

Programme Report

SE- 19: TRAFFICKING IN PERSONS PHASE TWO: CURRICULUM DESIGN AND FACULTY DEVELOPMENT (TOT), FEDERAL JUDICIAL CENTER, WASHINGTON, DC AND NEW YORK

December 12 - 16, 2022

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The National Judicial Academy (NJA), India in collaboration with the Central and East European Law Initiative (CEELI Institute), Prague and the Federal Judicial Centre (FJC), Washington DC which was supported by the United States Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) initiated the second phase of the judicial project that involved development and delivery of a training curriculum on human-trafficking for Indian judges. The said project through a series of training-of-trainer (ToT) workshops is focused on curriculum development and adult education strategies with the able guidance from international experts who aided to initiate creation of a unique human trafficking curriculum based on international good practices and Indian law, while refining the judicial educator skills of the participants (the "Working Group"). The first ToT session was a study tour conducted from December 12-16, 2022 at the Federal Judicial Centre (FJC), Washington DC and New York. The said workshop discussed challenges faced by judges while presiding over trafficking cases. The working group was introduced to curriculum development and teaching strategies. Over the next six months, the working group members are required to develop workshop content, refine their teaching skills, and prepare to deliver two programs for district/sessions court judges at the National Judicial Academy (NJA) in Bhopal.

Session 1

Program Overview

The opening session gave a comprehensive outline of the program by underlining the foremost components essential to the workshop i.e., primarily, to discourse, deliberate and critically comprehend the prevailing law and procedure with respect to trafficking in person. Secondly, to acquaint the working group to adult education and collaborative teaching approaches. Thirdly, to draft a schema for the impending workshops; and finally, assigning of curriculum development responsibilities to working group members. The session further highlighted that the purpose and objectives of the ToT is :

- ✓ To review human trafficking law and procedure
- ✓ To introduce and work upon adult education and interactive teaching methods and strategies by
 - engaging judges in the learning process
 - to make judges frontward in handling complex trafficking cases
 - to give judges an in-depth understanding of interactive teaching methodologies
 - how a judge should make his mind work while presiding over trafficking in persons cases
- ✓ To create a draft agenda
- ✓ To assign curriculum development responsibilities

The working group introduced themselves with a brief description of their legal and judicial practice. Including their experiences with human trafficking cases.

Session 2

Human Trafficking: Legal Issues and Human Context

This session emphasised discussing trafficking cases [different scenario] decided by courts across the globe with the idea to explore complex legal issues allied to trafficking cases. The first scenario for the discussion was based on *R v L [2014] 1 AER 113 (CA)*, in this case the UK Court of Appeal found that the defendant was a child victim of human trafficking and reversed the conviction, holding: “When there is evidence that victims of trafficking have been involved in criminal activities, the investigation, and the decision whether there should be a prosecution, and, if so, any subsequent

proceedings [must] be approached with the greatest sensitivity. ... The criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age ... but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual or group of individuals.” Some of the major issues that were highlighted are- what does the principle of ‘avoidance of re-victimization mean and whether judges can be pro-active in ensuring that re-victimization is avoided?

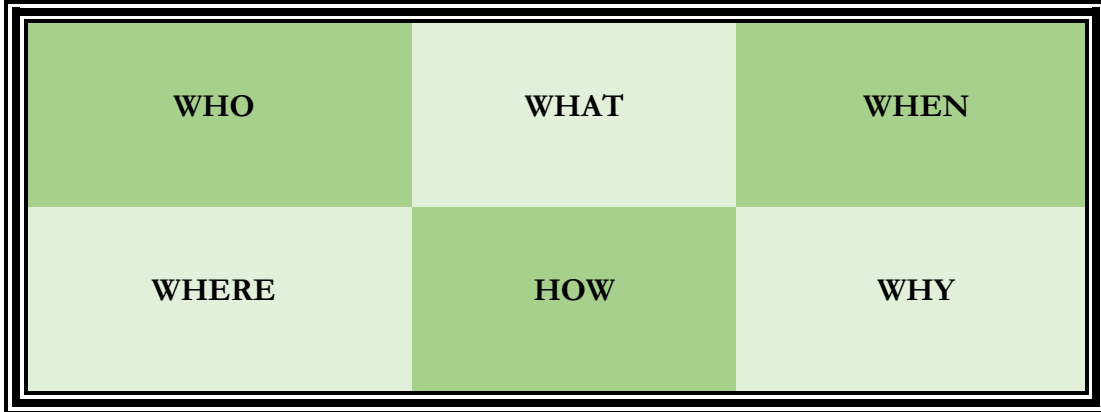
The second scenario for discussion was based on *State v. Kizer*, 403 Wis.2d 142 (2022), In *Wisconsin* the court held that - An offense is committed as a direct result of a violation of the human-trafficking statutes, “if there is a logical, causal connection between the offense and the trafficking such that the offense is not the result, in significant part, of other events, circumstances, or considerations apart from the trafficking violation, and the statute providing that affirmative defense creates a complete defense [Acquittal] to a charge of first-degree intentional homicide.” The third scenario for the discussion highlighted firstly, how does one negotiate contemporary forms of slavery in contexts where prevailing cultural practices that may clash with international legal norms? And secondly, does the state have an obligation to investigate involuntary servitude in communities?

