

Continuing Legal/Judicial Education in Pakistan
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Introduction:

Continuing legal education, in its formalized sense, is non-existent in Pakistan. Regrettably, there is no concern about its absence or realization of its need and utility for the profession and practitioners. This is also a disservice to the consumers of justice sector, who are being deprived of the assistance of qualified, able and competent legal counsels. Continuing judicial education also remained a neglected subject for long. It made a late entry in the judicial spectrum. This is so because of a false assumption that the basic qualifications and on-the-job experience is sufficient for judges and they require no more exposure to learning.

The lack of high standard law schools and the gradual deterioration in the quality of legal education in the country was noted by the Supreme Court in the case of *Pakistan Bar Council v Federation of Pakistan*¹. The Court bemoaned the absence of quality legal education in the country and observed:

The poor quality of legal education in the country is taking its toll on the Bench, the Bar and ultimately the quality of justice.

Federal Judicial Academy:

The Federal Judicial Academy (FJA) was established in 1988. It was initially set up under a Cabinet Resolution but subsequently given the requisite independence/autonomy through the enactment of Federal Judicial Academy Act 1997. Its primary aims/objects were the orientation as well as pre- and in-service training of judges, magistrates, law officers and court personnel. Having been in the field for a quarter of a century, the Academy has the unique distinction of being the sole continuing judicial education institution for professionals in the justice sector. It is one of oldest institution in the region, indeed Commonwealth countries, and has remained functional throughout, imparting training to thousands of officers/officials in substantive/procedural law, court/case management, budget and accounts and development of skills, character and aptitude. Limitation of space and resource constraint, coupled with the absence of organized/structured training programmes, hindered the growth of the Academy in assuming the stature of other sister training institutions in the country, like NIPA/Staff College for civil servants/armed forces. Since pre-service and in-service training has never been, and is still not, mandatory for confirmation or promotion in judicial service, those who attended the training did so casually, without putting their heart and soul in the acquisition of higher learning and professional skills.

The administration of justice being a provincial subject, the lack of interest in training by High Courts and non-availability of funds by the provincial governments, had the effect of judicial training remaining a neglected subject.

Consequently, whereas the FJA remained functional, nothing much changed in respect of improving training syllabi/courses and developing a core academic faculty of experts in the field of judicial education/training.

The situation, however, underwent a drastic change, in the aftermath of triumphant Judges Restoration Movement, with stress on judicial independence, observance of Constitutional norms/principles and supremacy of law. With the Supreme Court in the leading role, the provincial High Courts and Subordinate Courts geared up to improve performance and clear the backlog of pending cases. There was an increasing emphasis on integrity, professionalism and development of skills to deliver and perform better, so as to attain public trust and confidence in the administration of justice. And to modernize the legal system and enhance the efficiency of judicial administration, all the stakeholders of the justice sector, including judges, lawyers, law officers, etc were brought together through participation in national judicial conferences to formulate recommendations for reform. With the active cooperation of the bar, the National Judicial Policy 2009 was formulated and enforced. It was reviewed and further reformed through consultative meetings and conferences. Such developments had also the effect of setting up provincial judicial training institutions.

The Punjab Judicial Academy was established in 2009, followed by the Baluchistan Judicial Academy in 2010 and Khyber Pakhtunkhwa Judicial Academy in 2011. The Sindh Judicial Academy, even though set up in 1992, did not function regularly. It was only after the Judges Restoration Movement, when the Academy became fully operational and is imparting regular training since. The provincial academies are focusing on orientation and pre-service training, hence the FJA need not replicate the effort and has to chart out a new course for itself. Quite obviously, it has to concentrate on in-service training including education in modern laws and specialized disciplines and imparting training to other professionals in the justice sector like prosecutors, investigators, prison officers, law officers and lawyers, etc. Thus, the FJA Board of Governors in 2013, recommended to the Government for an expanded role in the area of continuing judicial education and the teaching of law. The Government accepted the recommendation. Thus, through a recent amendment to the Federal Judicial Academy Act 1997, the Academy has been converted/upgraded into Centre of Excellence for Law and Judicial Education. The aims/objects have been expanded to cover professionals, other than judges and court personnel, such as lawyers, prosecutors, investigators, law officers, prison officers and government officers. The scope of activities has also been expanded to offer graduate and higher degrees in law and judicial education. Currently, we are in the process of operationalising the Centre of Excellence.

