war like situation proves how we all are globally interconnected and that every phenomenon has a potential to repeat itself in different parts of the world. No country can remain isolated from events shaping at any one place. Violation of rights or their better protection at any place impact the whole world as judicial precedents are now making global impact on the lives. Therefore, even if one of the many JEIs in the world is able to design their trainings in such a way that it leads to judicial protection of vulnerable sections against their abuse, exploitation and discrimination, it will have a spiraling effect on lives of many similarly placed living beings in any part of the world.

Apart from familiarizing judges on the position of law within the bigger discipline of social justice, and on the art of balanced decision making to be learnt by knowledge on various interdisciplinary fields, JEIs must help judges to look beyond the glossy lenses to get a clear picture of the hardships that citizens are facing. Some areas which cannot be overlooked for training of judges could be: trials involving abused children, trials involving victims of poverty, trials concerning LGBT community, trials related to discrimination on the basis of caste, race or gender and the last but not the least the trials of activists tried for sedition for opposing the state policies.

Sensitisation on Child Sexual Abuse (CSA)

Recently, a Bombay high court judge in India invented new doctrine regarding CSA. She held that unless there is a 'skin to skin' touch by the accused, his vulgar actions of undressing before the child and making child undress would not amount to sexual assault on child strictly. She therefore reduced the punishment inflicted upon the accused by the trial court. This judgment was picked up by the media outlets all over the country and subjected to criticism from all the quarters. The criticism created so much pressure on the Supreme Court that she was not allowed to become a permanent judge of the high court. Till 11 February 2022, there was intense speculation as to whether she would be asked to stay as the high court judge or whether she would be demoted to her earlier post that of the district judge as she was elevated as an additional judge of the high court from the career judiciary branch. However, she resigned on 11 February 2022. Such career blocking for the judges was unheard of till this incident. This case makes it very obvious that the high court judges must undergo sensitisation

[3]Olawuyi (2014).

training on the complexities around the offence of CSA. Her case is not an isolated one calling for the training of appellate court justices. Recently, the Karnataka High Court (one of the appellate court from the southern states) had to expunge a remark of its own male judge that "it is unbecoming of Indian women to fall sleep after rape".

Sensitisation on LGBT Community and their rights

Way back someone said, rights mean nothing if nobody can enforce them.[4] Every kind of diversity is per se protected by all the constitutions of the world under the equality ideal. The right to equal treatment therefore includes the rights of LGBT community to exist amongst all the populations without facing any discrimination, stigma, disentitlement in any field. However, this has been not the case and the LGBT community has to approach the courts for enforcing their basic rights to equality, dignity and freedom. The courts, leaving aside some rare exceptions, have not shown the sensitivity as the majority of judges lack basic knowledge, awareness, or interest in challenges faced by the LGBT community and are reluctant to learn about the legal framework under which LGBT community's interest could be protected. This is because judges are disinterested in knowing the others, and in knowing anything that is beyond their geographical, cultural, political, historical understanding. There is a danger associated with this sensitivity deficit as it has potential to threaten the well-being and security of LGBT as a class. Therefore, it is important to raise both the capability and sensibility of judges to existential issues faced by LGBT as a class.

Further, from different jurisdictions of the world, we hear only about their highest court (most often the Supreme Court) showing some infrequent intervention to ameliorate the plight of LGBTs who face isolation and discrimination. The real insensitivity is faced at the trial court level and at the first appeal court level. Judges in these courts are acting overly provincial and holding on to cultural conservativism. It is with these judges that the JEIs must engage to provide them a discourse on LGBT movement. Such judges have to be infused with international and transnational dimensions of this movement. Greater knowledge and understanding on this subject from national, international, comparative and transnational perspective will surely dilute misconceptions that judges have about the community. In turn, judges will be helped in their task of delivery of justice to LGBT community. Sensitivity training also has a potential to allow greater participation of LGBT community more openly in the prominent legal and judicial positions.[5]

[4]Reynoso (1988).