Session 3

Trafficking in Persons: Review of Law and Procedure

The session provided an opportunity to the working group to review certain topics that were deliberated upon in the first phase of the workshop. Using the hypothetical fact pattern the working group brainstormed the path of trafficking investigation; evidentiary issues; cyber-enabled trafficking in persons; international cooperation in human trafficking cases and international standards and instruments involved. The various complexities of trafficking in persons as highlighted during the discourse are- different forms of trafficking; continuity of crime; contrast in schemes and victimization; overlap with other crimes like- internet crimes, violent crimes such as - sex offenses, threats, assaults, etc., fraud, money laundering, prostitution and labor violations; difficult to identify and most importantly difficulty in applying the laws.

While discussing the path of a trafficking investigation it was suggested that while developing leads in such cases judges should remember the -



On the other hand while identifying victims judges need to try and have the understanding of the information provided and its significance while encountering victims. Judges should also try and built a rapport with victims. To make the courts victim friendly it is important for judges to comprehend the allied facets of trauma-informed interviews that may include-

- ✓ Inconsistent statements
- ✓ Multiple statements
- ✓ Inability to remember important information etc.

Subsequently, various examples of corroborating evidences were also highlighted like-

❖ Cell phone data
❖ Online ads/websites
❖ Client lists
❖ Financial logs
❖ Statements from neighbors or employees
❖ Identification of another victim (pattern)
❖ Utility bills, receipts for rent payment
❖ Bank records
❖ Police reports from some prior interaction
❖ Immigration records from prior encounter with victims or traffickers

❖ Money remittance receipts etc.

The discourse further highlighted various evidentiary issues involved in trafficking cases like-

- ✓ Timing for gathering evidence
- ✓ Admissibility of victim testimony
- ✓ Uncooperative victims
- ✓ Unavailable victims
- ✓ Admissibility of impeaching evidence (both as to victim and defendant)
- ✓ Evidence obtained in foreign countries
- ✓ Presentation of evidence and electronic evidence

Some of the major challenges for judges presiding over human trafficking cases as stressed upon are- understanding the context of the crime, trafficking crimes take place over long periods of time - activities that occur at different moments in that timeline may tend to prove or disprove a trafficking case, overlap in crimes may create challenging evidentiary issues, maintaining an objective view of the information/evidence developed, to establish or refute the elements of the crime, identifying parts in the story that support the elements of a crime if the case is not presented well by the prosecutors and investigators, to identify whether any foreign evidence or other evidence is missing and most significantly to execute trauma-informed judging.

Session 4 & 5

Think-Pair-Share: Adjudicating Trafficking Cases & Report Back

These were pairing activity sessions in which the working group was divided in pairs of two. Thereafter, each pair was requested to discuss the legal, evidentiary, procedural, and technical areas that Indian judges must be familiar with when presiding over criminal trials involving human trafficking. Subsequently, each pair was asked to identify 3-4 potential workshop topics and record their list on the distributed paper. During the said activity the working group was required to keep the following adult education strategies in mind i.e. -

- ✓ **Competencies** related to knowledge, skills, values & evidence-based learning objectives related to professional responsibilities
- ✓ **Task oriented** which is relevant and practical to achieve goals

- ✓ **Engaged, active, self-directed learner** - Program “ownership”, experiential learning and facilitation not instruction

The three working hypotheses for the session were-

- ✓ Judges need a mix of substantive knowledge and process and decision-making skills
- ✓ Adults learn and retain knowledge and skills most effectively through interactive teaching methods and active engagement
- ✓ The effectiveness of workshops and faculty should be evaluated in relation to measurable learning objectives

Successively, all the working pairs shared their identified topics, the working group collectively culled out topics for the next session.

