

LEGAL EDUCATION IN JUSTICE DELIVERY SYSTEM

A country is known, respected and recognized globally if its economy is strong, democracy has deep roots in the society, has good governance and a well established rule of law. Of equal importance and also of the same relevance in this regard is the existence of progressive legislations and a strong and independent judiciary, with sovereign power of judicial review of constitutional validity of legislations. As a matter of fact, a vibrant and non-pliable judiciary is one of the parameters for recognition of a country as a developed nation and a *sine qua non* in the determination of its comparative status among the nations. Thus, a strong and independent judiciary, capable of handling challenges, not only thrown by enlightened citizens but also by its legislature is what goes into the making of a progressive and well developed nation. A judiciary of such stature which command respect and contribute towards winning such status for a country calls for not only morally strong and legally sound judges but also requires such judges to be well trained, well equipped and well informed in their sphere of work. This is where a continued legal education assumes importance and I propose to confine myself to this aspect of legal education in this brief paper.

The Justice Delivery System (JDS) basically involves judges, lawyers, police officers, forensic experts and also executive officers of other wings. In other words, the judicial systems and the administrative systems of justice involve almost all the organs of the government

machinery. It is the team work of all these persons which ultimately contributes towards resolutions of disputes between the parties. It is said that justice should not only be done but it must also be seen to have been done. Such a standard of perfection can be achieved only if all the organs involved in JDS are well equipped with infrastructures, tools and legal and scientific literature. In this regard, it would be well to bear in mind that such tools of performance, including the literature, undergo changes and even become outdated with the passage of time and need refinement, updating and replacement from time to time. As a consequence persons operating these tools and manning the different offices connected with JDS also need regular updating of their knowledge to keep pace with new emerging laws, changes in society, innovations in science and technologies and so on. Hence, the need for a continued legal education for the different functionaries concerned with administration of justice.

It is very often said that sharing of knowledge is also gaining of knowledge. However, in practice it is seen that persons, who possess certain special knowledge in a particular professional field, are reluctant to share their skill gratuitously on a wrong notion that by doing so they will create their own competitors. Interestingly, on the other hand, instances are not lacking where even persons who stand to gain by such sharing of knowledge have reservations about availing of such advantage. For instance, the concept of training was not received well initially in any part of the world. Proposals initiated both in England and Australia for training of Magistrates, tribunal personnel and the judges in

the late seventies of the last century were not welcomed by many members of the judiciary. The situation in India cannot be said to have been different. The concept of continued legal education in Indian judiciary is also of recent origin.

The concept of institutionalized legal and judicial education even in the developed countries of the world is not too old. Training in the judicial field was first initiated and accepted in France as late as in the year 1958. It was followed by United States in 1963 by way of establishing National Judicial College. United Kingdom followed the system in the year 1979 by establishing Judicial Studies Board. However, formal training process to the judicial officers began in the year 1987 after a long debate. The Canadian Judicial Council conducted its first training session in 1972, but its Judicial Training Institute came into operation only in 1988. Australia also adopted identical scheme of Judicial training in 1975. Coming home it might be noted that even though State level training institutes had been functioning since before in some of the States the first national level centre for Judicial Training and education in India came up only in the year 2005, which has been named as National Judicial Academy, presently located at Bhopal, Madhya Pradesh. Thus the concept of continued judicial education for the Judicial Officers through induction training and in-service training is of recent origin in our country.

It is anomalous that Judicial Officers have themselves prejudices for undergoing training. They think that it will undermine their authority in

Courts and in public and such training is likely to give a message in the society that judges are under-qualified and not properly informed in law who are still in need of further and full education. They feel that the very term 'training' give rise to perceptions that litigants are not getting proper justice at the hands of under-qualified and incompetent persons which results in lowering their image and authority in the eye of their own staff and public in general. The Judicial Officers also entertain a view that training may bring stereo typed judicial decisions. Amidst these myths and wrong perceptions the Judicial Officers opt for training courses reluctantly and/ or under compulsion from superior authority.

The judicial officers, lawyers and all other officers, who are involved in JDS, are oblivious of the merits, benefits and advantages of training courses. A few salient beneficial features of training courses are noted below:

- i) Judicial education through training makes judicial officers professionals. It helps rendering justice faster.
- ii) The training increases the confidence and authority level of judges. It also enhances rationality in judicial interpretation of laws, which helps in rendering bold judgments, quite oblivious to political repercussions. This leads to judicial independence;
- iii) It enhances judicial approach, which results in the improved service in the JDS;
- iv) It gives opportunity to the officers to overcome their individual biases. In judicial colloquia, seminars, work-shops etc. the

officers can express their hidden prejudices which they normally do not relate to their colleagues individually.

- v) It helps removing the potential inconsistencies and conflicts in judicial decisions;
- vi) Legal literacy helps the officers in acquainting themselves with the changes in law;
- vii) Legal education offers the opportunity to find grey areas where the existing laws need modification and/or to interpret the laws in accordance with new international treaties and covenants;
- viii) Training helps use of science and new technology, which may increase perfection in judicial decisions.

It is difficult to prepare a complete chart of benefits of training. Only handful examples of advantages of judicial work-shops have been set-out above, which can be termed as snapshots of training merits. As a whole, merit of continued judicial education/training far outweighs the apprehended demerits.

