

# CONVERSATION ON THE PEDAGOGY OF LAW AND POVERTY

*Amita Dhanda & Saurabh Bhattacharjee\**

*The NUJS Law Review was pleased to host Amita Dhanda and Saurabh Bhattacharjee for a conversation on the pedagogy of Law and Poverty on September 12, 2020. The Indian Academy, like Academies elsewhere, provides a privileged position to research and writing. Despite its labour intensive-ness and long-time impact on the polity, teaching continues to be seen as an also-ran. In an effort to break this silence and to foreground the research and reflection that goes into teaching, Amita Dhanda and Saurabh Bhattacharjee decided to have a conversation on the pedagogic dilemmas of teaching Law and Poverty, a course both of them have been teaching for more than a decade in their respective institutions. The NUJS Law Review Board hosted the event as well as took responsibility to transcribe, edit and correct their loud thinking. In this dialogue piece, they reflect on their approaches to teaching the subject and discuss the various questions which they have encountered therein.*

**Saurabh Bhattacharjee:** In spite of its veneer of neutrality, legal curriculum is not a politically neutral space. Consequently, the design of legal curriculum and the choice of various subjects we teach have a critical role in shaping access to justice as well as in defining the nature of interaction between different constituencies of people and legal institutions. Indeed, Justice Muralidhar, during the first Professor Shamnad Basheer Memorial Lecture, drew upon Professor Baxi's argument on the need for making universities, not just "Institutions of Excellence", but also "Institutions of Equity".<sup>1</sup> He also called for a more socially relevant legal education; a credo that almost every National Law University, and every law school for that matter, claims to serve. In this context, Law and Poverty plays an important part in humanising legal education and making it more inclusive and equitable.

In fact, law is not a distant abstraction for the poor. Very few other groups repeatedly encounter the law and the State in their most mundane ordinary transactions as the vulnerable and subaltern groups do. Paradoxically still,

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<sup>1</sup> LIVE LAW, *The First Professor Shamnad Basheer Memorial Lecture 2020*, YOUTUBE, September 12, 2020, <https://www.livelaw.in/top-stories/live-now-first-professor-shamnad-basheer-memorial-lecture-by-drjustice-s- muralidhar-162812> (Last visited on April 4, 2021).

concerns of poverty and deprivation very rarely occupy the mainstream space within the way we teach law, much less within the curriculum directly. With that backdrop in mind, I would go back to the fact that you were one of the first professors to have taught Law and Poverty as a compulsory subject in NALSAR. What made you decide to have Law and Poverty as a compulsory subject and as an integral part of the course curriculum?

**Amita Dhanda:** None of us perceive either law or the teaching of law as an apolitical enterprise. The question then basically becomes, “What is the politics with which we are going to teach law?”. An accusation which comes up very commonly, especially for Law and Poverty, is that it is very ideologically driven and a ‘socialist enterprise’ which does not take into consideration any counterpoints—“What about the other side? Why are we being fed only one way of looking at things? After all, if people are impoverished, what about the people who are making this resource-intensive investment into infrastructure? Why are we not responsive to their concerns? Are they not deserving of returns?”. As a Law and Poverty teacher, I frequently encounter such challenges. I am certain you must also be facing such questions, only I face them more often because I teach Law and Poverty as a mandatory course at NALSAR. The choice of opting for the course has not been left to the students.

When you were studying at NALSAR, we were primarily a mandatory-driven degree. There were just three courses which were optional; out of fifty courses, forty-seven were mandatory. If we disaggregated those forty-seven courses, we would find that the largest space was occupied by the so-called ‘economic’ laws, or the laws which were concerned with people who have a lot of resources, and how those resources could be conserved or maximised. The only counter to this curriculum of privilege was the course in ‘Law and Poverty’. Since the course curriculum was set up under a mandatory paradigm then, necessarily, the course on Law and Poverty also had to be mandatory.

We were visited with the question of choice when we revamped the entire course curriculum at NALSAR and adopted the choice-based elective system. If you look at the Bar Council Regulations, Law and Poverty is not listed as a mandatory subject. We had a faculty meeting where the question as to whether Law and Poverty should remain a mandatory course or be made into an elective, was put to vote. Maybe because of the reputation the course had acquired over the years or because of my passionate appeal that to make the course an elective would be akin to killing it, the faculty decided that Law and Poverty would continue as a mandatory course. This decision to continue the course as mandatory was taken whilst *acknowledging* the ideology of the course, not *dis-acknowledging* it.

Students constantly raise questions on the ideology informing the course. My counter question to them is: “Is ideology *unique* to Law and Poverty?”. Is ideology not there in every other course that they study?

When we study the law of contracts or company law, why is it that the course is organised in one kind of way and not in another? Why is it that the interest of the corporations is the fulcrum or the focus of the way in which the course is transacted? What about shareholders? What about ordinary shareholders? What about people who are the minions in the whole framework of corporate law? How much time is spent engaging with those aspects of corporate law? How come none of them raise that question when they are being taught corporate law? Adopting an offensive stance is one way in which I respond, when asked by my students on the ideology of Law and Poverty—another approach I adopt, is to ask them if the ideology of the course is troubling them, and when they respond in the affirmative, I tell them that I am not denying that the course has a politics. It speaks for the excluded; and it is just about the *only* mandatory law course that gets them to *worry* about the excluded. If they feel that the point of view of the included also needs to come into the classroom, I invite them to do it. Since I do not think that the included are being short-changed, it is not my obligation to bring their concerns into the classroom. I say, the day they go to the teachers who teach them corporate law, taxation law, mercantile law and other subjects, and ask them questions such as, “What about people who are trampled upon by corporations? Why are their interests not being taught in this course?”—that day they can come back and ask me this question. I may be willing to listen to them then, but not before.

It has been my line in all the courses that I have taught that I have a clear politics and I openly disclose that politics to my students. I do not play games and I do not pretend to be neutral. How do you look at this matter? I am curious, because I think it is a question that eventually everybody who teaches Law and Poverty has to face.

**Saurabh Bhattacharjee:** Indeed, the influence of ideology on law-teaching and curriculum is an issue that we as teachers have to confront. Further, there have been odd instances of feedback from students, raising concerns about the ideological slant in the course. At the same time, I would agree with you that the claims of neutrality of law are overstated, if not entirely a pretence. Both the choice of subjects like contracts, property, international trade law and corporate law in the curriculum and the method of teaching these subjects, seek to concretise a particular economic model, yet such examples are rarely perceived as undermining the neutrality of law. I would argue that where so much of the mainstream law curriculum is ideologically suffused, I do not see the need for being defensive about the political and ideological undertones of teaching Law and Poverty merely because the course critiques the dominant paradigms of development, environmental protection, State response to vagrancy and the use of technology in welfare.

At the same time, I have agonised over my duty as a teacher to adequately discuss multiple perspectives and expose students to a wider spectrum of arguments that have come up on a specific theme. For example, while the module on ‘development-induced displacement’ questions the narrative of developmentalism

and its impact on State action and the judicial approach to land acquisition, it also engages with writings that make an economic case for stronger use of the power of eminent domain by the State. Similarly, we look at the libertarian critique of State power and literature on the causal connection between the lack of economic freedom and poverty, especially the impact of the regulatory state on the informal workers. However, I do accept that there is a palpable choice made in the relative emphasis placed on such materials. While the appropriate weightage to be placed on different ideological strands has been a source of reflection, doubt, as well as anxiety, I do believe that there is no reason for defensiveness about the political undertones of the course.

In this context, one must reflect on Baxi's Introduction to the Law and Poverty reader published by the University of Delhi in the 80s.<sup>2</sup> Baxi had articulated the need for a conscious ideological project towards *shifting* the lens of our understanding of deprivation by shifting the usage from 'poverty' to 'impoverishment' and signifying that poverty is not a natural phenomenon but a dynamic process of public decision-making. That presents us with an example of the conscious use of legal pedagogy as a bulwark against the hegemonic role that mainstream economic philosophy has had in the legal curriculum. Indeed, I would argue that where the law itself is ideologically determined, any form of defensiveness on account of the ideological slant in teaching law and poverty would be self-defeating in the first place, and attempts at achieving *objective balance* would be an exercise in futility.

