

LEGAL EDUCATION: SUCCESS OR FAILURE*

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A recent newspaper report reveals that 41,000 citizens displaced and left their parental house to the refugee camp on account of the Muzaffarnagar riots. The video displayed on television remind the days of partition of India in 1947. The sad part is that persons staying in the relief camp (38,000 in number) are not ready to return to their native place.¹

The first riot took place in the year 1969 in Gujarat. Justice Jagmohan Reddy's Commission indicted biased role of the police. Again in 1970 riots took place in Bhiwandi, Jalgaon and Madad. The vicious 1984 anti-Sikh riot which is splotch on Indian democracy still not healed up. The Bombay riot of 1992 was investigated by Justice Srikrishna. Justice Ranganath Mishra's Commission submitted its report with regard to 1984 anti-Sikh riot. The 2002 Gujarat riot still hunting the nation. The Human Rights Commission of India indicted the "police role". The commission after commission questions the prejudiced role of police or the people's representatives. It continues even today in the form of Muzaffarnagar riots.

According to a report there is 11.64% in the cases of kidnapping and abduction. Rape has been increased manifold to the extent of 55% than previous years. Increase of theft, robbery and other cases under the Indian Penal Code, 1860 are 33.46%, 37.39% and 37.36% respectively than previous years. Attempt to murder has been increased by 11.46%.²

Billions of rupees have been stashed away abroad without any punitive action and punishment. Scam after scam exposed only because of judicial intervention.

The 10% poorest in urban area has been assessed at expenditure at the rate of Rs. 23.4 per day whereas, the expenditure of 10% or richest urban people has been assessed at the rate of Rs. 255 per day. According to a report the expenditure of top 10% of urban

* Circulated in the meeting of Legal Education Committee of Bar Council of India presided by Hon'ble Mr. (Dr.) Justice B.S. Chauhan on Sept. 21, 2013.

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¹ *Indian Express*, Sept. 13, 2013.

² *Hindustan Times*, Sept. 15, 2013.

population is 10.11 times more than the bottom 10% of population in 2011-12; though in 2004-05 it was 8.41 times. This shows the increasing gap between rich and poor. According to National Sample Survey Organization (NSSO) disparity in expenditure between the richest and poorest has increased more in urban area than in rural area.³

The reason which may be inferred is because of corrupt practices among the people who matters for the society. Because of disparity in income there shall be conflict between haves and have-nots in due course of time; that too under the increasing population growth of the country. Crimes committed by poor are in the form of theft or robbery whereas, crime committed by the rich are in the form of tax evasion, environmental crime and financial crime or misappropriation of government fund by corrupt practices. Among the intellectuals a thinking have been developed, which seems to more dangerous, that sometimes laws are framed to save the persons in power.

A recent editorial of *Hindu*⁴ voiced:

“Large sections of India’s political class live a life of ill-gotten wealth and undeserved privilege, whether they are in power or not. In the unlikely event of their getting convicted for corruption, they carry their VIP status with them to prison.”

According to recent survey young are despondent and fade up with democracy. They prefer dictatorial regime to tap corruption and ethnic violence.⁵

In an article, an eminent Professor and Chairperson of the Centre for Criminology and Justice at the Tata Institute of Social Sciences, Mr. Vijay Raghwan, has observed:

“There is also a theory that “relative deprivation” coupled with processes of marginalization can lead to anti-system feelings, which in turn can pull one into crime. On the other hand “rational choice theories” state that human beings have an ability to think rationally and choose options and life courses based on cost-benefit analyses. These theories emphasize that while extenuating for criminogenic behavior individuals act on the basis of benefits that would accrue to them-money, status, power, sexual pleasure, excitement; and the costs they would have to pay in terms of social

³ *Id.*

⁴ Sept. 17, 2013.

⁵ *See supra* note 4.

or legal sanctions-arrest and imprisonment and loss of livelihood or self-image.”⁶

The learned author further writes:

“[B]ut the larger emerging picture is that crime is increasing in both rural and urban areas. In the latter, property and profit-oriented crimes are on the rise due to the greater influence of a consumerist society. The acquisition of more wealth is an inspirational goal for most, and we celebrate the idea of getting rich. But the means to achieve the same are limited.”⁷

It is the matter of deep concern for the Bench and the Bar, both to ponder over the alarming situation of the country. We have been failed to provide effective administration of justice because of blind pursuit of western jurisprudence. It requires all-encompassing discussion.

