

Research Project II

Some Observations on the Problems Facing Judicial Education in Pakistan

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INTRODUCTION

While pursuing Research Project I, the Research Associates frequently interacted with the staff of the Federal Judicial Academy (FJA) and the participants of various training programmes conducted by the Academy. One of the Research Associates also had a meeting with the Director General of the Punjab Judicial Academy regarding Research Project I. These interactions raised various issues pertaining to the quality and efficacy of judicial training in Pakistan. On becoming aware of some of these issues, Hon. Mr. Justice Tassaduq Hassain Jilani directed the Research Associates to record all of them, along with relevant observations and comments.

The Research Associates have been keeping a log of all the issues coming to fore during their interactions with the staff and trainees at the FJA. For the sake of convenience, these issues have been classified under seven Chapters listed in the Table of Contents.

1. ENHANCING THE NUMBER OF TRAINEES

Under the existing practice, the High Court concerned approves the names of judges for training at the academies. It is a common complaint among the academies that the High Courts relieve very few people for training at the academies. On the other hand, the High Court is of the view that they can only send judges for training at the cost of delaying hundreds of cases pending before them. The statistics on the number of judges and the cases pending before them completely justify the concerns of the High Courts. Thus, it is a situation which necessitates innovation on the part of judicial educators.

1.1 Mobile Trainers

One option proposed for this purpose was preparing mobile trainers who would go to the trainees and impart training at the latter's place of business. However, this ambitious proposal is not well-considered: it ignores, for example, such a basic factor in judicial training as the availability of trainers. It is quite unrealistic to assume that Pakistan has sufficient number of judicial trainers who would be willing to go into disparate districts of a province to impart training to judges there. The judicial academies do have quite a few resource persons but, again, it would

impossible to convince them all for regularly going into the districts to impart training. The question of how much such a mobile operation would cost might also discourage further consideration of this option.

1.2 In-Court Training

A more realistic option is well illustrated by the prevailing practice in Canada. As was noted in Research Report I, "Each of Canada's courts provides education to the judges who sit on that court. Approximately fifty percent of the education available to Canada's judges is delivered at the court level, and some courts have extensive judicial education programmes.¹ According to the website of the National Judicial Academy (NJI) - which is responsible for the overall coordination of judicial education in Canada in addition to being a primary education deliverer - "Each of the courts in Canada offers education to its judges, generally at meetings of the court. Many also hold short education sessions over the lunch period or at the end of the day. All courts have a judge or judges who serve as education chairs or liaisons. Some larger courts have dedicated education secretariats."² Moreover, the NJI "offers support in planning the content, pedagogy and logistics of court-based education, working in a flexible manner with courts upon request."

The Canadian court-based judicial education system is one of the simplest models in the world. But its effectiveness depends entirely on the quality of the designated judicial educator in a court. Although it may not be realistic to presume that a judge competent to provide judicial training to his or her peers can be found in every district of Pakistan, it is quite possible to train a judge from every district in the art of training their peers. Such a programme would require extensive and regular contact between the trainer judge and the judicial academy, and for that, employing modern tools of technology - especially emails, video conferencing and online databases - can be extremely productive. Moreover, the four existing academies will have to provide training of trainers to only 130 judges (there are 113 districts in the four provinces of Pakistan - 36 in the

¹ Dr. Cheryl Thomas, *Review of Judicial Training and Education in Other Jurisdictions*, a report prepared for the Judicial Studies Board, London, May 2006: p. 32

² NJI website, <http://www.nji-inm.ca/nji/inm/progs-res/ressources-resources.cfm>: Accessed 25 June 2010

Punjab,³ 23 in Sindh,⁴ 24 in Khyber Pakhtunkhwa,⁵ and 30 in Balochistan⁶ - 7⁷ in Gilgit-Baltistan and 10⁸ in Azad Jammu and Kashmir) to make this programme fully functioning.

Moreover, there is reason to believe that a kind of in-court training already exists in Pakistan. Supreme Court Registrar Faqir Hussain's 2006 report titled "Judicial System of Pakistan" states, on page 16, that "After appointment, the civil judges are usually attached for a few weeks to the Court of Senior Civil Judge/District & Sessions Judge to get practical training." If the ambit of this "practical training" for civil judges could be broadened, with the assistance of the judicial academies, to include "academic" aspects of judicial training, the number of judicial officers annually receiving judicial training would be greatly enhanced. However, the academies and the relevant Superior Courts would have to ensure, through monitoring reports etc., that in-court training does in fact take place in every district.

The Final Report on Research Project I has already recommended that the proposed Coordination Committee should determine the hurdles facing the process of sparing judges for training and suggest ways of removing those hurdles and developing a systematic approach, still this is an idea which the Committee might consider before making its recommendations.