[5]Recently in India there was a big debate on the appointment of openly gay advocate Saurabh Kripal as judge of Delhi High Court.

Why to Integrate the Poverty Law in Judicial Education Discourse?

Poverty has been described, among other things, as "a condition that lacks the necessaries of life."[6] Levels of poverty, in an era of economic growth and affluence, is directly contrary to much of the economic success the nation claims to have achieved.[7] Presently, even when the workers around the world are more productive than ever before, they continue to languish in poverty[8] and never before they have faced so much uncertainty, exploitation and denial of basic rights. In fact, their conditions turn into a compelling reason for the study of poverty law. Not only workers, even citizens with no income to low-income continue experience exploitation in the form of eviction, denial of wages, denial of compensation, denial of health care and safe environment, unjust removal from employment, false prosecution, exaggerated and inflated debt collection, frauds, cheatings, death in police custody due to police torture, death due to medical negligence and so on. They continue to suffer these injustices as there is always dearth of sensitive legal attorneys who will fight free legal battle for them. Nobody in legal profession seems interested in questioning why civil legal services are the least available to the people who often need them the most.[9]

Though the poverty law was invented in the US in 1960s based on Federal entitlement programs and supported by a progressive Supreme Court, and it even led to the establishment of Legal Services Corporation, the major source of funding for poverty lawyers over there[10], the interest in treating the law as an instrument of social change to handle legal cases for persons in poverty to address systemic roots of poverty and economic inequality waned in millennium century. The law schools stopped taking much interest in inculcating community and social responsibilities. The well-traveled path between high academic achievement in law school and practice at large firms, to serve corporate and commercial interests[11], almost pushed poverty law, to non-significant component of the typical law school curriculum.[12] This "corporate bias" in curriculum offerings at law schools took away the exposure to real-world issues of poverty and community engagement. In fact, the notion that the law is a pathway to power and prestige is truer today than at any time before.[13] Most of the law taught in law schools deal with "the law and the rich."[14] Due to such materialistic nature of legal education discourse, the subject of poverty is ghettoised to few courses and seminars on legal philosophy, race, gender, or disability issues.

With no encouragement from the law schools to use the law to serve the others and with complete focus on skills and projects that rewarded incentives on

[6]Munsterberg (1904).
[7]Gilmore (2016).
[8]Eckholm (2008); See Greenhouse & Leonhardt (2006).
[9]Neisel (2020).
[10]Trubek (1995).
[11]Hornstein (2009).
[12]Chaifetz (1993) at 1698.
[13]Ibid.
[14]Gilmore (2016).

performance in black-letter tests, law students, future lawyers and future judges could not learn any skill required to handle the cases of persons living in poverty so as protect them through tools of legal reasoning, analysis, legal writing, issue spotting, cultural competency, empathy. Poverty is invisible not just in law schools, but also from the JE discourse. JEIs therefore should take upon themselves the task of not only filling the gaps left by legal education but also design the discourse to acquaint the old judges (who had no such subject in their legal education) and train the new judges about imbalances created at the policy level that is pushing millions into the status of poverty. While billions are spent on corporate welfare and to manage the crisis created by nation's banking and financial institutions[15], years are devoted on debating the wisdom of providing basic needs at subsidised rates to the poor families.[16] For decades, corporate chief executives were handsomely rewarded for leadership that resulted in harm to their companies and the loss of thousands of jobs[17] but no one questioned. At the same time, great objections were raised on subsidies afforded to poor and middle classes by the governments even when these subsidies can help poor to come out of their inferior status with the help of free education and affordable basic living.