Need for CL/JE:

For an effective and efficient system of dispensation of justice, continuing legal/judicial education is a *sine qua non* for lawyers and judges, the two key stakeholders in the justice sector. Just as gaining knowledge and expertise, is crucial for professionals in medicine, engineering and accounting professions, so is the acquisition of knowledge regarding modern laws and new principles of jurisprudence, vital for the practitioners in the legal profession. Continuing

legal/judicial education means and includes gaining excellence in comprehension of laws and attaining judicial skills and professionalism in the manner/method of dispensing justice, to the fuller satisfaction of consumers of the justice sector. Only an effective and efficient system of dispensation of justice can meet public expectations, thereby enhancing public trust/confidence in the judiciary. There is no alternative to gaining knowledge/wisdom for making progress/advancement in life. In the words of Lord Denning:

Just as castles provided the source of strength for medieval towns and factories provided prosperity in the industrial age, universities are the source of strength in the knowledge based economy of the 21st century.

International Obligation:

To seek effective remedy, access to justice from a competent and independent court, is guaranteed by international law, especially the Universal Declaration of Human Rights 1948² and the International Covenant on Civil and Political Rights 1966³. Several other international and regional human rights instruments provide for a fair and efficient judicial system to enforce legal claims and seek redress of grievances. In the same way, the Constitution of Pakistan also proclaims the independence of judiciary⁴, and its separation from the Executive⁵. It further obligates the State to “ensure inexpensive and expeditious justice”⁶. Ensuring inexpensive and expeditious justice from a competent court presupposes the possession of requisite qualifications, experience and professionalism by the practitioners of law. No doubt, such qualities can be acquired through continuing legal/judicial education. As stated by Justice Murray Gleeson, Chief Justice, High Court of Australia⁷:

The matter of competence covers not only possession of formal legal qualifications and knowledge of the law, but also an ability to conduct a hearing, to apply the rules of procedure and evidence, to control counsel and witness, to evaluate evidence and arguments, to make a sound decision, and to give adequate reasons for that decision. Nowadays, it also covers demeanour, sensitivity towards parties, witnesses, and even lawyers, awareness of human rights issues, diligence, and efficiency.

Judicial independence is an essential element of democracy⁸. Indeed, Lord Hailsham sees the independence of judiciary as a bastion against the absolutist theory of democracy.⁹ This is perfectly demonstrated by the example of democratically advanced countries and a few examples can be quoted from our recent history, when the independent judiciary took a clear stand on the Constitution and supported democratic dispensation as against any covert/overt attempt to undermine the same.

Good Governance:

Democracy entails a system of governance based on the doctrine of ‘separation of powers’ between the 3 state organs viz legislature, executive and judiciary, linked with the principle of ‘checks and balances’, so that no organ may ingress into the domain of the other. The judiciary acts as a referee to let each organ play

its role fully and effectively and watch against any encroachment or intrusion in its functioning. It is mandated to act as an impartial arbiter for settling inter-governmental conflicts and disputes between citizens or citizen and government. In the ultimate analysis, therefore, independent, impartial and competent judiciary operates as a bulwark against oppression, injustice, discrimination and acts as the guardian of fundamental rights and freedoms.

The stress for judicial independence and an effective/efficient judicial system has a purpose: the system of judicial administration has close nexus with good governance, maintenance of peace in society and socio-economic development. George Washington said over two hundred years ago:

The true administration of justice is the firmest pillar of good government.

Good governance has become the rallying cry of present-day democratic and other forms of government. It is indeed the stated objective of every constitutional dispensation. Nations, having established good governance, made phenomenal advancement and are enjoying today the fruits of its achievement in the form of economic growth, socio-political development, high per-capita income and the enjoyment of essential fundamental rights/freedoms including the right to life, liberty, property, equality and freedom of thought, expression, belief, association, profession, etc.

Genesis of Judicial Training:

Contrary to the imminent and pressing need of judicial training, progress towards setting up training institutes for judges and court staff has been slow and tardy. Thus, formalized judicial education is a relatively new development in the world. As against the life span of judicial administration, spanning over several centuries, judicial training programmes have had a short history. The beginning was made in the USA. The earliest example is the establishment of National Judicial College, Reno, United States in 1963. This was followed by the creation of Federal Judicial Centre at Washington DC in 1967, the Californian Centre for Judicial Education and Research in 1976 and the Michigan Judicial Institute in 1977.

In the European Continent, the Civil Law countries instituted training programmes quite earlier in time as compared to the Common Law states. This was on account of the fact that the Civil Law countries inducted judges from amongst fresh graduates, as compared to the practice in the Common Law countries, where experienced lawyers are appointed as judges. Indeed, in the Common Law jurisdictions, there prevailed a conspicuous distaste for judicial training. The judges mocked at the idea of imparting training to or educating the learned lawyers-turned-adjudicators. As noted by Justice Mason, Chief Justice of Australia¹⁰:

[In the past] new judges were expected somehow to acquire almost overnight the requisite knowledge of how to be a judge. Perhaps it was thought that judicial know-how was absorbed by a process of osmosis...One of the myths of our legal culture was that the barrister by dint of his or her long experience as an advocate in the courts was equipped to conduct a trial in any jurisdiction.