2. LECTURE -BASED TEACHING METHODS

The Federal Judicial Academy has organised at least four training programmes during the past two months. The Research Associates interacted with quite a few participants of these programmes, and many of them observed that the teaching methodology at the FJA was mostly lecture-based. Some of them, who had also received training at the Punjab Judicial Academy,

³ Government of Punjab website < http://portal.punjab.gov.pk/portal/portal/media-type/html/user/anon/page/default.psm/js_pane/P-11c93de95dd-1009f?nav=left >: Accessed 10 July 2010.

⁴ Local Government Department, Government of Sindh website < <http://www.lgdsindh.com.pk/> >: Accessed 10 July 2010.

⁵ Government of Khyber Pakhtunkhwa <<http://www.khyberpakhtunkhwa.gov.pk/Gov/index.php>>: Accessed 10 July 2010.

⁶ Government of Balochistan website < http://www.balochistan.gov.pk/index.php?option=com_content&task=view&id=32&Itemid=49 >: Accessed 10 July 2010.

⁷ *Gilgit-Baltistan Elections 2009: Report of HRCP Observers' Mission*, Human Rights Commission of Pakistan, Lahore, January 2010.

⁸ Government of AJK website < http://www.ajk.gov.pk/index.php?option=com_content&view=article&id=24&Itemid=8 >: Accessed 10 July 2010.

observed that the Punjab Academy was also relying mostly on lectures to impart training. The curriculum sent by the Punjab Academy in response to the Questionnaire for Research Project I also does not indicate any emphasis on interactive teaching methods.

Although there were no observers from Sindh, the annual report sent by the Sindh Judicial Academy places a lot emphasis on using non-lecture based, interactive modes of teaching, such as brainstorming, metaplans, guided group discussion, case studies, assignments and mock trials.⁹

It would therefore be very profitable for other academies to learn from the Sindh Judicial Academy in this respect. The Coordination Committee proposed in the Final Report on Research Project I can work towards making the experiences and lessons from Sindh Judicial Academy, in terms of teaching methods, available for the guidance of other judicial academies.

3. WRITING SKILLS AND COMPUTER LITERACY

3.1 Writing Skills

A number of senior officials have pointed towards the fact that judges in the subordinate judiciary need to improve their writing skills in English. One of the Research Associates has attended public schools until his intermediate and can corroborate the fact that our public schools do not prepare their students to speak or write good English. The same story is true of public universities as well. The same research associate also knows from experience that a lot of effort and energy is required to improve language skills. It is therefore evident to him that unless some special effort is made by the individuals themselves with or without being prompted by the judicial academies, their speaking and writing skills will not improve.

Since English is the official language of the courts in Pakistan, it is therefore recommended that judges in the subordinate judiciary should be encouraged and guided towards writing good English. However, a two-week or month-long training programme at one of the judicial academies would not be of much help. Writing skills develop over a long period of time through

⁹ *Annual Report of Sindh Judicial Academy, Karachi, p. 7-10*

reading a lot of well-written literature and regularly seeking views of others on one's efforts at writing. In our view, the best way to go about it is to encourage judicial officials to contribute essays and memoirs for publication by the judicial academies or the High Courts. Improving the literature sections of libraries in district courts would also be of immense help in this regard.

3.2 Computer literacy

The issue of judicial officials not being computer literate was raised by a number of people we met. However, the real question is, do judicial officials in fact *need* computer literacy? Most of the work in lower courts does not require a computer except for the purposes of typing and printing. There is no official reliance on emails or online databases. These observations point to another fact that there are hardly any online resources in Pakistan which can be useful to judicial officials, or even generally to anyone. Thus, the general state of affairs does not encourage judicial officials to learn how to use computers.

Unless computers are made part of the official business of judicial officials, computer literacy would not improve much. In this regard, first of all, the rules of business must be amended to incorporate the use of emails. The amount of time these amendments will subsequently save for everyone needs hardly be pointed out.

Secondly, all the courts must try to put up as much information as they can on their websites. The Supreme Court can take the lead in this regard by starting to upload on its website all cases it sends for reporting. The website of the Constitutional Court of South Africa (<http://www.constitutionalcourt.org.za/>) can be a ready model for reforming the website of Supreme Court of Pakistan.

Thirdly, all the statutes should also be made available online (as this is the easiest, cheapest and most effective way of spreading public awareness these days). It would be more appropriate if the relevant law ministries, federal or provincial, were to undertake this task, therefore the Superior Courts of Pakistan should press upon the said ministries to put all the laws in the statute books on their websites in any easy and accessible form. If the ministries fail to comply, there would nothing eccentric about it if the websites of the Superior Courts of Pakistan were to perform this public service instead.

Lastly, publications containing experiences and memoirs recommended above for the improvement of writing skills can also be made available online, which would not only breed reliance on computers, but also save a lot of expenditures on paper and printing.