**Amita Dhanda:** I also find this conversation useful to expose my students to the fact that actually no scholarship or policy can claim to be neutral. Even with regards to the blindfolded Goddess of Justice, we need to ask: *what* is it that she is blind to? My first class in every Poverty course that I have taught over the past twenty-plus years, begins with a brainstorming session, which is aimed at finding out how students understand the phenomenon of poverty before they study it. These discussions show that for most students, poverty is a static naturalised condition. The fact that poverty is something that is *caused* and *created*, is what the course enables them to understand. I want this to be the student's discovery or realisation, which is why I have continued to call the course 'Law and Poverty'.

It is also for this same reason of fostering reflection that we teach the course in the second year and not after constitutional law, administrative law and other public law courses. The logic is that in how we study constitutional law or labour law, we do not concentrate or focus on the *excluded*. They are not our primary players. We want that when our students study the

Constitution, they must also think of the excluded. Consequently, we include the excluded in their thinking, *before* they come to the Constitution *not after* they have studied it. Also, after they have studied the constitution, they

<sup>2</sup> Upendra Baxi, LAW AND POVERTY: CRITICAL ESSAYS (N.M. Tripathi, 1988).

believe they have already become lawyers, which is why I would prefer to have this conversation of oppression and exclusion, while they are still in the ‘Twilight Zone’; before they have become solid black-letter lawyers.

The objective is to make students aware that it is not just the authors they read or the judges about whom they read about or the legislations that they come across, but that they *themselves* are also proponents of ideologies. Once this reality is acknowledged and understood, then research and writing can run its own course. It is important that students are the central players of the whole education process. For that to happen, they need to understand that they are as much purveyors of ideology as any other person about whom they are reading. Students play a very major role in how the subject is understood and what is done with that understanding.

**Saurabh Bhattacharjee:** Taking on from there, one can understand the advantages of students first studying Law and Poverty before learning constitutional law and other core subjects since then they engage with these basic courses more critically. It also allows them to transcend the confines of doctrines and situate the doctrinal analysis within the experience of the excluded. However, I have also found that having students who have already studied subjects like constitutional law and administrative law, allows the class to dive deeper into some of the doctrinal questions. It also appears that senior students are able to navigate some of the inter-disciplinary and philosophical texts used in the course more easily. How would you respond to these concerns?

**Amita Dhanda:** Saurabh, in my view, there are at least two ways of teaching Law and Poverty. One can either teach the readings or teach *through* the readings. You can either inform the head or nurture the heart. I feel younger students have more heart. The relationship between law and justice is still strong for them. This instinct can be strengthened by familiarising them with legal theory before they study poverty. Legal methods is a very jurisprudence-dominant course at NALSAR. This course familiarises students with the various ways of asking the law question so that they come to appreciate that their theoretical lenses would greatly influence how they make, implement and interpret a legislation and the same holds good for judicial decisions and executive laws. This theoretical grounding can be furthered strengthened in Law and Poverty. When Law and Poverty is taught with a sound theoretical basis, it provides students with a meta-ethical touchstone which they can use to test extant policies, legislations and case law. A theoretically-grounded Law and Poverty course, provides students with both a conscience and materials which can help operate the conscience.

Illustratively, Amartya Sen critiques the income-based approach to poverty but critiquing an income-based approach does not mean that income is irrelevant.<sup>3</sup> The critical question is how is that income being provided. A very useful

<sup>3</sup> Amartya Sen, *DEVELOPMENT AS FREEDOM* (Anchor Books, 1999).

comparison can be set up between the nuanced articulation of income computation undertaken by Paul Streeten<sup>4</sup> and the unconditional providing for universal basic income advocated by Van Parijs. These comparisons help to move understanding from form to substance. Examining the capabilities approach from the distinct standpoints of Sen and Nussbaum<sup>5</sup> makes freedoms concrete and tangible. Then along with these various ways of understanding deprivation and its alleviation, we study Iris Young who points to the oppressive nature of social structures and why a distributive perspective towards justice is insufficient.<sup>6</sup> An exclusively distributive perspective, Young points out, makes people oblivious to the disadvantage residing *within* social structures. Her insights help in understanding why, despite robust affirmative action programs, nothing much changes in terms of race, caste, gender, disability and the like.

These theoretical expositions assist in getting students to understand the limitations of law as an instrument of social change. Law, we often say, is part of the social superstructure wherein change can be wrought, by just tinkering with the superstructure without examining the social structures on which the edifice has been created. If these connections between structure and superstructure are not forged, we feed into the popular understanding where law is offered as some all-powerful universal panacea. Law can provide *some* symptomatic relief, but it is not a panacea. Our students cannot fathom why law is not a panacea, unless we can show them the context within which it operates, the manner in which we have organised our society. Our society is hierarchical and skewed in favour of a particular segment of the people. We need to raise these foundational questions, before studying the Constitution or legislations and cases. When we study Law and Poverty before we study constitutional law, we at least show that the Constitution can be read from lenses other than just legal positivism. This meta-ethical equipment allows for a deeper and more layered understanding of the subject.

Legal positivism has a stranglehold over mainstream legal education. I, myself, have not been a positivist in my teaching life and have been continually warning my students on the pitfalls of an exclusively positivist approach. More recently however, I have started to see the value in positivism—something I may wish to discuss at another time. However, despite realising the disciplining potential of positivism, I think it is important for law students to appreciate that how a law is constructed, is very greatly determined by the manner in which *privilege* operates in a society. If this connection is not made, students cannot comprehend why despite a favourable legislative text or a catena of legal decisions in their favour, things went against them. Just to take one example, let us look at *Narmada Bachao*.

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<sup>4</sup> Paul Streeten, *THINKING ABOUT DEVELOPMENT* (Cambridge University Press, 1995).

<sup>5</sup> MARTHA NUSSBAUM, *FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP* (Oxford University Press, 2007).

<sup>6</sup> Iris Young, *JUSTICE AND THE POLITICS OF DIFFERENCE* (Princeton University Press, 1990).

If we look at the *Narmada Bachao* movement's work, the sort of hold it had on emancipatory imagination, the kind of critique they had set up against the neo-liberal model of development with that critical outlook, the *Andolan* decided to go to Court. We do not know why they made that decision but evidently they believed their critique of the dam would be accepted by the Court, but that did not happen. More importantly, the act of going to Court in a way killed the movement because even the people who were supporting the movement, were not willing to dismiss the Court. The decision in the *Andolan* case at best got treated as one bad decision from the Court. The *Andolan* people were not told that the Court performs other kinds of functions within a democracy. Nobody advised a movement-level body that once they activate the Court, they would be compelled to respect the decision of the Court, even if it went against them. The situation would be different if they were *taken* to Court. Say, if they are arrested in a criminal proceeding, they can continue their politics, as their appearance before the Courts was *compelled* and *not voluntary*. But if they go to Court *seeking* a relief and if they do not get what they seek, they are *no more* in a position to say this is a fixed Court. Because if it is a fixed Court, why did they go there? It is not possible to understand the distinction between a petition in Court and the movement-level work that the *Andolan* was doing, unless and until it is understood that the Court is part of the socio-economic political structures which the movement is questioning, and hence to expect the Court to dismantle those structures is poor political and legal strategy.

This distinction between change that can be wrought through a petition and that which has to be agitated through grassroots movement work, needs to be understood and appreciated in the second-year, when students still have idealism and wish to change the world. By the fourth-year, students are looking at career and placements. They are looking away from the problems of the world. I am sorry this is a sweeping generalisation, but a generalisation that captures the larger reality.

I find that in the senior classes, students have co-opted into the system and they give more cynical responses than what one gets when while discussing these questions of inequity with them in their second-year. So investment-wise, I prefer to *inform the heart* than to *engage with the head* and I prefer to use the readings to have larger conversations rather than to just teach the readings. I agree with you that as far as *comprehending* the readings is concerned, maybe students are better equipped in the fourth-year but as far as getting the *spirit* of the readings is concerned, I think they are *more open* in the second-year.