The importance of continuing judicial education is also stressed in the following words¹¹:

It would be easy, but intellectually lazy, to hold that the sole business of judges is judging, that all else is at least distracting and that accordingly a judge should avoid all non-judicial activities that might either be time-consuming or influence his opinion on matters that come before him... A judge is likely to be a better dispenser of justice if he is aware of the currents and passions of the time, the developments of technology, and the sweep of events. To judge in the real world a judge must live, think, and partake of opinions in the real world.

The prejudice against judicial training still lingers on at the level of superior courts judges. As a consequence, there are hardly any developed models of judicial education to imitate or programmes to replicate. Speaking of misconceptions about the programme of continuing judicial education, Catlin, the Head of the Michigan Judicial Institute, observed:¹²

Lawyers don't become good judges by the wave of a magic wand. Not even the best lawyers. To reappear behind the bench as a skilled jurist is a tricky maneuver. Going from adversary to adjudicator means changing one's attitude, learning and using new skills, and in some cases severing old ties. In many jurisdictions, judges must learn their new roles by the seat of their pants. In Michigan though, both new and veteran judges are trained extensively.

While the American experience set the lead in the field of judicial education, the other nations, including Common Law countries, followed suit. In a short span of three decades or so, there emerged a sea-change in attitudes, as many countries across the globe established judicial training institutes. In the words of Sallmann:¹³

[The increase in judicial education] might well be described without exaggeration as an explosion of activity in the field in the last decade.

This phenomenon led Nicholson to observe¹⁴:

Judicial education is now an accepted part of judicial life in many countries.

Objects of Judicial Training:

The National Association of States Judicial Educators in the United States published in 1993, the key principles and standards of judicial education. They defined the goal of judicial education:

To maintain and improve the professional competency of all persons performing judicial functions, thereby enhancing the performance of the judicial system as a whole.

They also outlined the objectives of judicial education:

To assist judges acquire the knowledge, skills and attitudes required to perform their judicial responsibilities fairly, correctly and efficiently;

to promote judges' adherence to the highest standards of personal and official conduct; to preserve the integrity and impartiality of the judicial system through elimination of bias and prejudice, and the appearance of bias and prejudice; to promote effective court practice and procedures; to improve the administration of justice; to enhance public confidence in the judicial system.

Judge William W Schwarzer, Director, Federal Judicial Center states that judicial education and training should cover the following 3 areas:

- i. Proficiency/competence.*
- ii. Performance/conduct of duties.*
- iii. Productivity/workload.*

He goes on to list the objectives of judicial education as follows:

- i. Imparting knowledge*
- ii. Improving skills and techniques.*
- iii. Establishing values and standards.*
- iv. Developing judge's sense of responsibility.*

Sandra E. Oxner, Head of the Commonwealth Judicial Education Institute, Halifax, Nova Scotia, Canada, states that the objective of judicial education is impartiality, competency, efficiency and effectiveness, which result in community confidence in the judiciary¹⁵. The overriding objective of judicial training is to attain highest professional standards for judicial office holders to perform better. Training helps promote their professional competency and capacity building to discharge judicial functions effectively and satisfying the requirements of consumers of the justice sector. This is the surest way to enhance public confidence in the justice system.

To establish and sustain a viable system of judicial education, Livingston Armytage prescribes 6 guiding principles¹⁶:

- i. Judicial Ownership – There is a doctrinal imperative for judicial education to be judge-led and court-owned, if it is to be successful in strengthening an independent and professional judicial system. This is best attained by securing the endorsement and support of the Chief Justice and Supreme Court from the outset.*
- ii. Faculty development Training of judges should wherever possible be by judges themselves to ensure authenticity. This will require an ongoing program of faculty development and train-the-trainer.*
- iii. Bench-specific focus – It is educationally most effective that training should be designed and delivered to meet specific needs of each court wherever economically feasible.*
- iv. Bottom-up and top-down strategies – Curricula should be designed to integrate distinct approaches which address the respective training needs of both judges at first instance and superior/appellate judges.*
- v. Consolidate judicial identity – All training endeavour should address the needs of judges and court administrators and, wherever appropriate and feasible, consolidate judicial identity by*

training all participants together, for example in case management.