Even judicial branch suffers from elitism. After getting the taste of power of their position in the society, judges lose all kinds of concern, sensitivity, love, affection, empathy, sympathy, care for anyone except themselves and their relatives and the others become *neerjeev* (lifeless) for them. They don't care if the person accused of the crime is legally represented or not, a suspect is entitled to bail or not, a person bailed has capacity to furnish the surety amount or not, whether the victim is adequately protected from the physical harm or not, whether tenant will survive post-eviction or not, whether the dispute is between equal or unequal parties and so on. For such judges the only things that matter are the speed of trial, the vocabulary of the counsels, the pedigree of counsels, the comfort of at arriving decision and so on. The best example of such judicial elitism is Justice Antonin Scalia of the US Supreme Court who in September of 2008, while addressing a gathering of the Federalist Society at Chicago's Union League Club[18] took the view that the legal interests of the poor should rightfully occupy a peripheral, or perhaps even inferior, place in legal education and the legal system. Apart from this address, his judicial opinion in *Legal Services Corporation v. Velazquez*[19] finding no constitutional foul due to the possibility that an impoverished person could not find substitute counsel, makes it clear that for Justice Scalia, the possibility that a poor person would be unable to retain substitute counsel was irrelevant.[20] Attitude of Justice Scalia, if anything, shows that amongst judges, concern of poor have always remained secondary.[21]

[15]See Andrews & Dash (2008); Herbert (2007a); Herbert (2007b); Sorkin (2008); Super (2004); Scelfo (2008).
[16]See Goodman (2008); Swarns (2008).
[17]See Anderson (2008); Stolberg & Lebaton (2009).
[18]Pallasch (2008).
[19]531 U.S. 533 (2001).
[20]Hornstein (2009).
[21]Wax (2008).

JEIs therefore rather than consigning poverty law to the margins of their annual calendar of themes, must make poverty law as a prominent fixtures and central institutional concern. At present, JEIs are found not initiating institutional discussions on the role of a judge in fighting poverty and injustice.[22] This education policy of keeping judges aloof from the social and local context within which they operate will prove harmful for the whole legal system. It has potential to increase judicial illiteracy on the types of civil legal issues experienced by low-income individuals like health care, domestic violence, disability access, housing, children and custody, income maintenance, landlord/tenant issues, and veteran's benefits.[23] The JEIs need to design the courses to help judges in understanding why the low-income individuals and families are often unable to afford representation for necessary lawsuits, like landlord/tenant issues, health insurance or billing issues, probate matters, or consumer law issues[24] and how the courts can utilise legal aid machinery to prevent bankruptcy of people.[25]

Why JEI must focus on Human Rights Training?

In 2011, UN Declaration on Human Rights Education (HRE) and Training was adopted to encourage HRs related trainings. JEI must adhere to this convention even if it is non-binding on them so as build pro-rights cadre of judges. As noted by Struthers[26], pro-right education is important not only for allowing people to recognise rights violation in their own lives, but also for empowering them to stand up for protection of rights of others. That there is a bias against inclusion of HRE in JE discourse will be evident from the number of courses devoted to HR protection by JEIs from the past five years. The poor representation of HRE calls for positive steps to mainstream HRE discourse by JEIs. Further, international level organisations like IOJT can pass a resolution for integrating HRE in yearly discourse of JEIs all over the world. IOJT by such resolutions can be seen implementing both the UDHR and 2011 UN Convention of HR Education and Training.

HRE in JE discourse has potential to build a sustainable HRs culture and awareness that will help prevent HRs violations. The JEIs must incorporate HRE as part of its discourse for number of reasons. First being, it is an international obligation embodied in the UN instruments: UDHR, ICCPR and ICESCR. Secondly, the law schools do not have HRE as a compulsory but as an optional subject. Thirdly, HRs can be instruments in the hands of judges to check the abuse of power by the legislature or the executive. Fourthly, the humanism in HRE through the soft element of culture, promotes attention and pursuit of self-perfection, and can create understanding and respect towards human life and

[22]Hornstein (2009).
[23]See Rose (1992) at 450.
[24]See Bard & Cunningham (2017).
[25]42 U.S.C. § 2996.
[26]Struthers (2016).

development, needs and pursuits, freedom and creation, as well as character and dignity. Fifthly, as HRE can cultivate a culture of tolerance, rationality, compassion, respect for others, JEIs can push forward for the HR focused trainings to draw attention to socially disadvantaged groups, to prevent and protect them from cruel treatment, torture and abuse.