Methodology of Training

(i) Broadly there are two methods of imparting training, didactic and participatory. The demerits of former method and benefits of later method can be understood from the following Chinese proverb:

***“Tell me, and I forget, show me,
and I remember,
Involve me, and I understand”***

The above proverb is further supplemented by the 'Learning Pyramid', prepared by Ms Joanna Liddle of School of Law, University of Warwick, U.K.:

Learning 5%
 Reading 10%
 Audio/Visual 20%
 Demonstration 30%
 Group of Discussion 50%
 Practice by Doing 75%
 Teach Others/Immediate Use 95%

ii) It has also been experienced that, while conducting lecture method of training, large number of participants are invited. In such a big group the trainer can not give individual attention, resulting in loss of interest of the trainees also. Hence, a group of 20-25 participants is considered to be ideal.

iii) It is also seen that in every group few participants are found to be docile/passive, whereas few are dominant. If the training sessions are held with small group of participants the resource person will be able to take care of passive participants.

iv) The resource person should have extensive knowledge of the subject. Only then he or she will be able to draw the attention of the participants and keep them under control.

v) The trainers should have the quality to receive/hear the views of the participants, which will help in developing the topic of discussion.

vi) Wherever possible visual mechanism should be applied. This will increase the impact of lectures.

vii) Attention should also be given upon the content of the topic as well as upon the training schedule. If the content is large, neither the trainer will be able to put his view points effectively in the given time nor will the trainees get time for interaction. This can be called 'Training Management'.

In other words the entire training course should be held with precision in all respect and in a scientific manner. Only then it will bring desired result.

Training for Lawyers

Lawyers play a significant role in the advancement of justice. It can be said that the lawyers play the role of propounders in the justice delivery system. Having specialized in the legal field they champion the cause of victims of fundamental and legal rights; protect the civil and human rights of citizens; prevents the State from acting arbitrarily. In a nutshell, there is heavy load on the shoulders of the lawyers to protect the democratic system of governance. These functions of lawyers help in strengthening the independence of judiciary. It can be said that stronger is the Bar, stronger is the Bench and together they can up-hold the rule of law and democracy.

The National Knowledge Commission has also taken cognizance of the importance of legal education. In its Report dated 15.07.2008 the Commission, while recommending establishment of a Regulatory body under the name and style of "Regulatory Authority for Higher Education"

(IRAHE) covering the field of legal teaching, has made the following observations:

“The vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the Constitution of India. In keeping with this vision, legal education must aim at preparing legal professionals who will play decisive leadership roles, not only as advocates practicing in courts, but also as academics, legislators, judges, policy makers, public officials, civil society activists as well as legal counsel in the private sector, maintaining the highest standards of professional ethics and a spirit of public service. Legal education should also prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. Further, there is need for original and path breaking legal research to create new legal knowledge and ideas that will help meet these challenges in a manner responsive to the needs of the country and the ideals and goals of our Constitution.”

To make the lawyers more professional and with a view to sharpen their legal acumen, the Bar associations should organize seminars, work-shops or training camps. It is true that such get-togethers are held on special occasions, but it is not a regular feature. Many Bar Associations with small membership do not organize any such workshop at all.

The functions of lawyers are regulated by a statutory body, namely the Bar Council of India, which has been constituted under the Advocates Act, 1961. Similarly, State Bar Councils are constituted in all states where there is a seat of High Court. Ss 6 and 7 of the Act lay down the functions of the Bar Councils respectively. Sec. 15 empowers the councils to frame rules to carry out the above functions.

The Advocates Act, 1961 was amended in the year 1974 with progressive mind-set inserting the following provisions in Sections 6 and 7, which deal with functions of Councils-

“to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;”

The Bar Councils have framed rules and regulations for the enrollment, qualifications, dis-qualifications and also for conduct of lawyers. The original Act had a provision for apprenticeship. Now, this requirement has also been given a go-bye by way of amendment in the statute in the year 1973. Even otherwise apprenticeship/Bar examination was only meant for new entrants in the profession. However, I am advocating for regular interaction on subjects related to legal and justice delivery system. The Act, though envisages the necessity and usefulness of seminars, is silent about making training courses a mandatory feature of legal profession. In practice the lawyers' community is being controlled by local Bar Associations. Conspicuously, such Bar Associations are not within the statutory control of the Bar Councils. In my opinion to carry forward the avowed objectives of the Advocates Act there is urgent need to amend it further for bringing associations of lawyers within its framework. The changed concept of legal education can be adopted and fruitfully implemented through such Bar Associations by amending the Advocates Act and Bar Council Rules. For this purpose Bar Councils may allot fund, provide legal literatures and resource persons to the Bar Associations and it can also play a supervisory role in this regard.

It is heartening to note that on the basis of various inputs the Government of India has recently enacted two legislations. The first law is for regulating higher educational institutions, including legal education, titled as “The National Commission For Higher Education And Research Bill, 2010” and the second law has been enacted for establishment of a Legal Services Board and to regulate the activities of the legal practitioners through an Ombudsman. This law has been named as “Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Act, 2010”. The main objective of this law is to protect the consumers of law and improve the ways and means for access to justice. Section 13 of the Act provides for assistance of the Board in developing the standards of the activities of the Advocates and education and training of the legal professionals. In this way the Government is also recognizing immediate need to raise the level of legal education and training of the legal professionals. Though the aforesaid two laws are yet to take legal shape and become statutes a road map has been laid-out. All that is required now is to follow it up with zeal and enthusiasm to achieve the desired goal.

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Paper Consulted: Judges As Learners: Reflections on Principle and Practice-
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