- vi. *Centralised and regional delivery – Training should be conducted on both a centralized basis to maximize resource-efficiency and to provide opportunities for collegial networking and the exchange of professional experience nationally, and on a regional basis to promote accessibility and convenience for participants.*

Scope/Methods of Judicial Training:

The scope of judicial education is fairly wide. The main curriculum generally includes substantive/procedural law, legal skills, judicial ethics and personal welfare. The judges must develop skills that will enable them to serve effectively. Thus, training programmes cover areas like case management, use of procedures/practices, computer skills, communication skills, judicial ethics and professional conduct as well as managing one's personal life including physical and mental health, stress management and work habits.

Judicial training programmes are designed to improve judicial performance by up-dating their information/knowledge about laws and acquiring judicial skills to dispense justice expeditiously. Legal skills are also referred as 'judge craft' (opinion writing, recording/analyzing evidence/arguments, use of ADR, etc) and judicial skills include court/case management, use of technology and avoiding biased/prejudice. The judicial ethics cover issues of conflict of interest and maintaining high standard of character and conduct. The training programmes also focus on stress- management and maintaining good physical/psychological health.

For delivering judicial training, wide ranges of options are practiced. Thus, training may be for long term or short duration, full time or part time. It may be through lectures, seminar presentation/attendance, case studies, research and publications, self study, group/panel discussion, audio-visual teaching material, distance learning, online learning, etc.

The key elements of a good judicial system are the possession of essential qualities in judges including knowledge of law/procedure, judicial skills, professionalism and integrity. These are necessary conditions for an efficient system of dispensation of justice.

Adult Learning:

While designing courses for continuing legal/judicial education, it may be kept in mind that such education is life long affair and the professionals i.e. lawyers/judges are adult learners. Adult learning is characterized by its autonomy, self-direction, and preference to building personal experience, the need to perceive relevance through an immediacy of application, and its purposive nature and its problem-orientation¹⁷. The point is further elaborated in the following words¹⁸:

As a rule, however, they like their learning activities to be problem centred and to be meaningful to their life situations, and they want the learning outcomes to have some immediacy of application. The past experiences of adults affect their current learning.... Finally, adults exhibit a tendency towards self-directedness in their learning.

Thus, it has been argued¹⁹:

The major emphasis in adult learning is on the practical rather than on the academic; on the applied rather than the theoretical; and on skills rather than on knowledge or information.

In short, the adults participate in continuing legal/judicial education for reasons to become better informed, qualified for a new job or improve present job abilities, etc.

To conclude, the primary objective of judicial education is the establishment of a skilled judicial corps, whose personnel are imbued with the spirit of professionalism and possessing the requisite qualities of detachment, impartiality, competency, efficiency and professionalism. Competency and professionalism in turn lead to greater confidence in one's ability to deliver and offer one's self for accountability. A competent judge, imbued with qualities of professionalism and feeling accountable, has no fear of anyone or anything. He performs functions with complete independence of mind. Thus, judicial training and education serve to make judges acquire the necessary knowledge, competence and independence to take on the challenges, resist inducement, temptations and thwart extraneous influences. It enables the judges to dispense justice freely, fairly and expeditiously. This in turn enhances public faith and trust in the system of administration of justice.

References:

¹ PLD 2007 SC 394

² Art 8 & 10

³ Art 14

⁴ Preamble

⁵ Art 175 (3)

⁶ Art 37(d)

⁷ Chief Justice Murray Gleeson, High Court of Australia, Keynote Address at Conference on Confidence in the Courts, Canberra, February 2007.

⁸ Livingston Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning*, Kluwer Law, International, The Hague.

⁹ Lord Hailsham, *Democracy and Judicial Impedence*, University of New Brunswick Law Journal, 1979

¹⁰ Mason A, *The Role of the Judge*, Inaugural Judicial Orientation Program, Sydney, 1994

¹¹ R. McKay "The Judiciary and Nonjudicial Activities", 25 *Law and Contemporary Problems* 9, 12 (1970)

¹² Catlin DW, *Michigan's Magic Touch in Educating Judges*, *The Judges' Journal* 1986

¹³ Sallmann PA, *Comparative Judicial Education in a Nutshell*, *Journal of Judicial Administration*, 1993

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¹⁷ Knowles MS, *The Modern Practice of Adult Education: From Pedagogy to Andragogy*, Chicago; Follett, 1980

¹⁸ Dr. Livingston Armytage paper, *Continuing Legal Education - The Australian Approach*.

¹⁹ Johnstone JW & Rivera RJ, *Volunteers for Learning* Chicago: Aldine, 1965.