We are living in a global village. A thing happened at the distance of thousands of kilometer affects the society globally. There is cultural invasion, diffusion and overlapping. With the expansion of Articles 14 and 21 of the Constitution of India by catena of judgments of the Supreme Court of India, now almost every state-action is subject to judicial review. Complicated questions involving science and related development, environment, forestry, banking, social problems often come to courts.

Democracy works when citizens and the most marginalized people have the capacity to ask questions, seek accountability from the state, and participate in the process of governance. Democracy becomes meaningful when people can shape the state and the state in turn, creates enabling social, political, economic and legal conditions wherein people can exercise their rights and achieve freedom from fear and want. Democracy is not merely elections or universal adult franchise. Democracy involves dignity, diversity, dissent and development. Unless the last person can celebrate his or her sense of dignity, exercise democratic dissent and involve themselves in the process of governance and development, democracy becomes an empty rhetoric.

⁶ See *supra* note 4.

⁷ See *supra* note 4.

The eminent scholar Jill I. Goldenziel, a lecturer of Boston University School of Law, at Harvard College observed:⁸

“Where autocracy reigns or its specter still looms, elections cannot serve as a true check by the people on either executive or legislative power, as they are likely to be manipulated in favor of the regime, and are thus unlikely to serve as an accurate mirror or public opinion. Elections may also be infrequent, since the executive often has the power to dissolve parliament at will and control the timing of elections. Moreover, legislatures are too weak to delegate authority over issue areas to courts. Interactions between interest groups, the judiciary, and the legislature in these regimes thus cannot follow the structural models proposed in the literature based on democracies.”

These words of Mr. Goldenziel, remind us to be vigilant; make consistent research/effort to meet the challenges by innovating and evolving new arena in the field of law.

With the tremendous pressure on the courts with tremendous responsibilities wherein citizenry view the court as last resort for oppressed and bewildered, we have to innovate law keeping in view our own ground realities.

In this fast growing society where bottom change has taken place, the Bench and the Bar both have to cope up with the different situation where mixed question of science, history, geography, psychology and sociology are cropped up. I remind what Justice V.R. Krishna Iyer said:

“What mutations in the law can be achieved by a socially sensitive and creative judge while interpreting the laws is born but mode Society is so complex and changes so rapid that lawyers and judges have to keep abreast of the expanding frontier of law since all of life unravels in court in knotty tangles. Instead of leaving the law functionaries to cope with the inevitable gap between their mental kit and the new knowledge and technology, and to avoid the social and economic costs of professional ignorance an American writer has argued the case for judicial education. His plea for imparting to know the working of the judiciary through seminars, collegiate courses, workshops and other programmes applies to our country as well.”

⁸ *The American Journal of Comparative Law*, [2013] 61 The American Society of Comparative Law, Winder 7, 8.

Not only the law students but lawyers and judges are also required regular upgrading of their knowledge in the changing scenario. Judge Jerome Frank⁹ wrote:

“I suggest that we should at once set about contriving methods of avoiding the avoidable tragedies cause by lack of systematic training of trial judges Such a man should be specially educated for that job.....[H]e should be taught not only what a law student now learns—that is much about upper courts, the legal rules, the values, the policies and ideals which are or should be expressed in those rules—but also what no law school now teaches. He should be shown, in great detail, the problems, relating to the facts, which confront a trial judge, as they do not confront a higher court judge. He should learn all that is now known about psychological devices for testing the trustworthiness of witnesses as to their individual capacities for observation, memory and accuracy in narrating what they remember. He should be taught to be alert to the possibilities of using such devices, as they become improved, in trials.....”

All efforts made in imparting education to law students are to imbibe multi-facet knowledge to the students, who in due course of time may reach to the Bench, comes through the Bar. Learned and scholarly Bar when join the Bench they become asset for the country. The assistance provided by the Bar during the course of hearing improves the quality of judgment; but it appears that the era of justices-Seervai, Palkhiwala, Setalvad or Khanna almost has gone. Innovative argument followed by innovative judgment seems to be at receding end. With the bulk of work and backlog judges are hard-pressed to indulge into research work. Bar has been commercialized. Similar situation was noted by Benjamin N. Cardozo in 1925 while delivering a series of lectures in Yale University, America (*The nature of the judicial process*). He tried to develop academic and research oriented atmosphere in the law colleges like Haward and Yale Universities. The effort made by the Supreme Court Judges of United States of America right from Benjamin N. Cardozo is giving fruit. We are far behind them. Every good judgment is opposed as the instrument of intrusion to legislative action under the garb of separation of power.