4. INCENTIVES FOR JUDICIAL TRAINING

We learnt during our informal interactions that judicial training in Pakistan is more or less deprived of incentives. These trainings are not required for promotions, nor are they required to be placed in any of the service records of judicial officials. Even the training itself does not involve any competition among the participants. Consequently, judicial trainees in Pakistan have no reason to worry if they do not learn anything at all from the training imparted to them by judicial academies.

Moreover, there is no incentive for judicial trainers except for their salary. The trainees are not required to submit their views on the quality of the curriculum or the trainer. Consequently, the trainer and the academy have no fear of anything going wrong as far as the class room is concerned.

These facts demand immediate attention of the authorities concerned, who should introduce ways and means of providing incentives for trainees to learn as much as they can from their trainings, and for trainers to impart as much knowledge as they can. After all, what is the use of training judicial officials if there is no way of knowing whether or not the officials learnt anything from their training?

5. LEGAL RESEARCH AND LINKAGES WITH ACADEMIA

The following table makes it abundantly clear that all the existing judicial academies are required to promote legal research.

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| Federal Judicial Academy Act, 1997 | Sindh Judicial Academy Act, 1993 | Punjab Judicial Academy Act, 2007 | Balochistan Judicial Academy Act, 2010 |
|--|--|---|--|

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|---|--|--|--|
| <p><i>Section 4: Aim and Objectives –</i></p> <p>(d) publishing of journals, memories, research papers and reports.</p> | <p><i>Section 4: Functions –</i></p> <p>(d) providing information on legal and constitutional research;</p> <p>(f) publishing of journals, memories, research papers or reports;</p> | <p><i>Section 4: Functions –</i></p> <p>(f) publish books, journals, research papers and reports on important topics relating to administration of justice;</p> <p>(g) promote research on case management, court management, trial skills and judicial reasoning;</p> <p>(h) encourage legal and constitutional research.</p> | <p><i>Section 4: Aim and Objectives –</i></p> <p>(d) publishing of books, journals, research papers, memories, reports, etc.</p> |
|---|--|--|--|

However, there is hardly anything by way of publications, not to speak of research, that any of the academies has produced so far. Even the Federal and Sindh Academies, which have existed for more than 15 years now, have not produced anything which can be classified under their responsibilities highlighted in the above table.

A suggestion has already been made above concerning the publication, preferably on internet, of essays and memories of judicial officials working in Pakistan. Another way of promoting research using the existing resources is for judicial academies to build linkages with the competent academics in and outside Pakistan. Although there are not many reliable legal academics in Pakistan, however such institutions as the Law and Policy Department of LUMS can be of great assistance to the academies in producing quality research. Moreover, the judicial academies can invite competent scholars from abroad, even from India, to do research on legal issues in Pakistan. Such invitations would not even cost any money as donors can always be found for such research. Another, more aggressive and costly, approach towards promoting research is for judicial academies to identify such competent working or retired judicial officials whose time would be better served writing about legal issues than actually working on them.

Such officials can then be commissioned (that is, provided with the research topic as well as the money required to complete the same) to write journal articles, or even whole books.

6. JUDICIAL EDUCATION FOR JUDGES OF SUPERIOR COURTS:

It is common sense that learning never stops, not even for the judges of the High Courts or those of the Supreme Court. With this idea in mind, the Questionnaire sent to provincial judicial academies for Research Project I included the following question:

J. There is a proposal that the Judicial Academies should also run Courses/Workshops/Symposiums etc. for the Justices of the High Courts and the Supreme Court. What are your opinions and/or suggestions in this regard?

Before offering any comments, the replies of the respective academies are copied below:

6.1 Replies of Provincial Judicial Academies

Sindh's reply:

"This is a sensitive issue and sensitization of the Judges of Superior Courts should be left to the Supreme Court, which may direct the Federal Judicial Academy or Provincial Judicial Academy to arrange a particular course for the benefit of High Court Judges. Beyond that we would not express any further opinion as in the past we are not aware of any such program arranged by the Federal Judicial Academy. However Judicial Conferences at National and International level should be arranged by the Federal Judicial Academy or the Supreme Court in all capital cities of the Country.

Workshops, Symposiums and like activities should be regular features of all the Academies, particularly the Federal Judicial Academy.

It may be mentioned that for arranging such programs funds is needed which should be provided by the Government."

Balochistan's reply:

“Usually, Advocates inducted directly in High Courts have little experience in Court Management, Office Management, Administrative Affairs, Financial/Budgetary Affairs and Computer Skills. So this aspect of their job requires some future guidance.”