Why Sedition Trials must be included in the Judicial Education Discourse?

The offence of sedition is defined as lack of affection by a citizen towards the state. As such there is extreme subjectivity in prosecution of such offence. While some citizens are privileged to possess absolute freedom to criticise the state and its various instrumentalities at any length, others even for much less offensive criticism are prosecuted and jailed on the charges of sedition. Even bigger question than such bias is - how a democracy can even exist if the nation does not allow criticism of the government and its organs? Sedition and democracy cannot co-exist. In democratic framework, every citizen, howsoever, he or she may be ordinary and insignificant, must possess the freedom to criticise the state and all of its instrumentalities, on all the possible platforms available and that could be reached. If that be so, then it leaves no place for contempt and sedition trials. Written or spoken words cannot become excuses for prosecution of author or reader of those words. However, this is not the case and we have historically witnessed the British sedition trials and the American sedition cases that fined and imprisoned men under the guise of being punished for their bad motives or bad intent and ends, simply because the powers that be did not agree with their opinions. Men have been punished without overt acts, with only a presumed intention to cause overt acts, merely for the utterance of words which judge and jury thought to have a tendency to injure the state.[27]

Sedition trials to silence the opposition to the government is regular feature since ages. The spokesperson of minorities were terrorised and silenced when they were most needed by the community for protection against a hostile, arrogant majority. From documents we learn that the years 1793-94 witnessed long series of sedition trials in Scotland[28], Margarot, a Baptist minister of Dundee as quoted in the book: "Law and Laughter" also faced sedition trial,[29] Nelson faced his first sedition trial in 1925 for being organiser of the communist party in Chicago and for helping it to organise a massive demonstration in 1930.[30] Though he was acquitted by the jury, in 1950 he was again arrested and prosecuted for sedition against the state of Pennsylvania under the Federal anti-Communist Smith Act. These charges could not be overturned till 1956. This shows that substantial part of life of person accused of sedition goes in incarceration and in defending oneself. Only now, the legal community has started questioning the need to have such a

[27]Chafee Jr. (1918-1919).
[28]Roughead (1914).
[29]Morton & Malloch (1913).
[30]Mishler (2004).

law and trial[31] as it is contrary to the democratic principles which many nations claim to be based upon. Though the apex courts have been sensitive and limited the frequent curtailment of freedom of speech and expression under the guise of sedition trial, the same could not be assumed about the trial courts as demonstrated by the conviction of lawyer Thomas Muir on charges of sedition for his recommendation of Tom Paine's book *Rights of Man* to his friends and relatives by the High Court of Justiciary at Edinburgh. The JEIs must utilise all writings related to this trial to design their courses on the sedition law so that the grave illegalities, biases, reasoning bereft of logic are not repeated in the judicial history.

How to Design the Courses for enhanced learning and Positive Participation?

After the success of Langdell's case method for legal education discourse, clinical legal education (CLE) was the next pedagogical development by Russian professor Alexander Lyublinsky who suggested to develop law school education modeled on medical college education.[32] Pursuant to this, the law schools developed their own models of CLE. As part of CLE, some law schools asked the students to provide free legal services to the clients, some others stressed on one month to three months externships with senior lawyers, judges, trial courts, NGOs, legal aid departments and so on,[33] some law schools asked their students to take part in legal literacy to raise awareness on legal rights,[34] and some made students take part in simulation and role play based moot court courses, etc. CLE model provided experiential learning where entire focus was on student learning rather than faculty teaching.[35] It allowed the law schools to engage services of grassroot workers from different fields to provide inter-disciplinary experience to create understanding of non-legal actors in justice dispensation.

