

PROFESSIONALISING DISTRICT JUDICIARY THROUGH TRAINING

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INTRODUCTION

At the outset, I may say that the word “training” in the topic presents a problem. It seems to have been used probably because of its mention in the Federal Judicial Academy Act, which enjoins training of judicial officers as the Academy’s main function. Whatever the reason, we can find a solution, if it is taken to convey the sense of continuing judicial education which is intended to be treated as the bottom line of this presentation.

2. The role of training and its extent in professionalising district judiciary can be properly appreciated only if we have a clear idea of what is professionalism. The judiciary’s formative role and the transformation of judges from legal practitioners in view, I propose to explore the import and connotation of this word, with reference to what it is understood to suggest when used in relation to lawyers’ calling, because the conceptual foundation is more or less the same in both the cases.

WHAT IS PROFESSIONALISM?

3. The word “profession” comes from the Latin “professus”, which means to have affirmed publicly. Through a process of evolution, the term came to describe occupations such as law, medicine and the religious preaching, that required new entrants to take an oath professing their decision to the ideals and practices associated with a learned calling.

4. Reference may also be made with advantage to the recitation by the Dean Roscoe Pound of Harvard Law School on “professionalism”: “The term refers to a group pursuing a learned art as a common calling in the spirit of public service, no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of public service is the primary purpose”.

5. The 1996 Report of the Professionalism Committee of the American Bar Association’s Section of the Legal Education and Admissions to the Bar expanded Pound’s definition and particularized it for lawyers in the follow words: A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.

6. Sandra Day O’Connor of the United States Supreme Court has defined “professionalism” as a commitment to develop one’s skills to the fullest and to apply that responsibility to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a willingness to subordinate narrow self-interest in pursuit of a more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all.

ETHICS AND PROFESSIONALISM

7. Chief Justice Clarke of Supreme Court of Georgia best explained the distinction between ethics and professionalism in an interview in May of 1990. He said: “Professionalism differs from ethics in the sense that ethics is a minimum standard, while professionalism is higher standard expected of all lawyers, and in our case the judges of course. Professionalism imposes no official sanctions. It offers no official reward. Yet, sanctions and rewards exist unofficially. So because there can be no greater sanction than lost respect and no greater reward than the satisfaction of doing right for right’s own sake.

8. People can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law or the code. Truly ethical people measure their conduct, not by rules but by basic moral principles such as honesty, integrity and fairness. Professionalism embraces many values, such as competence, civility, ethics, integrity, respect for the rule of law and the obligation to work with passion for improvement of judicial dispensation and the quality of judicial business.

PHILOSOPHY

9. Professional behaviour is not simply a matter of character and principle; it is a matter of choice and decision making. Thus, the issue is not, all or nothing. It is not a question of being or not being ethical. It usually is not a question of right or wrong. It is a question of doing or not doing the ethical or professional thing. In our high pressure world, it may not be possible to act professionally all the time. It is, however, possible and important to act more professionally more often.

10. Professionalism discussions are too often framed as simple issues of rule-following or rule-violation. But the real issue facing the professionals is developing the capacity for critical and reflective judgment, and the judicial education sessions should strive to cultivate reflective judgment about the judicial business, and to assess how well current practices are serving the system of justice in the light of traditions of our practice. Professionalism with reference to those who are concerned with dispensation of justice is the pursuit and practice of the highest ideals and tenets of the judicial profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, and commitment.

11. Enough has been said about what is professionalism. However, with reference to local judicial environment, we can have the best exposition of this term from the quantification formula for performance evaluation. The High Courts have set monthly disposal target of seventy five to one hundred units for each judicial officer. This quantification has given rise to an attitude which is not commendable. After he achieves the target, the judge considers that he has exonerated himself of his duty and no further disposal is required. But a professional’s approach will be altogether different, in that he will do his best in terms of disposal, irrespective of the target. For him it is not a question of only getting the target, it will be a question of the reputation of his profession.

THE SCOPE OF DISCUSSION

12. I am conscious of the fact that the scope of discussion in this presentation is limited and meant only to address the performance of district judiciary and eventually the need for its professionalisation. However, what I have said by way of introduction relates to the entire judiciary as the most important pillar of the State. This is because of the feeling that justice could be done to the topic only by taking the entire judiciary as an institution. That is not to say that professionalising district judiciary could not be the topic. It could certainly be so, particularly for a person who represents the Federal Judicial Academy, in the context of consideration that it is primarily concerned with the training of the members of the District Judiciary. Therefore, for precision's sake, if not for any other reason, I will try to take care that this presentation remains confined in its aim, only to the district judiciary, in an attempt to examine how it can be professionalized through the process of continuing judicial education.