Punjab’s reply:

“The professional level of the Judges of the Superior Judiciary does not require any tuitions [sic]. Even new laws can be learnt by them merely by reading and applying their mind. The example of privy council [sic] supports this view which used to decide the cases of places wherever the Crown existed in the entire world. However, Sessions upon Computer Orientation would be beneficial for the superior judiciary.”

In summary, the Punjab Academy does not share the belief that ‘learning never stops’; the Sindh Academy is, as elsewhere in their reply to the questionnaire, very sceptical about the success of this idea and does not want to have much to do with it; and the Balochistan Academy does in fact agree with the idea.

It can be inferred from the replies from Punjab and Sindh that judicial education for judges of the Superior Courts is an unprecedented, and perhaps therefore, an undesirable idea. However, the reply from Balochistan candidly shares a problem common to advocates inducted into the High Court and seems to welcome the idea of judicial training for High Court judges.

6.2 Examples from India:

It is for the judges of the Superior Courts, who are also in charge of judicial academies, to honestly state whether or not they need any introductory or continuing judicial education. However, for the sake of reference, two examples of their peers in Indian High Courts are cited below. These excerpts are from Indian National Judicial Academy’s Annual Report 2008-09:

“The High Court Justices Conference on Criminal Justice administration was held at NJA from 22nd to 27th of July, 2008. The main objective of this conference was to discuss and reflect on issues and challenges facing High Courts across the

country in the area of criminal law and jurisprudence. In this context, a few themes were identified for discussion over four days of the Conference. These included approaches to appellate judging in criminal cases; appreciation of evidence and the power of appellate courts; Inherent powers of High Courts under Section 482 of the Cr.P.C.; Criminal Law and the Protection of Constitutional Rights; Sentencing; Rights of Parties in the Criminal Justice System; Impact of Science and Technology on Criminal jurisprudence and white collar crimes. The discussions in the conference focused on issues of approach. Protection of rights of all the parties in the criminal justice system was emphasized on. The Hon'ble Chief Justice of India interacted with the participating High Court Justices through video conferencing and spoke about what he perceives as challenges facing newly elevated High Court Justices. Thirty newly elevated High Court Justices from across the country participated in the Conference." (page 5)

"The Conference of High Court Justices on strengthening the administration of justice in India was organized at NJA from 27th-28th of September, 2008. The Conference was attended by around 30 High Court Judges from different states and was chaired by Hon'ble Justice S.B. Sinha. The conference focused on finding out the ways by which the system of Administration of Justice can be improved in particular on developing a Planning and Management system for Timely Justice (PMTJ) consisting of (i) a system of Court-wise planning, (ii) systems of case load management and case management; and (iii) development of an Information Management System for Administration of Justice (IMAJ), an integrated electronic database to support systematic planning and management of the judicial system (iv) and Human Resource Management in Judiciary. The main purpose of the National Conference of High Court Justices was to submit the suggestions developed by National Judicial Academy for strengthening the administration of justice to Hon'ble Justices from High Courts for discussion to obtain their feedback and guidance so that the revised proposals can be submitted to the Hon'ble CJI for his consideration and appropriate further action. The Conference also provided an important forum for High Courts to share notes and

experiences about initiatives being taken by them to strengthen the administration of justice.” (page 20)

It is hoped that the honourable justices of the Superior Courts would benefit from learning about the Indian experience.

7. FUTURE OF FEDERAL JUDICIAL ACADEMY

The Federal Judicial Academy’s primary task - that is, to provide judicial education to judges in the subordinate judiciary – is being increasingly taken up by the provincial judicial academies. It is only a matter of time before the Punjab and Balochistan Academies would become fully active in performing their statutory duties, and the Judicial Training Centre in Khyber Pakhtunkhwa will become an official provincial judicial academy. Then FJA would be left to train officials from only Azad Jammu and Kashmir and Gilgit-Baltistan, and that is assuming that these jurisdictions would not establish judicial academies of their own.

If the Federal Judicial Academy does not revise its statutory mandate, it is very likely that it would soon have nothing to do but haggle with the provincial academies over training of subordinate judiciary. Other outside observers are also sensing such a direction. For example, USAID’s “Pakistan: Rule of Law Assessment Final Report 2008” states:

“The FJA... is not currently geared toward becoming a source of continuing judicial education in Pakistan. This is evidenced by the actions of three of the four provinces (Sindh, Punjab, and NWFP)¹⁰ to organize their own judicial training academies—partly so their judges need not travel all the way to Islamabad, but also because *they do not feel the FJA is meeting the need.*” (p. 42) [emphasis added]

This is high time for the Federal Judicial Academy to rethink and expand its statutory mandate if it wants to stay alive. It must focus on imparting judicial education on cutting edge issues,

¹⁰ Balochistan Judicial Academy was established a year and a half after this USAID report was written.

developing its research facilities and initiating special conferences/programmes for judges of the Superior Courts.