Session 6

Overview: What is Adult Education?

Needless to assert that “Judicial Education” being a form of “Adult Education”, the andragogy therefore, should provide judges the opportunity to gain mastery of essential knowledge, skills, and values. The session accentuated on the sharpening of the skill-sets, to enable them on the nature and professional traits necessary for being an effective judge. Premised on the fact, that judges are task oriented, self-driven, and very busy, the session focused on enabling them on judicial education to further enrich their capabilities in dispensation of justice delivery. During this session, the principles of adult education was reviewed. Discussions on the meaning of “judicial competencies,” and examples of “general competencies” for first instance judges were delved into. It was emphasized that competencies could be better analysed, understood, developed and internalized by focussing on a popular “KSV” or “KSA” model, wherein the acronym represents “Knowledge”; “Skill(s)”; and “Value” or “Attributes”.

It was asserted that while designing learning activities (particularly to educate adults and professions) the KSV or KSA models play an important role. Two popular says were relied upon:

- (a) One can take a horse to the well, but can’t make it drink water.
- (b) For organising ones desk, cleaning the clutter and reshuffling to suit needs and priorities are very important to optimize space effectively.

It was then explained that in case of (a) the management skill should work towards the end that, “one can make the horse thirsty” (meaning thereby creating a distinction between “what an individual learner has v. what (s)he needs”). The same could be done by employing myriad tools including effective communication, establishing the need using probing techniques etc. For point (b) it was asserted that for professional learning, adult education aggressively advocates for “de-learning”. The process neutralises the learning process from biases, prejudices, and stereotypes, rendering a clean space to prioritize essentials for specific skills or new learnings.

It was asserted that for defining and developing “competencies” (which is an art) using KSA two key factors may be understood:

- (a) Describing the “Associated behaviour(s)”, and
- (b) Anticipating the “Intended outcome(s)” expected out of (a) when used effectively and appropriately.

A brief inclusive matrix, exemplifying the above could be laid down hereunder:

Competencies	Knowledge (K)	Skill (S)	Value/Attributes (V)/(A)
Associated Behaviour	Law – Substantive & Procedural	Active Listening	Fair Treatment of all Stakeholders to <i>lis</i>
Intended Outcome	Timely & Soundly reasoned decisions, raises public trust on institution, reduces protracted <i>lis</i> , faster and conclusive reliefs reducing unnecessary appeals, etc.	Impactful framing of charges/issues, effective application of correct principles of evidence (law), controlling the trial process as a master of the court, fair and quick disposal, etc.	Ensuring “Rule of Law” through natural justice, foster sense of equity amongst stakeholders, foster sense of satisfaction of being fairly heard or treated by court, increasing chances of acceptance for the decision, raising institutional trust, etc.

Session 7

Competencies for Adjudicating Human Trafficking Cases: Brainstorm

The speaker initiated the session by focusing upon the core competencies in the domain of knowledge, skills and values which are required by the judges. It was stated that the judges require a mixture of knowledge of the statutes and decision making skills .Knowledge of the criminal procedure, evidence and penal code was categorized as integral for the adjudication of such cases. It was stressed that understanding of human behavior is also important for the judge adjudicating on cases of human trafficking. Subsequent to the deliberations it was highlighted that the following skills are vital for a judge i.e. creation of a comfortable environment for the victim; maintenance of a cool demeanor; case and courtroom management; framing of charges; sifting through the evidence of witnesses and experts. Further, certain traits which should be part of the value system of the judge were discussed which include sensitivity, empathy, moral value, fairness, compassion, independence and integrity.