JEIs has lot to learn from the journey of legal education from case method to CLE for bringing innovations in delivery of its training courses. To offer the context and subtexts behind the litigation, JEI can design simulations, role plays, interviews with litigants, field visits and clinical observations. Opinions and viewpoints of diverse interest groups as well as experts from national and international organisations working on specific issues can be presented to raise greater understanding amongst judges on perspectives different than legal perspective.

[31]"Pity the nation that has to silence its writers for speaking their minds. Pity the nation that needs to jail those who ask for justice, while communal killers, mass murderers, corporate scamsters, looters, rapists and those who prey on the poorest of the poor, roam free." Public Statement of writer Arundhati Roy released on NDTV website and quoted by Narrain (2011).
[32]Wilson (2004).
[33]Milstein (2001).
[34]See www.streetlaw.org and http://www.wcl.american.edu/wethestudents/mbindex.cfm
[35]Wilson (2002).

Clinical designing of training courses by JEIs

Like medical students who have access to university-run hospitals, where they can accompany professors making rounds and treating patients, trainees at JEIs too have access to the courts as the judges who are managing the affairs of the JEI are most often the sitting judges who can facilitate an experiential learning in the court rooms. Such learning would involve taking down the notes of the court proceedings, doing research for the judgment writing, assisting the presiding judges in their case-court-record management, assisting the court administration in listing of cases, brainstorming with judges and their clerks on the nature of evidence collected for the cases to be taken up for hearing on the next day and so on.

Apart from offering experiential learning to new batch of judges, JEIs must think hard on the best method to sensitise senior and experienced judges so that they can comprehend the problems of vulnerable population who is forced to seek justice from the courts. CLE has the potential to transform legal culture by widening the perspective beyond an application of legal norm to a situation. CLE can raise consciousness to hurdles faced in securing justice from the courts. The clinical designing of courses will also give JEIs the freedom to invite for the purpose of training, the real litigants, or real victims, or accused persons who had a rough and long drawn battle before their vindication by the courts. Such hands on experience with injustice and its different manifestations would enlighten the senior judges on the need for careful analysis of facts and evidence presented before them.

For designing a successful training on social justice, the JEI must focus on (i) curriculum that coordinates theory with practice in the courts, (ii) faculty that has a huge experience of watching and critiquing judges for their poor performance in relation to protection of social justice, (iii) intellectual climate that allows free and fair discussion without anyone throwing tantrums about the power that they wield, (iv) extracurricular event that takes judges to actual places of violation of basic rights of human beings be they prisons, hospitals, trial courts, village meetings, police stations etc. The extracurricular activities can be treated as a link to curb professional alienation of judges and break the ice around them so that they can face the real world.

For designing a successful training on human rights protection, the JEI can initiate classroom interactions to understand the human rights ideology of individual judges which in turn would bring out their outlook to plight and misery of others. For effective training, JEI must not stand as mute party or simply as any event organiser. The JEI must step out of the comfort zone and push for experiments on HRE, engage consultants or researchers to document HR violations in different places and the failure of the justice system, as well as prepare the handbook on the best practices in the form of judicial precedents to intensify the learning amongst judges.

For designing a successful training on protection of the LGBT community, the JEI can devise a role play or a simulation wherein the participating judges can be asked to enact the role of oppressed and dispossessed member of LGBT

community who have been forcefully evicted from their rented premises by the resident welfare association after coming to know of their sexual orientation. In this role play, some judges could be asked to play the role of member of this resident welfare association, some to play roles of tenants, landlord, investigation officer, the LGBT couple and some to act as legal counsel for the parties involved. This whole role play exercise involving every judge participant in taking up some specific role for themselves whether of a client, attorney, witness, defendant and so on has potential to expose the judicial mindset on the status of LGBT in society, or whether the community should be protected against discrimination, etc. This role play participation would stay as an enduring experience with judges and improve their attitude in future litigation.

What should be the Content of Different Courses to be designed for the Judges?