THE INGREDIENTS OF PROFESSIONALISM

13. What follows from the introduction is that process of professionalisation cannot be complete without paradigm shift in attitude and behaviour and acquisition of competence, efficiency and effectiveness of the highest possible order, judicial accountability and independence. These virtues can thus be regarded as basics of professionalism. Seen from this point of view, it becomes easier to define the role of judicial training in professionalising the district judiciary. I would say that the purpose of any programme of continuing judicial education is to provide a formalized process to promote the continuing learning of judges. The purpose of this learning is to improve the judicial performance and thereby the quality of justice.

THE PARADOX

14. But the question is whether the precept of judicial accountability and judicial independence can co-exist; that is to say whether the judges can preserve the need for judicial independence and at the same time being accountable to the community. As Lord Hailsham put it, the problem is how to reconcile the divergent and to some extent inconsistent requirements of public accountability, judicial independence and efficiency in the administration of justice.

15. I am of the view that, even though seemingly divergent, it should not be difficult to reconcile these notions. I would say that the obligation of accountability to the community rather ensures judicial independence from the executive and legislative arms of the government. A closer and some what deeper application to the subject would solve the problem. Judges are accountable to God through the community and the performance of judicial functions should be seen as discharge of a sacred trust. This incidentally introduces the notion of impartiality which the judges can contrive by negation of self and the total elimination of the promotion, achievement and accomplishment of their personal interests; that can be made possible by piety and character building which bereft them of needs and self interest and bring about the kind of independence that would co-exist with public accountability.

FEDERAL JUDICIAL ACADEMY'S CHARTER

16. As we have it from the Statute, the ultimate goal to be achieved by the Federal Judicial Academy is the improvement of judicial system and the quality of judicial work. It has been established for the proper training of judicial officers, law officers and the court personnel in order to improve the professional competence of judges and the quality of justice administered in the courts. This goal is sought to be achieved by in-service and pre-service orientation and training of judges, magistrates, law officers and court personnel, holding of conferences, seminars, workshops and symposia and publishing of journals, memoirs and research papers.

THE ACADEMY'S CURRICULUM

17. To make the curriculum purpose oriented, different topics and subjects have been detailed under the captions impartiality, competency, efficiency and effectiveness. A detailed account is not possible for paucity of time, and it will be sufficient to say that through the successful execution of curriculum under this arrangement, the Academy undertakes the transference of judicial skills and competence from an individual to a group, which reflects evolution of district judiciary as a social institution within society and as a body of professionals rather than as public servants constituting an arm of the government. We understand that incompetence and inefficiency, stung by the effect of partiality, are diametrically opposed to professionalism and that there can be no such thing as an incompetent and inefficient professional.

PRACTICAL SKILLS

18. In imparting training to the members of district judiciary, what the Academy is supposed to accomplish is the conversion of raw potential into a judicial silver ware, that in terms may be the kind of professionalism, adequate enough to respond to public criticism and the expectations. This in view, we have brought about a change mainly in the method of judicial education and training. Hitherto, emphasis has been on dissemination of knowledge and information about substantive law, by way of lecturing. But now we have employed useful and effective means of delivering educational services, with the introduction of a new professional approach to judicial training based on the theory and principles of adult education. In terms of content, this will focus not just on substantive law, but on the skills and disposition of judging. In terms of method, lecturing is heavily supplemented by the introduction of small group seminars and workshops which are built on the active participation of judges in techniques of active learning, such as problem solving case studies, scenarios and simulations, and also panel discussions to develop professional skills and judgment which will be supported by the foundation of information and knowledge. It is important to stress that this training approach is considerably more practical rather than theoretical and active rather than passive.

GROUND REALITY

19. But I feel no hesitation in conceding that whatever is being done in the Academy by way of pre-service and in-service training of judicial officers, is not sufficient to meet this articulation of the ideals of professionalism. As already asserted, training definitely

makes a difference in competency and efficiency, which is reflected by on the job performance of trainee judges, particularly with reference to trial procedures. But this is not enough to attain the aspirational standards of professionalism, unless more attention and time are given to areas of judicial conduct and effectiveness. The first is the sum total of attitude, behaviour, outlook, character, responsibility, devotion, passion for work, accountability and impartiality. The second results from adequate acquisition of judicial skills, such as framing of issues and the charge, marshalling of facts, decision making, writing interlocutory orders, judgment writing, judicial leadership, communication and adaptability to change.

20. As already noticed, the curriculum does cater for these things. But our malady in the Academy is that the transfer of these skills is a tall order and it is not possible to come up to it in one to three week's refreshers or eight weeks induction level training courses. Incidentally, when I come to think of it, the goal set by the statute for the Academy is improvement in the justice system and the quality of judicial work. It says nothing about professionalisation and it is conveniently left to the overarching influence of continuing judicial education which extends beyond the period of training.