Session 8

Case Management

In the session the participants analyzed a fact problem provided by the Federal Judicial Center and discussed the proceeding with the trial of the particular case. A case management checklist was provided to the participants and it was opined that it is important that tentative dates are fixed for examination of witnesses and other aspects of the trial. It was advised that a time frame should also be fixed for the case. In respect of the fact problem the deliberations encompassed various issues emanating from it including extradition and separation of trial in case of absconding of accused

Session 9

Trauma-Informed Judging

It was stated that traumatized victims interact with the court system in various cases which include trafficking cases; domestic violence; harassment; prostitution; sexual assault etc. and it is important that trauma faced by the victims is addressed. The various emotions/ feelings experienced by the victims of such cases include betrayal, loss of freedom, harm to reputation, helplessness which is further aggravated in instances of child trafficking victims. The harm inflicted in such situations normally include both physical and physiological harm. Furthermore the impact of the trauma in such

situations and resulting behavior of the victims were also discussed. It was stated that it is important that the trauma of the victims is stabilized through emotional and social support apart from therapy and medication. Regarding the perspective of the judge it was opined that the judge should understand the situation of the victims and that awkward responses by the victim showcase that they have impacted by trauma. It was stressed that the judges should comprehend that individuals interact differently to trauma and therefore they should undertake a victim centric approach. They should understand the impact of the crime on the victim which results in trust deficit in the judicial system or difficulty in recounting their ordeal. It was also stressed that there should be no re-traumatization of the victim during the examination and the judge should ensure that adequate protection is provided to the victim. The various powers of the judge and measures provided under the POSCO Act, 2012 to deal with victims were also discussed during the session.

Session 10

Order the Concepts: Small Group Activity

In the session the participant judges were divided into groups and shortlisted the themes from the topics which were identified in the earlier session by the groups. Subsequent to intensive deliberations and brainstorming among the participants and the faculty at the Federal Judicial Centre eight themes were selected and put in a chronological order which would be a part of the curriculum of the conference.

Session 11

Learning Objectives: Return to Groups

The session emphasised that a strong curriculum design is an internal structure based on learning objectives. These objectives reflect the demonstrable skills, knowledge, and values participants acquire during a workshop. Learning objectives also facilitate the selection and organization of course content and instructional strategies. This session enabled the working group to identify and distinguish the elements of adult education.

- ✓ Competencies [knowledge, skills, attributes]
- ✓ Content [what] and Process [how]
- ✓ Learning objectives
- ✓ Teaching Strategies [hypothetical, brainstorm, jigsaw]

At the conclusion of the session, the working group was able to prioritize the topics that are required to be included in the curriculum to be prepared. The group was able to identify the competencies as well as to distinguish between the different kinds of competencies. The group also identified the statutes and provisions that are required to be applied in cases of trafficking.

Session 12

The “What” and “Why” of Learning Activities: Jigsaw Activity

This was a “do it yourself” (DIY) session. As the session title would suggest, it was designed for the participants (in dedicated groups) to explore by “trial” and “feedback” process the appropriate utility of the various “learning activities” theoretically shared by the trainers in the earlier sessions. In this DIY exercise the comprehensive “*travaux préparatoires*” were shared and simulated in a controlled and adversarial environment. The suggestions shared by the larger group and the trainers were considered and taken back to the drawing board for increasing the effectiveness of designing, sequencing and drafting. The scheme of the simulation exercise was time barred and scheduled as under:

Groups had 30 minutes to:

- Select one workshop topic
- Identify the learning objectives
- Choose a learning activity to reinforce one objective
- Prepare to present to the large group:
 - The activity and learning objectives
 - Instructions, including time needed
 - Materials (flip charts, laptop, small tables, online tools)
 - Delivery of a segment of the activity

Each group was given 15 minutes to present its activity, and the other participants were observers and requested to offer critical feedbacks.

The session in addition also enforced the participants to:

- i. Intra-Group dynamics and virtues *viz.* coordinated working, taking the lead, appreciating collegiality, building consensus, sharing responsibilities, etc.

- ii. Defending, and constructively opening up and accepting critiques from external (other passive Groups and their members)

The sessional workshop, facilitated active participation to enhance learning and provide an opportunity to apply knowledge and practice skills.