An area of great concern as far as the content of JE discourse is concerned is related to the role of judges within constitutional and democratic framework. It is primary responsibility of JEI to distinguish and differentiate between role of judges and role of civil servants. Judges must be made to realise that they are different from the civil servants and therefore the society expects more from them. Their role does not finish just by applying the law produced by the parliament in a case before them. JEIs, therefore, need to develop their course content to explain judges how their role in the constitutional framework is different from that of any civil servant, parliamentarian and other professions. In fact, at least fifty percent of training material should be devoted to create this understanding among judges so that we don't end up having a bureaucratic judiciary.

Domselaar brings out a very important point before us about failure of legal and judicial profession in doing justice historically.[36] He provides many instances where both bar and the bench failed the citizens. Such examples are: during atrocities committed in times of the second world war, by not protecting legally Jews against the Nazi laws, during slavery system in the US and apartheid system in South Africa, at times of Watergate scandal in the US, during the times of war on terror under Bush and Obama administration, during many corporate and financial frauds that occurred such as Enron Bankruptcy scandal, GM ignition switch scandal, Volkswagen emission fraud scandal and so many others. Domselaar demonstrates how judges and lawyers did not act ethically in most difficult periods of history. JEIs can introduce a realistic didactic teaching materials to prove many ways in which judges failed to alleviate the suffering of its citizen or played a passive role in support of injustice.

Further, post pandemic, JEIs need to reform their course content. To begin with, they should increase emphasis on social justice element in their course curriculum to sensitise judges on the plight of marginalised, neglected, subordinated, under represented citizens and how by increasing access to justice to such citizens

[36]van Domselaar (2021).

procedural justice would be afforded. Judges will have to be introduced to the materials that can help them to pursue social justice goals and the materials that will guide them on the societal benefit that would follow by pursuing such goals.

The Course Content to Create Interest in Judges on the Poverty Law

Poverty law is about economic disadvantage. As a subject, it never became a mainstream part of the law school curriculum.[37] Because of which there is no standard, agreed-upon curriculum on poverty law[38] and this vacuum gives trainer/instructor wider space to incorporate his or her interest and convictions. The contents could be around the political developments, or shifting notions on the causes and cures of economic disadvantage, or economic deprivation due to unjust economic and social system or inequities in policies, regulations, and programs designed by the government and the structure of society. The field is dynamic and ever-changing, so substantial revisions in teaching materials are required from year to year. The subject matter is far-ranging and calls for an interdisciplinary approach. The professor should of course be familiar with intricate federal and state benefits programs designed to address disadvantage and redistribute income.[39]

A critical part of the poverty law course would comprise an inquiry into (i) Who the poor are and theories of poverty; (ii) The topics of education, work, housing and homelessness, health, and welfare; (iii) On causes and approaches to poverty and (iv) Using the law as weapon against poverty. The session "Who Are the Poor?," can introduce various definitions of poverty and provide a conceptual framework for understanding poverty and the poor. The session, "Problems of Poor Families," can present specific problems relating to income, education, health, housing, parenting, and non-traditional family relationships to expose regulatory schemes and laws affecting the poor, such as legal aid and child custody laws. The reading materials can be prepared from multi-disciplinary essays on sociological, economic, anthropological studies; newspaper articles; and judicial opinions and law review articles. [40]

How such Courses are to be delivered?

One of the biggest drawback found in online delivery courses is alienation of participants. In online environment, trainee judges can only see faces of organisers, their colleagues and peers on computers. This is comparable to judges watching their television sets, with only difference that they can participate, if they wish, and present their side of the view. In physical settings, different experiments other than lecture method can be carried out. Judges learn from each other and not

[37]Wax (2008).
[38]Ibid.
[39]Ibid.
[40]Johnson & Trubek (1992).

only in classroom or clinical settings. Further, field visits designed as part of social justice curriculum has potential to fight alienation of judges from citizens. Thus field visit would be a vehicle to foster inclusion and to curb professional alienation. Field visits that promote consciousness to vulnerabilities of different groups be they juveniles, children in need of care and protection, old age population, disabled persons, woman destitute, refugee living in a camp will inculcate acceptance of diversity in judicial culture and help in checking on the human tendency to replicate comfortable networks that only mirror oneself.