**Saurabh Bhattacharjee:** Leading on from there, a significant difference between the the way we teach Law and Poverty in NALSAR and NUJS is that in the former, it is a compulsory course whereas it is taught as an elective course in the latter. As a result, the course attracts a small pool, but a pool of highly motivated students who are passionate about the subject. This has also allowed me

to push them harder and experiment more. What sort of things have you tried to generate a greater degree of interest in a compulsory class? I believe NALSAR now has eighty students, as opposed to a smaller group of sixty students when we were there.

**Amita Dhanda:** We have two sections of sixty each, with two separate teachers teaching Law and Poverty. Therefore, it is a smaller class that we are teaching. Occasionally, we do join classes and teach 120 together. However, it is a smaller class generally, so that is not an issue.

Following up on what I was saying earlier, what we find is that though students are not 'poor', as we are teaching in a privileged institution, it is not like they do not face temporary poverty. There are two things to take into consideration, first being the notion of temporary poverty and the second, the concept of relative poverty, wherein I feel as though someone has more than me. Therefore, this business of being made to feel small, not having enough, or not being able to keep up with the Joneses, as they say; while it is not a similar experience to that of someone who does not know where their next meal will come from, we cannot say that they do not have experience of either vulnerability or value for positional goods. One of the strategies that I keep in mind is based on the fact that while NALSAR has progressed over the years and is a much more democratic space, national law schools, by creation, are not democratic spaces. We are too small to perform that role, because when one is so small, students are easily identifiable, and the option to dissent and question shrinks. Therefore, it is a *relative* space to see how much it is that a student can do and where is it that they feel helpless.

Additionally, like I said, because I am informing the heart, I am at no point forgetting their experiences and encounters with authority and vulnerability. Instead, I use those experiences as a way of helping them to step into the shoes of others, so they can see some kind of similarity in their sizes; an affinity they did not think existed when they started the course. I find it useful to recognise everything around us as material. For instance, caste remains a big issue across the board. Though we have affirmative action and we have reservations, can we say we have inclusion? I do not think so. What is the nature of exclusion we practice? How much voice do we give everyone? How do we transact our classes? How much space do we give to all manner of students? How do we protect the minority voices in our own classrooms? For me, these are questions that help students learn—calling out students and getting them to call each other out, while ensuring it does not get acrimonious, is part of the larger politics within which Law and Poverty has to be taught. Similarly, the way in which the projects get used (under the original system, I had more leeway), the fact that the students need to think and write, that we are getting them to research stuff and look at issues which they are passionate about, have all been strategies that have worked. Actually at one point, I used to do an end-semester seminar around Law and Poverty, where I would structure their materials according to a sequence and make them question each other. This was



in fact a major space in which learning happened and many people used their Law and Poverty paper to work in a field, do research and build upon their findings. I have learnt a lot from my students so I try to create places where their original contribution is funnelled back into the class. I used to mandatorily ask a question around the projects so that they listened to each other and learnt how to engage with each others' work. At core, I can say that building empathy and informing the emotions is a key strategy that I use to run the course.

However, I am not a great proponent of fieldwork and I have reasons for my position. It may be because I teach second-years, yet lots of people feel that Law and Poverty cannot be effectively taught, if you are not doing fieldwork. What is your take on it?

**Saurabh Bhattacharjee:** It is very interesting to hear that. In fact, I do believe that there is a major role for fieldwork. Nonetheless, as a personal choice, barring a few exceptions, I have not used fieldwork as a tool for teaching. While I have asked students to survey workplaces in some of my courses, I consciously had chosen to not emphasise on field work in the course when I began teaching Law and Poverty. In view of the fact that I was not in a position to supervise such field work because of restrictions on my mobility due to health concerns, I made a choice as I believed it would be unfair on my part to expect my students to carry out field- exercises. Additionally, there are logistical challenges of organising field-research within a span of four months so as to make the exercise systematic and meaningful for undergraduate students.

I do believe there is a role for fieldwork in teaching Law and Poverty but at the same time the challenge remains—how do we fare as a pedagogic component at the undergraduate level? Mine is a course that spans over four months. How effectively then can we ask students to do fieldwork and monitor that in a systematic manner for a group of five people? For you the challenge would be far greater than that.

That is the concern that has held me back. Justice Muralidhar in his Shamnad Basheer Memorial lecture today, argued that the brutality and arbitrariness in the treatment of slum- dwellers by the State can be effectively understood *only* when one witnesses the process of eviction and its immediate aftermath. Similarly, the limitations of the Supreme Court verdict in the Olga Tellis case can perhaps never be appreciated without a glimpse into the absence of due process in eviction and into direct real life experiences of the slum dwellers.<sup>7</sup> Therefore, I have encouraged students if they have wanted to do fieldwork as part of their project and as part of their other research. How do we tackle the challenge to design and frame fieldwork as an effective pedagogic component which we can supervise such that students can be meaningfully guided?

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<sup>7</sup> Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545.

**Amita Dhanda:** Okay, the logistical constraint is *one* dimension of the fieldwork question, but the other dimension is that going to the field is a very responsible exercise; and the kind of learning which needs to pre-date going to the field is extensive. After all, fieldwork as a method is primarily taken from anthropology and if we read anthropological literature, we find anthropologists make a big deal about going to the field. There is no such thing as a neutral field or an objective observer. Since I am teaching second-years, I am clear that they are not equipped to be objective observers and if they are not cognisant of their own subjective biases, in such a situation, they could end up being a very big liability in the field. I do not know whether or not they will learn anything but due to the glamour attached to fieldwork, they may cause harm and yet return with a halo on their head.

If supposing we had two papers on Law and Poverty, a Law and Poverty-I and Law and Poverty-II, I would agree to bring in field work, as I can prepare students for going to the field. But if I have to choose between doing a theory-rich course and learning the operation of the law from other people's field work and not my own—by this I mean bringing in case studies, bringing in other people's field work—as opposed to sending people into the field as unprepared liabilities, I would choose the former. I mean, even if they do go 'slumming', do they get themselves a political conscience? Do they get themselves a social conscience? I do not think so. They, actually, I mean *all* of us, and I am saying this very openly to all of you (I do not think students at NUJS are dramatically different from other national law school students), all of whom believe that they are to the manor born and very smart so they do not really have to be taught anything, if on top of all that arrogance, we also send them to the field, that one humility of ignorance which remains, even that goes.

I am okay with having a Law and Poverty clinic in the fourth-year. I am okay if we have a Law and Poverty-II, as an elective course and truly interested students come and a foray into the field is planned with them. I am more inclined to do fieldwork as part of Law Clinics, than as part of a Law and Poverty course. I feel it is important to thoroughly ground our students theoretically, in order to get them to understand what causes exclusions to happen—the point that you make when you title your course 'Law and Impoverishment'. It is important to get our students to understand the process so that whenever they do fieldwork, they are at least conceptually sound, otherwise they would do this half-baked kind of stuff which unnecessarily makes them feel like they are doing something marvellous, whereas they are not even touching the tip of the problem and could even cause harm.

So, no fieldwork, but Law and Poverty is still a rigorous mandatory course. It is not easy for students to do well in Law and Poverty. They cannot simply slash their wrists and make emotional claims as to how their heart beats for the poor and expect to do well. I insist that they learn how to make a hard argument, learn how to think, to rely on hard evidence to make a legally strong case. The

conceptual rigor gets them to learn something, whereas field work unnecessarily romanticises the poverty question for people who have never faced questions of poverty and the period of exposure is too short for it to have any kind of impact either on their hearts or in what good they may do for the community.

Also, one wanted that *all students*, every single one who is pursuing a legal career, should be exposed to these questions of deprivation and exclusion; that is why the mandatory course. I would categorise Law and Poverty as a course in meta-ethics. For us, it strategically ties up in that manner. NALSAR has this elective Clinic programme to address social justice questions. We now have somebody running a Law and Poverty Clinic. So you could say that Law and Poverty provides the theoretical underpinning, but the practical fieldwork can happen in courses other than Law and Poverty. Also, one way of not breaking pedagogic silos is to treat Law and Poverty as one silo.