Session 13

Curriculum Design and Planning

After the dry run session of DIY, a group activity including the trainers and the executives from CEELI Institute and FJC facilitated in enabling selection of final eight topics on which the participating judges would develop specific training modules to execute the series of ToT programs to the Indian judges in India. In this session was a culmination of assignment of specific topics to each participating judge. The assignment of the topics (pending final micro-level framing of the topics) is listed hereunder:

S.No.	Topic/Title
1.	Sensitization of Judges
2.	Media Relations
3.	Role of the Judge
4.	Human Trafficking: International Perspectives
5.	Case Management in Human Trafficking Cases
6.	Victims: Interaction & Support
7.	Evidentiary Issues
8.	Human Trafficking: Domestic Laws

Subsequent to a democratic assignment and ownership of the topical areas on Human Trafficking, the various stages involving the development of the specific topics were discussed. A review of the curriculum design process was done. Every action owner was required to ponder over and develop a program or session planning outline on their respective topics. Program/Session planning outline.

It was reiterated that the process of curriculum development includes many stages including:

- i. Assessing the learning needs of the target audience, wherein firstly the training has to be designed subsequent to the identification of the target audience. Example of such audience (in Indian scenario) would be geo-spatial *viz.* judges of the bordering States, in those States where incidences of kidnapping and abductions are recorded more, or States in which organ trafficking have triggered the alarm etc.
- ii. Developing educational objectives. This was examined as the second important activity after identification of the target audience and the ball park. It was reiterated that that the objective should be a “SMART” objective. Wherein, each letter of the acronym needs to be considered carefully while framing the educational objective *viz.* “S” denoting Specificity; “M” signifying Measurability; “A” indicating Achievable; “R” for being Relevant or Realistic; and “T” indicative of Time-bound. A smart educational objective must qualify all the above criteria. Moreover, the participants were requested to draft (in the next session) three such objectives using “active” verbs employing “Bloom’s Taxonomy” (i.e. Define, Identify, Explain, Interpret, Demonstrate, Solve, Report, Administer, Deduce, Produce, Conclude, Criticise, Rank, Test, Evolve, Develop, Formulate, etc.)
- iii. Designing “learning activities” to teach and reinforce the information being delivered, deploying a specific or a hybrid use of such activities, and
- iv. Planning program implementation by scheduling the contents, considering the logistics, and tools to be used including Power point presentation, check list, hand-outs, case law etc.

Session 14

The Action Plan

The last session delved upon development of an “Action Plan”. This had to be done by each participating judge on his/her designated topics. The session was only an initiation platform and had to be carried over by the participants in the next 15 days, to develop and submit an independent

“Program/Session Planning Outline” (PPO) to be uploaded at the CEELI website for further administration and development. A guiding template was circulated to capture structured input in a standardized format. The participants were required to design the PPO clearly identifying and arresting in writing the ideas under the following heads:

- I. Title of Workshop Session
- II. Duration
- III. Learning Objectives: (listing 3-5 objectives using “active verbs”)
- IV. Opening Statement: (2-3 sentences “opening statement” that describes the objectives for the session. The statements were suggested to be so framed such that they connect with the participants and preview the contents that would be addressed)
- V. Outline of Content: A scheme of presentation that will be covered during the session.
- VI. Learning Activities: (1-2 such “activities” suitable to cover the topic may be described *viz.*, brainstorming, break-out groups, role play, quizzing etc.)
- VII. Materials: List the materials needed for executing the session.

The filled-up document needed submission on a later date.

Study Tour

The study tour in Washington D.C. included a visit to the Supreme Court of the United States of America wherein the participants were apprised about the hierarchy and structure of courts at the federal and state level in the U.S.A. It was followed by a visit to the United States District Court for the District of Columbia wherein the contingent interacted the judges and discussed measures to deal with complex transnational cases.

The study tour in New York included the following visits and the participants interacted with-

- ✓ United States Circuit Judge of the U.S. Court of Appeals for the Second Circuit.
- ✓ Judge of the United States District Court for the Southern District of New York and briefed about the process of jury trial in the United States
- ✓ Attorneys and Officers from the U.S. Attorney's Office for the Southern District of New York involving sharing of practices followed in human trafficking cases in both the jurisdictions
- ✓ Observed trial proceedings in the United States District Court for the Southern District of New York