How the Discourse on Poverty Law may be delivered to Judges?

The courses on poverty law must use an innovative approach aimed at encouraging critical thinking through observation of real life events, combined with seminar discussions and readings. The emphasis should be to change judicial culture in all its aspects, ranging from use of substantive law to empower communities, humanise legal fora, and use reality to transform the law. Judges can be given a copy of the book Evicted by Matthew Desmond, a Pulitzer Prize winning book that explores the issues of homelessness in U.S. cities and the pipeline to homelessness.[41] The book richly describes the stories of those living in poverty and on the verge of homelessness.[42] As part of the book, Desmond explores the root causes of poverty and homelessness, including the cycle of poverty, education, race, incarceration, and mental health. Further, it shows that low-income persons facing eviction almost always fared better when they had legal representation. In eviction proceedings described in the book, attorneys often appear for the landlords and rarely appear for the tenants.[43] Desmond tentatively introduces the concept of "exploitation" — "a word that has been scrubbed out of the poverty debate." The landlord who evicts Lamar, Larraine and so many others is rich enough to have a vacation in the Caribbean while her tenants shiver in Milwaukee. The owner of the trailer park takes in over $400,000 a year. These incomes are made possible by the extreme poverty of the tenants, who are afraid to complain and lack any form of legal representation.[44] After each judge has done reading of the book, a questionnaire can be framed and judges be divided into smaller groups to share their impressions on the issues of poverty, and how they could play a role in these situations. Some of these questions could be: How might a judge change the outcome in some of these situations? Which provisions of statutes allow you to fashion an appropriate remedy? What is the relationship between poverty and inequality as a whole? Or can robust capitalism co-exist comfortably with less poverty and more equality than is observed today? Whether poverty is an absolute or relative phenomenon. Will the people on the bottom rung of the ladder, even if reasonably well-provided for, necessarily view themselves as

[41]Desmond (2016).
[42]Blumgart (2016).
[43]Bezdek (1992) at 554.
[44]Ehrenreich (2016).

poor? Is self-direction a real possibility for most people within our society? Might extreme childhood deprivation, for example, significantly undermine the ability to exercise meaningful choice? Given their insular lives, can the poor really advance? Are all people really so free to climb or fall that they can reasonably be held responsible for where they end up? Whether the opportunity to achieve basic economic self-sufficiency is available to able-bodied persons of all backgrounds who are determined to make a decent life and get ahead. What circumstances would satisfy this condition? Is it really possible for everyone at the bottom to improve their situation or are there "structural" limits on how many people can do so? What is poverty? And what is the problem? Is poverty, like beauty, in the guilty eye of the beholder, or in the empty belly of the sufferer? How are poverty levels compared, across centuries and cultures, continents and countries? Is there an absolute standard of poverty, and if so, what is it? Or is it all relative, since the poor man only feels deprived when at the gate of the rich man's castle? What is the difference between deserving and undeserving poor, between those who labour but earn insufficient reward, and those who are impoverished because they cannot work? And how is poverty to be treated: by realistically diminishing desires, or by seeking to satisfy demands?[45]

JEI must make efforts to alter how poverty is perceived and what can and should be done by judges to comfort persons reeling under poverty. For this, the first thing to be accomplished is to increase the presence of poverty related issues as much as possible and in more ways as possible. In the spirit of this effort, part of the plan could be to organise a film-viewing series for "transformation of consciousness."[46] A film, or cinema, is an important component of clinical law teaching. A combination of sensitive lawyers and sensitive judge can turn the tables as we saw in a movie *Jai Bheem* based on true events related to police torture leading to death of a daily wage earner in a village in Tamil Nadu, India. The movie shows how poor are treated by the society and the government machinery and but for efforts of sensitive lawyer, justice would have remained a dream. The movie shows that the opposite of poverty is not wealth; the opposite of poverty is justice.