I wish to quote a passage from *Spirit of Law* written by Montesquieu which seems to be foundation of principle of separation of power. In case separation of power is considered in terms of Montesquieu

⁹ [1889-1957], Federal Appellate Judge, the United State Court of Appeals, 2d. Fed. Cir.

doctrine, then it should be considered keeping in view the historical and ground realities of India and not the western principle mechanically. Montesquieu himself has said:

“Law in general is human reason, in as much as it governs all the inhabitants of the earth; the political and civil laws of each nation ought to be only the particular cases in which human reason is applied. They should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another. They should be in relation to the nature and principle of each government; whether they support it, as in the case of civil institutions. They should be in relation to the nature and principle of each government; whether they form it, as may be said of politic laws; or whether they support it, as in the case of civil institutions. They should be in relation to the climate of each country, to the quality of its soil, to its situation and extent, to the principle occupation of the natives, whether men, huntsmen, or shepherds; they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manner and customs. In fine, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered.”

We seem to have been failed to understand the doctrine of separation of power. Montesquieu spent almost 20 years in writing one treatise (*supra*). Every word and line of his book matters, and should be given meaning while preparing the curriculum of law students and writing judgments in the related matters.

While emphasizing to inculcate ethical, historical and cultural knowledge in the persons working in field of law, Benjamin N. Cardozo said:

“The final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence. “Ethical considerations can no more be excluded from the administration of justice which is the end and purpose of all civil laws than one can exclude the vital air from his room and live.” Logic and history and custom have their place. We will shape the law to conform to them when we may; but only within bounds. The end which the law serves will dominate them all. This is an old legend that on one occasion God prayed, and his prayer was: “Be it may will that my justice be ruled by my mercy.” That is a prayer which we all need

to utter at times when the demon of formalism tempts the intellect with the lure of scientific order.”

Let us learn from the observation made by giants of law while formulating our own destiny in the field of law based on our own ethics, culture, morality, history and ground reality. We should take lesson from our historical and cultural background while evolving law to meet the requirement of our country. The curriculum of law students should contain a broader historical background of the country and lesson which may be learnt from the mistake of our forefathers. Side by side a broader knowledge should be inculcated in the law students through curriculum with regard to science, geology, forestry, politics, psychology, sociology etc. Curriculum must be set so that in case in due course of time if an advocate adorns the seat of judgeship he may deal with varieties of the cases without any problem or assist the court as its officer. We should not forget that the role of judiciary is not only in making of constitution but also the democracy itself. The constitution and the law are being organic body unless students are educated with regard to different facet of society they can neither be a good advocate nor a good judge.

A nation where judiciary operates as the agent of government, and does not distinguish itself different than the other two wings of the government because of its knowledge, ability, good logic and integrity, not only democracy is compromised to large extent but judiciary in turn loses its legitimacy with due course of time, resulting in frequent street protest by the people for small causes, public lynching of ‘crime committers’ etc. The Bar and Bench becomes an eyesore in public eyes in case their integrity, ability and knowledge become doubtful in public eye.

India should take lesson from Arab spring and neighbouring countries where democracy is failing because of weak and fragile judiciary lacking in integrity, knowledge, ability and firmness to defend their constitution and innovate new law to meet the challenges.

The experience shows that standard of education of law colleges is not up to mark. More than 80% of lawyers appear in our court lacks merit, ability and knowledge to advance their argument up to mark. It is sorry state of affair. The Bar Council of India must look into it, to tone up the curriculum as well as the standards of education in the law colleges.

Ground situation of the country prima facie reveals that equality of law or equal protection of law is far away from satisfaction in

governance. Citizens are treated differently keeping in view their status, might and rights.

By the passing of day situation deteriorated because of stagnation in evolving law which may suits to our country to establish the rule of law. Things must start by inculcating knowledge in pursuance to curriculum, from the class room of the law colleges to the Bar Council followed by innovative judgments of country with the assistance of eminent and learned advocates.