**Saurabh Bhattacharjee:** Yes, I suppose a strong theoretical foundation would be advisable before embarking on field research. I also completely agree with you that just a couple of perfunctory visits do not provide useful lessons. However, one of the questions that I have on the use of the clinical model of teaching, is the potential space and techniques available for Law and Poverty for shaping the larger law school curriculum. Is there a danger that despite a separate course, the intersection between law and poverty may remain on the margins of the curriculum as an academic concern? Perhaps, this apprehension is more acute in NUJS where the course is taught as an elective course to a small pool of students. But even elsewhere, we need to ask ourselves, how much can the larger attitude of the student body and the wider faculty be sensitised to the engagement between law and subaltern marginalised groups? Apart from using a compulsory course as opposed to an elective, what sort of other things can we try out in trying to foreground the concerns of poverty much more centrally within legal academia?

**Amita Dhanda:** One way is to have a clinic programme which is not about skill development. We do not need to see the clinical courses as courses which are equipping students with skills, whether of pleading, drafting or moot-ing; that is not what it should be. Our clinics should be engaging with social justice questions. The colleague who runs the Law and Poverty Clinic, runs it by looking at the various welfare programs that exist within the State, and to see whether, and how effectively, they function or not. What is it that lies between the programme and the constituency? What are the kind of bridges which need to be built if these programmes are to achieve anything? Another person who runs what we call as a 'Language Justice' Clinic, is looking at this situation of people not having English, or having a dialect and not even having a recognised regional language. What is it that we need to be doing for them to be able to access the legal system? It is by picking up very concrete issues and then asking questions about how to fill that gap. Since it is a focused case study, it opens up other potential. I am not saying, "Oh, we have the clinic and it is doing marvellous work!". However, it is an entry point; it is an interesting and an important entry point.

The other point I would make, since both NUJS and NALSAR and now several other law schools, have started to go in for elective programs, is that it might be worthwhile to look at the possibility and potential of elective programmes. What is it that we can be doing there? Exploring interdisciplinary courses, wherein the law and other courses join in to deepen understanding and bring in resonances in how we teach. For example, we teach criminal law not by focusing on the constituencies of criminal law but on the norms and rules of criminal law. It is a very normatively-driven course. If it was a sociologically-driven course, we would see who is the primary constituency of criminal law and within criminal law, we would see the difference between white collar and traditional crimes. Again, if we were to do a course around death row victims, we would be compelled to see the class dimension of punishment. If as part of family law, we were to do an additional course, looking at what happens when the normative system does not provide for matrimonial property and has fault-based divorce, who are the people who pay the highest costs for such like organising of matrimonial relations? I think when you were studying Law and Poverty at NALSAR, we used to do a reading called the “New Poor”, where we used to look at how women were impacted by an unfair matrimonial law.

If one starts pulling out threads from mainstream courses, it is actually possible to run an entire stream which looks at the counterpoint. For example, if we look at Corporate Social Responsibility and the manner in which it has become one of the biggest scams in recent times, we would also see how many NGOs have suddenly been set up with close affiliations to major corporate houses. There is a poverty question everywhere; it is for us to foreground it.

Ideally as a poverty teacher, I would want that every teacher takes up this exercise—which maybe is too tall an ask. But it is possible for those of us who are so inclined to create a cohort of courses, which provide an entire, strong alternative discourse to what we are teaching in the mainstream courses while pretending that they are neutral and not ideologically-driven. I would say, at least lift the veil and show the ideology nestled in those courses. For me, that would be a big strategy.

I agree with you that we may or may not get very many takers for this alternative scheme. But in all our schools, we have one body of students that is disaffected from the mainstream and is looking to channelise their thought and energy. I think we should at least begin from them. It is extremely important for us to recognise that there is a political dimension to teaching Law and Poverty. It is the politics of the disempowered. If we want to shake the status quo, the status quo is not going to facilitate it for us. Strategy making has to come from the excluded. It cannot come from the included; they are not going to bring it in.

**Saurabh Bhattacharjee:** That brings up another concern that I had. While, as discussed earlier, fieldwork may not be possible within the confines or

structures of our existing course, how much space do you think is available to bring in experts and social movement activists into the classroom, and how well have you negotiated this? I found this a difficult challenge to address. While some of the interactions were remarkable, many such sessions were not adequately integrated with the rest of the course. What is your view on that? Is that something you have experimented with on an extensive basis?

**Amita Dhandra:** Well, I can only share one recent thing because we have a two-section system. I have a colleague, Jagtshwar Sohi, who is teaching the other section and has done a lot of close work on Niyamgiri. He looked at both the Niyamgiri litigation, as well as the movement-level work. He had done it in the form of a deep case study, so he shared his entire experience with the class as a parallel discourse. It entailed a discourse of what was happening at the ground, how the community was organised and what exactly their strategies were. Then they were talking in terms of the sacredness of the Hill and were discussing why Vedanta could not be doing what they were doing. Simultaneously, he was demonstrating to them how the Court was using the Amicus, or the Amicus was getting used, as a way of trying to counter the entitlements of the indigenous people in that region.

Now, because the movement undertook this constant exposé of what the amicus was doing, they were robbing the amicus of the institutional legitimacy which they otherwise possessed. Looking at this ethnographic material and the legal arguments, it became clear that it was necessary to have a media strategy, to have a division of tasks so that we know how the manipulations of the powerful need to be orchestrated, and how this orchestration should feed into the legal argument. By closely studying actual cases, we learn from our successes and failures and eventually even make an impact.

I have also found a lot of anthropologists who have spoken in terms of using case studies as materials which help concretise an iniquitous situation. Similarly, I noticed this while speaking with people about the whole Narmada experience—there was a big gap between what the *Andolan* was doing on the ground and what happened in Court. Shiv Vishvanathan has mounted a strong critique of the legal strategy in his Economic & Political Weekly piece titled “the Supreme Court built a dam”.<sup>8</sup> Vishvanathan points out how Prashant Bhusan only made highfalutin environment conversation. He only talked in terms of what the UN documents are saying or what environmental law required. He was not able to present the nuts and bolts, the hard realities of what happens when people are displaced. What is it that the displaced people are losing? The litigation, Vishvanathan contends, required a carpenter—someone who could tell the Court, this is how much they earn from their present occupations and this is what they

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<sup>8</sup> Shiv Vishvanathan, *Supreme Court Constructs a Dam*, Vol. 33(48), ECONOMIC AND POLITICAL WEEKLY, November 25, 2020.

would not be able to earn if they are displaced. An “international law requires this” argument will not work!

It is a very telling critique, but it is a sociologist writing about it. He is saying that the legal argument is not concrete enough for the Court to act on it. The judges cannot understand why anybody would not want the developmental choice that the State is offering, unless and until it is demonstrated in facts and figures to the Court that the developmental choices are *no choice* for the people to whom they are being given, in a language that the Court understands. Only if arguments are so mounted, do they have any chance to succeed. Rhetorical arguments or evocative language will not be taken seriously and just pooh-poohed as “being sentimental” or “impractical”.

To provide this concreteness, it is not necessary for all of us to be on the field. Such concreteness can be provided by drawing upon case studies undertaken by researchers from other disciplines but the connection between the empirical studies and the law can only be drawn by law persons. Shiv Vishvanathan is an exception. He is amongst the few sociologists that have closely engaged with legal issues, However, in general, if we have people from other disciplines look at legal questions, without engaging with the legal nuts and bolts that we as law people are continually confronted with, the empirical work has little legal impact and there is too much run-off.

**Saurabh Bhattacharjee:** Your reference to Shiv Visvanathan takes me to another anxiety that I have had over the years. While the course revolves around the intersection between law and social structures and policy and requires considerable engagement with interdisciplinary literature, how do we ensure that some of the fundamental legal questions are not lost sight of? Is there a danger that excessive use of materials from other disciplines may push the analysis of legal issues to the background? On the other hand, there is also an apprehension of the depoliticising effect of the emphasis on legal rights and remedies—an apprehension that has been articulated by several critics of the law and poverty scholarship. So, how do we navigate that tension as a teacher, and as a scholar?