The course co-ordinators can collect a plethora of judgements from around the world to bring home a point that the true measure of commitment to justice, to the rule of law, fairness, and equality cannot be measured by how courts treat the rich, the powerful, the privileged, and the respected ones, but the true measure is how courts treat the poor, the disfavoured, the accused, the incarcerated, and the condemned. In this direction, discussions on judgments that - secured the right to legal counsel for the poor in criminal proceedings[47], obtained the right of the poor to due process in public assistance termination proceedings[48], secured important due process protections in landlord-tenant eviction actions[49] afforded the indigent

[45]Cannadine (1985).
[46]Gilmore (2016).
[47]*Gideon v. Wainwright*, 372 U.S. 335 (1986).
[48]*Goldberg v. Kelly*, 397 U.S. 254 (1970).
[49]*Javins v. First Nat. Realty Corp*., 428 F.2d 1071 (D.C. Cir. 1970).

the right to proceed without payment of costs in court matters [50] can be initiated by the JEIs to guide judges on how to provide remedy to poor and disadvantaged sections in the society.

Whether to Involve Judges in the beginning of their Career or at any Point of their Career?

More than fresh entrants, it is the mid-level judges who have spent more than a decade as a judge in the system, need to undergo social justice courses to break them away from their comfort zone and attitudinal rigidity earned by the power of the judicial post. Recently it has been found from the recorded court hearings that judges are just not ready to adjust and accept the requests of citizens or their representatives in litigation. One court hearing reflected rigid attitude in cost imposition and another court hearing reflected bias to languages when judge mocked the citizen who could not speak in English language and had appeared in person. Judge started speaking in his local language!

Who all should be involved for effective transfer of learning?

It was observed that in the US it is the people of colour who in numbers disproportionate to their white colleagues represent the interest of subordinated and underrepresented population before the courts.[51] Similar observation are made also on the state of affairs in other countries. Most of the JEIs are composed of the old, traditional, conservative and pro-government judges holding authoritarian position. Will this composition help in producing socially aware and courageous judges who will fear none and even risk their personal growth for adhering to and upholding the first principles of universal justice? Only time will prove.

Regarding poverty law course, as noted by Wax, JEI can engage persons learned in the aspects of tax law, administrative law, family law, constitutional law and those possessing more than a passing knowledge of social science subjects like labour economics, demography, social psychology, sociology, liberal political theory, and the sociology of education. The instructor should also have some familiarity-and comfort-with the methods of ethnography, statistics and regression analysis.[52]

Conclusion

JEIs are forced to believe that they are doing exceptionally well. The question that needs to be asked is if they are doing exceptionally well for themselves or for

[50] *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331 (1948).
[51] Lempert, Chambers & Adams (2000) at 401.
[52] Wax (2008).

the justice system. Further, denial of failures in transfer of learning, will prevent JEIs from innovations, improvements, revision. At international meetings, like the one IOJT organises, most JEIs compete to showcase their success and achievements. Hardly their representatives discuss threadbare how they failed in specific course design or course delivery. What tensions were involved in constructing an innovative approach to address the judges on any specific subject. How they failed to integrate practical and academic perspectives. What kind of resistance from judges the speaker faced in bridging the gap between the academic and practical approaches etc. There is no handbook developed to ease out these tensions so as to learn and improve. Nonetheless, it is hoped that in the future, international networks like IOJT will encourage the JEIs to bring forth these tensions so that the fellow JEIs and the IOJT network can learn and help the JEIs in constructing their courses in a manner that will ease out these tensions. At the same time JEIs will have to be guided on how best they can expose their judges on relationship between law and inequality, between globalisation of capital and labour, or how social justice can arrest the decline of labour unions, higher costs for basics like food, housing, education and health care, etc. It is very much within the domain of IOJT to encourage JEIs to train judges to develop jurisprudence to procure rights and resources for the poor and thereby secure the social justice.

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