

## **EVOLUTION AND RATIONALE OF JUDICIAL EDUCATION**

*By*

**DR. FAQIR HUSSAIN,**

*Registrar, Supreme Court of Pakistan*

Both the developed as well as developing nations are striving to improve the performance of their judicial systems, so as to meet the demands/challenges of evolving societies, emerging realities and complexities of life. Thus, the movement for legal and judicial reform has gathered momentum. There is an increasing impetus for reform of the legal/judicial system to have a stable and predictable legal system and an organized and efficient system of judicial administration. The key elements of an effective judicial system are the possession of essential qualities in judges such as knowledge of law/procedure, judicial skills, integrity and professionalism. These are the necessary conditions for an efficient judicial system. There is, therefore, a growing momentum for judicial training and continuing judicial education to improve the performance of Courts and attain public confidence in the administration of justice.

The stress for an effective 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 form of governments. 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 viz economic growth, socio-political development, high per-capita income and enjoyment of essential fundamental rights

including the right to life, liberty, property and freedom of thought, expression, religion, association, profession and information, etc.

Contrary to the imminent and pressing need of judicial training, progress towards setting up training institutes for judges 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 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 earlier than the common law states, with emphasis on pre-service orientation/training. 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. The prejudice still lingers on at the level of superior Courts' judges. As a consequence, there are hardly any models of judicial education to imitate or programmes to replicate. Therefore, best practices are hard to find. To remove

misconceptions about the programme of continuing judicial education, Catlin, the Head of the Michigan Judicial Institute, observed:<sup>1[1]</sup>

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 manoeuvre. 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, <sup>2[2]</sup> *"[The increase in judicial education] might well be described without exaggeration as an explosion of activity in the field in the last decade."* Hence, Nicholson observed, *"Judicial education is now an accepted part of judicial life in many countries."*<sup>3[3]</sup>

The need for judicial education is commonly acknowledged and strongly emphasized. This is on account of rising expectations of the public from the judiciary to organize itself on professional lines to perform better, so as to settle disputes, restore rights, redress grievances, grant relief and dispense justice to all manner of people, without fear or favour, affection or ill-will.

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<sup>1[1]</sup> Catlin DW, Michigan's Magic Touch in Educating Judges, The Judges' Journal 1986

<sup>2[2]</sup> Sallmann PA, Comparative Judicial Education in a Nutshell, Journal of Judicial Administration, 1993

<sup>3[3]</sup> Nicholson RD, Judicial Independence and Accountability: Can They Co-exist? Australian Law Journal, 1993

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 three areas: (i). proficiency/competence, (ii). performance/conduct of duties and (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 and iv. developing judge's sense of responsibility.

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 once personal life including physical and mental health, .stress management and work habits.

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 leads 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, temptation and extraneous influences. This in turn enhances public faith and trust in the judiciary.

Judicial independence is an essential element of democracy.<sup>4[4]</sup> Lord Hailsham sees the independence of judiciary as a bastion against the "absolutist theory of democracy".<sup>5[5]</sup> Democracy entails a system of governance based on the doctrine of separation of powers between the three 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,

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<sup>4[4]</sup> Livingston Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning*, Kluwer Law International, The Hague.

<sup>5[5]</sup> Lord Hailsham, *Democracy and Judicial Independence*, University of New Brunswick Law Journal, 1979.

independent, impartial and competent judiciary operates as a bulwark against oppression, injustice, discrimination and guardian of fundamental rights and freedoms.