**Amita Dhanda:** How have you been doing it?

**Saurabh Bhattacharjee:** I have gradually increased my focus a little more on the engagement of Courts with social rights around poverty. In the initial years I did not focus so much on concrete cases around social rights. In the first few years of teaching this course, I had placed considerably more stress on ethnographic accounts around themes of deprivation and exclusion. However, I began to realise that while it is important to begin with readings from sociology and political theory, especially in order to provide students with a more comprehensive understanding of poverty, it is also important to stay rooted to debates around social rights, adjudicatory processes and the interpretive approaches taken by the Indian

judiciary. As a result, I have begun to focus more on the rights-based approach to poverty, social rights adjudication, as well as statutory regimes on social rights. At the same time, as a teacher, one tends to wonder whether we are on the right path or whether we have ended up reinforcing what we started off to critique. So, your thoughts on this as teacher would be quite valuable.

**Amita Dhanda:** I would agree with you. I also started with giving much more stress on sociological materials or materials from other disciplines but later realised how their utility was limited if these other materials were not explicitly connected to concrete legal situations. Even if we have an entire discourse on equality and how people have experienced structural disadvantage and the manner in which it has been legally addressed, unless and until one can form some kind of a bridge between the other disciplines and law, the two bodies of knowledge become like parallel lines and students do not know how the understanding of one domain has to be transported to the other. The problem is that when we exclusively focus on formal legal materials be it legislations, judicial decisions and the the manner in which legal institutions have addressed these issues we feed into legal insularity. It is important that legal understanding is subjected to a social critique. Thus, for example, when a Justice B.N. Kirpal refers to slum dwellers as pickpockets,<sup>9</sup> when doing the judgement we should not be content with examining the judgment as legal discourse alone, we need to also introduce our students to readings which delineate what *causes* slums, and how they are for many the only affordable housing, after introducing this social situation. We have to look at the legislation and the manner in which it addresses the ground situation and then point out that this legislation is going to be interpreted very often by a judge who comes from a privileged background and the fate of this slum dweller is going to be written by this judge if he is able to reach Court.

Chhatrapati Singh in his very powerful book “Common Property and Common Poverty: India’s Forests, Forest Dwellers and the Law” makes an important point which we need to appreciate. He points out that legislations relating to poverty, or which are trying to “uplift people”, rarely go to Court as the persons affected by the rough end of the stick in the implementation of the law do not have the wherewithal to move Courts.<sup>10</sup> These legislations are therefore executive-administered legislations; they are not Court-administered. At the same time, we know in every other area of law, the nuance in the law comes from adjudication. Just look at the extent of nuance we have, say, in tax law? This is because every time an assessee finds something disadvantageous in the law, they go to Court. We do not get a similar experience when it comes to poverty law. Legislations relating to the poor do not undergo a similar fine-tuning, as the poor do not have the resources to move the Court. Consequently, the legislation is implemented only in accordance with the administrator’s understanding.

<sup>9</sup> See *Almitra H. Patel v. Union of India*, (2000) 2 SCC 679, ¶14.

<sup>10</sup> Chhatrapathi Singh, *COMMON PROPERTY AND COMMON POVERTY: INDIA’S FORESTS, FOREST DWELLERS AND THE LAW* (Oxford University Press, 1986).

Second, if it goes to Courts, and then encounters a Kirpal saying that these are pickpockets, the matter gets examined from the lens of prejudice, not law. Or let us look at Olga Tellis, what did it decide? It spoke about the intrinsic value of natural justice but held the pavement dwellers were not disadvantaged due to the absence of a hearing by the Municipal Commissioner because the Supreme Court has heard them aplenty. Olga Tellis did not apply its own standard of natural justice to the case before it. It spoke of a constitutional right to livelihood and had no problem with the deprivation of the right to the petitioners who were before it. What then is the ratio of the decision or where is, as Baxi keeps saying, the exercise of judgment? If these prejudicial pronouncements are accorded precedential status, then the already deprived are going to be continually disadvantaged.

And if I want to change that precedent, from where am I going to get my material? Nandita Haksar extensively uses the affidavit as a strategy. When she files petitions, she has various people who are affected by the rough end of a law to swear first-person affidavits. She collects them and annexes them to the petition. It's her way of getting the discourse to change. Unless and until we learn how to inject the reality of the poor into the mainstream system so that people who occupy authoritative institutional positions have to engage with it, we are not going to be able to alter very much.

We have to assist our students to think how they will find space for the lived reality of the poor? If they have to incorporate that reality into a legal petition, how would they do it? If they are only be going to rely on case law which is anti-poor, they have lost the battle even before it has started. How do we teach them to subvert the traditional rules of reading case law and legislations so that they can advance the cause of the disadvantaged? Shruti Pandey describes it as creating a toolbox for human rights lawyering.<sup>11</sup> The re-writing judgements project is another strategy to provide voice to excluded groups. The project will require us to ask, "If we have to write the judgment from the standpoint of the slum dwellers, how will we do it?". Even the Forest Act judgement you were referring to where the Supreme Court in a petition filed challenging the constitutionality of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2005 order the eviction of lakhs of forest dwellers by sleight of hand, dispossessed lakhs of people. It would be pertinent to ask whether the Court expressed an opinion or issued a binding order? Sometimes a technical argument may be more effective than a sociological one, and whichever argument advances the case of the disadvantaged should be used. We cannot stop using sociological and the ethnographic material, nor should we abandon legal argumentation. The bigger challenge is how to harmoniously or imaginatively use them both.

It is not possible to cover all relevant cases or every area of law. What may be a feasible strategy is to intensely teach one or at most two, case studies.

<sup>11</sup> Shruti Pandey, Associate Professor at Jindal Global Law School taught a human rights course at NALSAR titled "Tool-box for 'Maximum' Lawyering".



These should change from year to year, depending upon what is most relevant in that year. Last year at NALSAR we studied demonetisation as an example. We studied the RBI Act, and the notifications to look at what was permissible by the law and joined this to the wealth of ethnographic materials which narrated how demonetisation impacted people. Subsequent to this, the core inquiry of the course was raised: is the law impoverishing or not? We also deliberated on the adequacy or inadequacy of the technical argument and asked, “What would have been a stronger argument? What should the Court have done?”.

We should not ignore core legal materials but we need to inject other knowledge into legal materials. For instance, just based on the RBI Act, we could look at the argument that Indira Jaisingh was making that the statute only allows a series to be demonetised and not an entire currency, and how a promissory note cannot be demonetised—these are *pakka* legal arguments. Along with these legal arguments are the narratives of people who have saved cash for different purposes but have been left high and dry by the policy. Is the government’s withdrawal of the currency a breach of legitimate expectations? Is it usually said that there is no estoppel if an illegal promise is made? Can a promise be broken by acting against the law?

It is important to understand that the exercise is illustrative, not comprehensive. The effort is aimed to show how to build critique which is not information driven, but analytically informed. I would suggest a maximum of two or three examples to be attempted in a semester. Like right now, the pandemic can become an example for how it has impacted not just the migrants but also women, people with disabilities, and a whole range of people who have been impacted by the pandemic very differently from others. Because everybody has experienced the pandemic, there is an emotional association that can be drawn upon to deepen learning.

**Saurabh Bhattacharjee:** Before we open up the session to the students who have been patiently listening to us, I had one more question to ask. The trigger for this question is the recent order of the Supreme Court in *M.C. Mehta v. Union of India* directing the demolition of an estimated 48,000 houses.<sup>12</sup> This is a challenge I suppose every law teacher, and surely even some lawyers, are confronted with. At this moment, when the Supreme Court of India appears to have so visibly abdicated its core constitutional duty, when even the pretence of rule of law seems to have been given up and when, as you said, positivist adherence to black-letter law itself has become a virtue, how do we reconceptualise our roles as teachers when we walk into the classroom? At a time like this, there are days when one cannot but begin to wonder whether law has retained its relevance as a source of protection for the vulnerable. How do we adapt ourselves to such a changed sobering reality?