THE ROLE OF SUPERIOR JUDICIARY

21. We do need the help of High Courts in the quest for professionalism. It should be taken as an accepted proposition that, for successful completion of the process, we have to bring about a noticeable improvement in the work attitude of judicial officers, especially those who are freshly recruited. They can be made to take their cue from the senior judges to respond efficiently and without hesitation to all the new calls made on them because of the exigencies of time. The judges of the High Courts can make a substantial contribution to the process of evolution by regular periodical inspections of the district courts and with the application of corrective measures in exercise of their revisional and appellate jurisdiction.

22. Positive interest thus shown by the Hon'ble Judges of the High Courts can go a long way in advancing professionalism in the lower dispensaries of justice. By simulating as role models, they can bring improvement in their conduct and attitudes and inspire a much needed passion for work, to resolve the main problem of back log, so that they may be able to pay more attention on a number of other important areas. This will bring into focus, the ever growing challenge of attaining a level of excellence and professionalism.

THE BAR

23. The Bar can also play a meaningful role in the process of professionalisation. In adversarial system, such as ours, they can help in expeditious disposal of judicial business. This can rid us of the chronic malady of delay, which is the root cause of all other ills. They can render assistance in improving the quality of judicial work.

However this object cannot be achieved without raising the standard of legal assistance. It is my considered opinion, on the basis of what I have learnt from experience, that the contribution made by the Bar in improving the quality of judicial work, leaves so much to be desired, particularly in procedural laws and pleadings.

24. I take advantage of this occasion to point out an important circumstance which requires the urgent address of those who are concerned with the efficient and effective administration of justice. This is about the standard and quality of legal education now being dished out in the law colleges. It goes without saying that the collegial knowledge of substantive laws constitutes a foundation for building a proficient justice system to come up to the expectations of people and to serve as foundation to set up the edifice of professionalism. But the quality of legal education today, whether viewed in professional or academic terms, is rather poor and it is not producing lawyers, judges and law officers, equipped with necessary knowledge and skills to meet the challenge of judicial stratification.

25. It is suggested that continued commitment to professionalism should be made a vital part of legal education, and amendment be made in the syllabus of law colleges, as would make it compulsory for them to offer professionalism programmes to the students. Ethics and value system must be treated as a subject in the law schools, for what is law except an expression of our values.

RISING TO EXPECTATIONS

26. I tell you briefly what a legal practitioner of the Florida Bar in Miami said about the eyes of his sons five and two in age. During one of the morning good byes the elder looked at me, looked at the sun rising over my shoulder and shouted Look Daddy you are bigger than the sun. That is what my boys see when they look at me. I take that look to work and conquer the day with it.

27. “There’s power in those eyes. I want to be the man they see. The one who does the right thing, not the easy thing. The one who keeps his head while those about him are losing theirs. I want to make those boys proud, to live up to their image of me. I don’t want to do anything to make that look in their eyes wane. I’m not naïve. They will grow up, become teenagers, see me differently. I’ll look smaller in their eyes. But I’m going to do my best not to contribute to my own diminution”

28. “Those eyes define professionalism for me. It’s not about rules, codes of conduct, mission statements or the things that are not done. It’s about being the man my boys see, the man I want to be. For me, professionalism simply begins and ends by asking the question, “Would my sons be proud of my actions?” Ask me about professionalism, about what it means to be a lawyer, and I’ll tell you about two little boys who idolize their father, who, with their eyes, push him to always be the man they see”.

29. “Each of us has someone who sees us for more than what we are. It may be a child, a spouse, a sibling or a friend. We want to make them proud; we want to be the person they see. It is in striving to be that person that we pursue professionalism, true ethics. It’s more than following rules for the sake of following rules. It’s doing the right thing for the sake of those who matter. I try to do the right thing because my boys expect me to, and I do it to set an example for them, so that they’ll do the right thing too. Start looking deep into your loved ones’ eyes. You’ll find what it means to be a professional in those eyes, and you’ll find the inspiration to act like one”.

CONCLUSION

30. The attainment of high profile goal of professionalizing the district judiciary, or for that matter the judiciary as a whole, requires all systems go kind of approach and a sort of movement. Let us take the opportunity made available by the Judicial Conference and start this movement from the jurisdiction of Peshawar High Court: By accepting the challenge of growing public criticism; of heavy pending file; of judicial inertia; of change in social conditions, environment and values with consequential change in philosophical perspectives of law. Let us rise to the challenge of ever increasing expectations of the community by committing ourselves to continuing judicial education, in an attempt to take our performance to the highest possible level, thereby getting closer to the ultimate goal of professionalism, such as would enable us to exist with honour and dignity, as an institution and a body of professionals within the society and not only just as a collection of government servants.

31. In the end, I want to say that although this presentation is meant for the worthy brothers of the district judiciary, I would n't mind if it is taken to have addressed itself to all members of the judicial fraternity, who have watched me saying the things I have said and who have seen lines of anguish and concern sitting in my eyes staring.

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