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<sup>12</sup> *M.C. Mehta v. Union of India*, (2004) 12 SCC 118 (Order dated August 31, 2020).

**Amita Dhanda:** My response to you will be very celebratory of the academic. I feel that we have just not given enough significance or importance to what we as legal scholars can be doing to contribute towards both the understanding of law, as well as towards changing it. And possibly, we are the only ones who can criticise the Supreme Court and say, “Well this is what the Supreme Court has done? This is not acceptable”, and why it is not acceptable. When we say the Supreme Court is supreme but not infallible, it is important for us to demonstrate their fallibility. Because Saurabh, it’s not “Oh, the Supreme Court is doing this, what can we do?”. It is more like, “Okay, the Supreme Court of *today* is doing this”—and it is *our job* to vocalise that the Supreme Court’s actions are wrong or unjust and list out the hundred *ways* in which it is so. I know that maybe as people who are not immediately disadvantaged, we cannot do as much; but if we understand an unfairness to be an unfairness, then we should come back to change it. I think that as teachers, it is our role to do so. We do not depend for our livelihood on the Court the way in which a lawyer does. A lawyer cannot vocalise dissent and anger against the Court the way we, as academics, can always do. To be talking and developing legal scholarship—I would encourage all the students who are sitting here to remember that in legal scholarship, you have the power of the pen! When you write your case comments, how you write them and what you write in them matters. We do not simply write about the Honourable Supreme Court and its Honourable judges and what have you; they jolly well have to *deserve* their honour and their learnedness. If they do not, then we expose that. I think we have just been too deferent in our legal scholarship. If we do not know how to question and haven’t learnt how to dissent, then we cannot possibly bring in change. Why is it only the Court’s responsibility to bring in that change? I think it is as much our responsibility and it is not just that we teach our students what the Court has held, we also teach them how wrong it is, and why it is wrong, and what is the right way of doing it. All that has to be a part of our teaching. And if that is part of our teaching, our work is never over. And it is definitely not dependent on how well or badly the Supreme Court is doing its job. Also, you know Saurabh, sometimes we tend to spend a lot of time looking at everything the Apex Court of this country has done wrong; I think we need to spend more time looking at what the High Courts and other subordinate Courts have done *right*. It is important for both of these to be a part of how we teach and what we teach. And to encourage our students to realise that the Supreme Court has got it really wrong, ask them if they were to re-write the judgement, how would they do it? I think that we need a lot less deferent students.

**Saurabh Bhattacharjee:** Yes, and less deferent teachers as well! I suppose in this moment, our role is reinforced by the failures of the judiciary.

**Amita Dhanda:** I agree. For any democracy, it is a matter of survival; it is okay to say that we have lost it today, but we should also think of how to counter it. Look at the way the Court has been handling the quarantine rules, and the manner in which they were handling the issue of migrant workers from a point where they were not even willing to touch the migrant issue with a bargepole, they

moved to proactive intervention. That consistent and constant criticism of their actions caused them to do something. Even in the Prashant Bhushan case, public criticism helped. It's a different thing that we can still argue whether that one-rupee fine and his acceptance of it was an acceptance of guilt or not; at the same time it's also true that in difficult times we have to make *wise* decisions, and martyrdom may not be a wise option. My only point is that we should not downplay the importance of public criticism, and definitely not downplay the importance of scholastic criticism, because when scholars criticise the Court, it is more difficult for them to stomach it. If we do not want to acknowledge that we have a certain power, and just want to play it safe, then we cannot blame the Court for it. It is a choice we are making.

**Saurabh Bhattacharjee:** And it is not just a matter of power, rather it is our duty as academics. Thank you, Ma'am. Now let's open the discussion to the students and see what they have to say. Devashri, would you like to coordinate this section?

**Devashri Mishra (Student):** Yes Sir, in fact, we were just discussing our questions, and we have quite a few to ask. Anoushka, would you like to go first?

**Anoushka Soni (Student):** Yes. Ma'am, we are currently in our fourth-year, and we are learning Law and Poverty now. Considering that we had Sociology in our first year and Jurisprudence in our third year, these courses in some ways—though maybe not in the same way as Law and Impoverishment—made us question the assumptions that you discussed previously. But by the time we get to our fourth and fifth-years, we do not have any other outlet remaining to question these assumptions. So having the Law and Impoverishment course at this point of time helps us have that outlet, giving us an opportunity in Saurabh sir's class to not be very jaded, at least in some spheres. Therefore, my question to you would be that, since we are closer to graduating right now, do you think having the course at this point in law school would impact our life later on more than it would have, had we done it in our second-year as a compulsory course?

**Amita Dhanda:** The entire conversation that Saurabh and I had was more about a systemic investment in making the Course mandatory. An elective course is—I wouldn't say it's speaking to the converted—but it's like getting yourself a good strong ginger group that is really interested in doing something. I am not seeing these as *either-or* strategies; in fact one of the responses I gave to Saurabh for strengthening the Law and Poverty discourse was in terms of multiple other additional elective courses to join with the mandatory course. In the mandatory course, when we teach students even if they are not interested, there is one kind of exposure from a very particular lens that we give them. Ultimately, we can have all the mandatory courses in the world, but if someone has a closed mind then there is not much anybody can do. I am only saying that some form of

systemic investments have their utility. But this is not to say that it is not possible for your elective course and what you are learning there, and what you draw from it, and as Saurabh said, the fact that you have already done constitutional law, jurisprudence and sociology provides the foundation to build a more critical kind of course, than say, what I am offering as a mandatory course. I was just giving the other side of the picture in saying that when we have a mandatory course, there is one kind of exposure which everybody in that batch gets. I would strongly recommend to include Law and Poverty as a mandatory course, and also have it as an elective course. But if we do not have it as a mandatory course, I would not say that it means nothing to have it as an elective—that is not what I am saying at all! I see value of another kind in an elective. I am only speaking of the kind of value we get in the mandatory course. I am not looking at these as either-or options.

But we also need to ask why is it that we cannot make Law and Poverty a mandatory course? This is a political question we have to decide—Curriculum making is informed by the politics of scholarship—Take a look at the Bar Council's list of mandatory courses and ask, "How many people in the country are impacted by these courses? Who are we addressing when we make a course mandatory?". This is what we were addressing when we were discussing, Anoushka, and not that your course is not valuable.

I am much too fond of your professor, and I know that anything he does would be of high value—I am willing to sign an affidavit to that effect anywhere. He is an amazing teacher and his course would be so!

But the question I would want you all to think about is: Why can't we make Law and Poverty mandatory? In a poor country, where the laws affect so many people, why are we *all* not made to study it? Why should only the ones who are committed to the issues covered by the course study it, when everyone, irrespective of where they are going, will make decisions which will impact the poor?. We have gone into an entire lockdown, forgetting that there are this many people in the country that do not have homes. So we are totally blindsided, and that type of blindsiding requires that we are confronted with the fact of poverty. I did not say it to you then Saurabh, but this was a factor that significantly influenced us in making Law and Poverty a mandatory course—that in a poor country, no one should be allowed to be a lawyer without engaging with the impoverishment question.

**Devashri Mishra (Student):** Thank you so much ma'am. We will move on to the next question. Aswathi?

**Aswathi Menon (Student):** Thank you Amita Ma'am and Saurabh Sir for that very enlightening talk. As someone who has taken the Law and Impoverishment course, I think it was one of the most important courses I took in law school. I definitely think that it has changed the way I want to practice my career in the future. While the talk was going on, Saurabh Sir mentioned how

our approach to adjudicating these problems does need some rethinking from our side, especially with respect to the rights-based discourse, but how in the end we do ultimately rely on these rights themselves. In light of the current position of our judiciary and how they have been hostile towards granting these rights to our citizens, do you think there should be any difference in the way the course approaches these questions? Do you envisage to give an answer to these problems while teaching the course?

**Amita Dhandra:** I do not know how Saurabh sees it, but I do not see giving answers to my students on anything as a part of teaching them. Finding answers is their work, my job is to give them good questions. On the other hand, from the point you were making about the Courts and the entire jurisprudence of seeking remedies for rights from the Courts—that has taken a bit of a knocking at this point of time. That is why, to the last question that Saurabh asked me, I said that it is important for us to say that this is *one route* for seeking remedies, but it is not the only one. There is a large amount of work that people have done in relation to the legal resources approach which Clarence Dias speaks about. You can be a lawyer, or a law person, who is a part of a movement; who helps the movement but does not take it over; who is driven by the movement but does not try to drive it as a professional. For us to then think in terms of devising fresh remedies or another way of doing things—the Court System is a western liberal approach which has given us this *one way* of trying to address the whole issue of rights—there are a lot of indigenous solutions that people have devised, and there is an entire strength of the movement and how it ekes out something from the political system, not from the adjudicative system. At least an awareness of those strategies is a very integral part of how we function as law people.

It is a fact that we as law people, actually believe that we have the solutions to all problems—we discuss any issue for a period of time and someone amongst the student body, or amongst colleagues, will raise their hand and say, “But what is the solution?”. We want that immediate fix-up and an instant solution to something which is so endemic. It requires much more reflection and more breaking of head and heart. One needs to be telling people, “Listen, you need to break this down, recast things and try to think in a fresh way”. That’s how I would see it. I agree that Courts, and going there and trying to obtain a solution, has been *one* of the ways in which we have thought about guaranteeing rights. I think what we need to do is to go back to the drawing board and start to say, “This is only one of the ways, what are the other ways that we can think of?”, and start talking about that. Saurabh’s exercise—the entire experience with the other media people—I thought that was a very powerful strategy, in terms of opinion making and to see what can be done. This too is a way of obtaining remedies because you are investing in attitudes and investing in finding more localised solutions rather than going to the Apex Court of the country and obtaining some directives, which are then impossible to implement.

**Saurabh Bhattacharjee:** Thank you. Working in a larger human rights advocacy organisation was an incredibly valuable lesson for me as a young lawyer. That stint imbibed in me the perspective that legal instruments are only a part of the wider panoply of mobilisation and advocacy and strategies that can be used. Coincidentally just this afternoon in our Law and Poverty class, we discussed Ms. Srilatha Batliwala's piece, "When Rights Go Wrong" where she critiques the fetishisation of the rights-based approach.<sup>13</sup> Indeed, we cannot exclusively focus on legal institutions and the rights approach. The rights-based approach and legal advocacy must be situated within their wider socio-political context and aligned with other instruments of campaign and advocacy. I think that is a lesson which must be driven home not just while teaching Law and Poverty but in every single course, for that matter.

**Amita Dhanda:** I absolutely agree. Saurabh, the thing that we were discussing in relation to *Narmada*—I really think that they did not think hard enough before they decided to go to Court. Because you sell this remedy so much, that when faced with a problem we just by reflex decide, "Okay, let's file this public interest action and go to Court." I feel that is only one of the strategies.

**Saurabh Bhattacharjee:** *Narmada* also came during the hay days of the PIL where all of us saw the Supreme Court through a much more rose-tinted lens, in comparison to now.

**Amita Dhanda:** It is a point which Baxi makes somewhere. He says that after all, PIL at its best is only an institutional revolution and you cannot expect an institutional revolution to demolish the institution of which it is a part.

**Devashri Mishra (Student):** Thank you so much. Arjun, please go ahead.

**Arjun Singh Rana (Student):** Yes. Hi Ma'am, hi Sir. I am in my fourth-year and I also take the course of Law and Impoverishment. My question to both of you is with regards to the palatability of the Courts to all political views. As much as I agree with most of the literature in our course outline—at least for NUJS—being left-heavy, considering that outside our microcosm the pendulum has swung the other way for sure, do you think that it is feasible or desirable to give some space to centrist and conservative thinkers who have opined on poverty to give a veneer of neutrality as well as engage with the other side, even if just to refute it, or do you think it is going to affect the ideological purity of the course to allow for Shekhar Gupta to say things like, "Give poor people food and money, rather than rights, that is all they need to live"—something that Saurabh Sir also mentioned in one of his classes. So, what do you think about that, or do you think that the time constraints of a course also do not allow for multiple views to be

<sup>13</sup> Srilatha Batliwala, *When Rights Go Wrong – Distorting the Rights-based Approach to Development*, Seminar 569, 89 (2007).

entertained? And what is your opinion on engaging both sides, or do you think that there is no time for neutrality in our country anymore?

**Saurabh Bhattacharjee:** One response to this is that it would be an intellectually dishonest exercise to claim neutrality when the course has explicit ideological underpinnings. At the same time, we strive to embrace a wide gamut of perspectives while also trying to critique the dominant perceptions that we inherit from outside the classroom. Students walk into the classroom with a baggage they acquire from the mainstream media and the popular discourse on themes like displacement and land acquisition, regulation of informal work. The course seeks to provide them with an alternate perspective so that that baggage can be slowly unlearned. I also agree with you on how the quest towards providing space for multiple perspectives has to confront the constraints of time. But interventions and queries by students often assist in extending the ambit of the course to many new perspectives. Indeed, a lot of alternate perspectives arise from the students' queries because of the learning they have had over the years from mass media, and from the *Shekhar Guptas* of the world. The readings and class discussion become an arena for engaging with those perspectives. If that makes the course ideologically slanted, as I said earlier, I don't think that there is a need to be defensive about that. Indeed, we should ask why such imputations should be made only about a course on Law and Poverty when the entirety of law school curriculum is suffused with ideology.

**Amita Dhanda:** Well Arjun, the way I would say it is this: there is an entire critique on why it is problematic to be having pro-poor policies or programmes or schemes, and people will tell you, especially in the context of slum-dwelling, "Oh, you have these rehabilitation programs, so you will give them a piece of land and they would be selling it off, and again be standing in the queue for rehabilitation, and that is why it is only teaching people to be lazy, or teaching people to be dishonest, or to be exploitative." You have a large volume of writing which is anti-poor. Now to use that writing as the other point of view, and to question that writing and to say what is wrong with it are different things. I always bring in the entire culture of the poverty argument, where people speak in terms of the poor being poor because they wish to be poor, that it is their fault that they are poor—If you do not address why that way of looking at poverty and the poor is faulty, then I think the Law and Poverty course fails. So what is the extent to which we have to engage with people who put out these arguments, I would see that as an integral part of how we teach Law and Poverty. But when you speak in terms of neutrality, Arjun, then it becomes like the people who make these arguments are *right* in taking those positions, or correct in taking those positions, and hence we should present them in this 'neutral' and 'objective' manner. I have a problem with that position, because the moment we start making such concessions then we could have justifications for using torture in certain kinds of situations, so exploitation is justified, injustice is justified—if that is the demand of objectivity or neutrality, then I would say that let's throw objectivity and neutrality out of the window.

However, if you are saying that for us to take defensible and winnable pro-poor positions, we need to engage with the anti-poor positions, that is a different ball game. I don't know which of the two options you are advocating because if you are saying to engage with the anti-poor to really understand what they are saying in order to learn how to counter it in a proper, systematic manner, then I would agree. But to say that they have something to say and let's give them also a chance to, I have a problem with that. I really, really have a problem with that. It's like you are boxing yourself into a corner, and I think people need to be shown up for the shameful stances they take.

**Arjun Singh Rana (Student):** I am saying the former, which is that you engage with their arguments solely to destroy them.

**Amita Dhandra:** Yes, I would agree with you. I'll give you a quick example. I have a powerful reading on Universal Basic Income, and now post the pandemic, almost every sensible country is beginning to look at Universal Basic Income as a way of countering extreme situations. You cannot really do Universal Basic Income without looking at Parijs' first book, where he looks at what is wrong with a free lunch.<sup>14</sup> The book was structured in a manner where he gave everybody who thought of whatever was wrong with Universal Basic Income as much space as the ones that agreed with him. So, the agreement and disagreement both came on board. Such like engagement is desirable. But if we have a Shekar Gupta, not giving respect and dignity to a fellow being, that is not something I agree with. It is similar to people saying that if conditions in jail were to improve, then everyone would be wanting to go to jail—I mean, what are we talking about! If I were really to give you five-star treatment for going to jail, would that make you willing to go to jail? It is that kind of a question. When people make offensive and horrible statements, those statements need to be demonstrated as offensive and horrible. We cannot legitimise such utterances in the name of objectivity and neutrality. But yes, we should learn how to engage with people that disagree with us so that you can answer them properly, and also to recognise how all of us have been hard-wired and where this hegemony stems from.

Hegemony is where we have consented to thinking of the poor in a certain manner. We can't really question that hegemony without deconstructing it, and seeing from where it is arising. If that is what you are asking for, both Saurabh and I will agree with you. But, if you are saying let us also treat it as one opinion, then I will say this is one opinion which I refuse to give any legitimacy to and I would scream from rooftops to say that people who think in this manner should be ashamed of holding such opinions. I have no problem in getting my students to be very defensive about their anti-poor views, and that is one of my reasons, for pressing for a mandatory course. A mandatory course is not singing to the choir.

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<sup>14</sup> Phillippe Van Parijs, *WHAT'S WRONG WITH A FREE LUNCH* (Beacon Press, 2001).



**Devashri Mishra (Student):** My question does not have to do with the pedagogy of Law and Poverty *per se*, but rather to do with what we are studying with Saurabh Sir right now, which is Srilatha Batliwala's piece in the India Seminar. She discusses the appropriation of social movements by activist lawyers, activist judges, and how cases often leave behind the concerns of those who were actually intended to be the beneficiaries of these laws. Now, I think you mentioned a lawyer who takes this approach of building her case around the affidavits of people who are affected by, for example, land acquisition. Would you think that this way of centring narratives of the people in a rights-based approach is enough of a measure to make the start? We have, of course, discussed examples of PUCL as one way of doing so, which is that of using a campaign, a ground-level fact-finding body, and so on which results in a more collaborative approach. That of course, may not be a model to follow in every matter of socio-economic rights adjudication; but do you think what you're suggesting is an alternative way, or are there any other alternatives that you could see as resolving this critique of the rights-based approach?

**Amita Dhanda:** Well, I do a reading in my course Devashri, and even though I disagree with the author as an individual, I do find their argumentation to be worth looking at. It is that of Clarence Dias, who talks about the legal resources approach, and amongst the things he very strongly says to lawyers, is that you have to un-seat yourself, you are only facilitators, not decision-makers.<sup>15</sup> So when you give affidavits of people, you are still in the driving seat. You may provide them resources and tell them that these are the possibilities within the law, and these are the downsides within the law, but the final decision of what has to happen and how it is to happen has to be with the people and cannot be with the lawyers. If you look at the history of the Right to Information Act, and especially the bottom-up movement that started in Rajasthan—the reason they asked for the Right to Information Act was because they suddenly discovered that the muster roll was putting them down for having done some work for which they had not received money, or for having received money when they had not done the work. So they realised that this was happening because they did not know what was being included in the muster rolls and this power imbalance could only be corrected if the secrecy surrounding the muster roll was abandoned and they had access to the muster roll. Unfortunately, the way in which we think of the law is that we believe that lay people or people actually affected by a problem do not know how to resolve it and that we know better. What we land up suggesting to them then is, whatever the law permits them. We tell them, “This is what the law gives to you, and this is how you need to present your case to obtain it from the law.” The option that, “If this is all that the law gives, then let us chuck the law”, is not even considered, that unless and until the law starts to re-work itself to give us what you require it is not worth engaging with the law. If we look at the entire struggle they went into getting the RTI Act, we find it to be a struggle of people who knew what

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<sup>15</sup> Clarence Dias, *The Legal Resources Approach* in FOOD AS A HUMAN RIGHT, 175 (Asbjorn et al., eds., 1984).

they wanted from the law and having obtained it, they unflinchingly defended any efforts to dilute the legislation. Compare this situation to the Right to Education Act, and a totally different discourse emerges.

One statute was driven by the people and one, was driven by the experts. The experts actually thought that if the Right to Education is transformed from a Directive Principle to a Fundamental Right, all problems associated with the provisioning of education would be sorted. Similarly, twenty-five percent reservation for people from educationally backward classes was seen as game-changing. The RTE story shows what happens when we try to usher change only from the law without having the grass root movement to back it.

Just undertake a random assessment of the cases filed under the Right to Education Act, Devashri. How many people have filed for getting the entitlements promised under the Act, and how many people have filed to wriggle out of the obligations placed by the Act? If we have more cases where people want to get out of the obligations, then evidently we did not succeed in making the unequal playing field into a level playing field; the privileged people literally hijacked the entire statute and its jurisprudence. The largest amount of case law has come in against the twenty-five percent provision, or by the minority institutions claiming that they do not have these obligations. One can barely find cases where the Court was moved to enforce their right promised under the Statute and the petition was successful. Whatever good work has happened under the Right to Education Act—and I'm giving you this as a good strong example—has been by people who have worked from the ground-up with the parents and the school management committees. They have worked out at the school level to determine how the school management committee was going to reorganise the school and transform it into the kind of a school which gives inclusion to all manner of students. They are not going to a Court, they are handling it in their own school, and they are looking to formulate rules, regulations and notifications that help in realising the mandate of the statute without going to Court. This bottom-up approach has been adopted to ensure that children are in fact in school and the school is functional. The point is that if we want a functional school we get involved into the management of the school and take things in our own hands.

We do not study these productive examples, instead, we keep engaging with a Court which has an inflated ego and often limited understanding. I think it's about time that we start thinking of rights outside the stranglehold of judicial review.

**Devashri Mishra (Student):** Yes, Ma'am. I think especially what you said about the Right to Education Act has given me a lot to think about. Saurabh Sir, I was wondering if you wanted to say anything before we conclude?

**Saurabh Bhattacharjee:** I think I agree that there is a role for other institutions beyond Courts when it comes to social rights; since rights are not merely legal instruments, but also political commitments. And those political commitments can be leveraged through not only Courts, but a whole variety of other strategies. Indeed, this conversation has constantly iterated that legal rights are only a part of a larger gamut of institutions that can be used. Nonetheless, it is vital for lawyers and human rights advocates to appreciate that they are not the prime drivers but actually only facilitators who are trying to enhance the realisation of certain rights on behalf of the most directly affected constituencies. Rights advocates have a duty, as part of their professional and also political responsibility, to ensure respect for agency and autonomy of the direct stakeholders and the affected groups. Empathy and sensitivity are an essential part the professional armour of all lawyers involved in rights adjudication. There is a need for greater sensitivity towards the power dynamics involved in the relation between the lawyers and the movements and peoples' organisations. That is something which cannot be over-emphasised at all.

**Devashri Mishra (Student):** Yes, sir. Completely agreed. I think this gives us a lot to think about the way we will practice the law going forward and I do hope that everyone has had as much of an experience during these past two hours as I have. I think one of the privileges of studying in a National Law University, in all recognition of my privileges, is to be able to interact with teachers like the both of you and this whole talk has been an example of that. Ma'am I must say, I think that when we sent that mail to you inviting you to write for the Law Review back in the summer, we were so happy when you agreed and I am so delighted that it turned into this. I think others at NUJS have had the chance to interact with you as well. We just had a brilliant time tonight and I cannot think of a better use of a Saturday evening. That is all from our end. Thank you so much for doing this.

**Amita Dhanda:** Thank you so much, Devashri. I am really appreciating the fact that NUJS students are imaginative, such that when an idea is given, they know exactly what to do with it. Thank you very much.

**Saurabh Bhattacharjee:** I join Ma'am in thanking Devashri and the entire Law Review team for taking up this initiative and also getting it organised. Thank you for organising it. I can surely say that I have a lot to take back from this conversation and think back about what we can do and improve our course. This was an overdue conversation. Unfortunately, there is not enough institutionalised space for such dialogue between faculty who are teaching such courses, and I think I really have enjoyed this and learnt a lot from this conversation. Thank you, Ma'am and thank you to the entire Law Review team.