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JUDGES AS LEARNERS : NEED FOR CONTINUING JUDICIAL EDUCATION

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"Judiciary is the guardian of civilized life"

- *Dr.A.P.Abdul Kalam*

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This paper is a collage of excerpts from papers presented by renowned Jurists emphasizing the need for continuing Judicial education, for which purpose the Judicial Academies were established. An interesting paper presented to tackle delay also forms part of this compilation.

The Judicial service is not a service in the sense of 'employment'. Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally[1].

1 All India Judges' Association vs. Union of India (1993) 4 SCC 288

Rule of Law and judicial review are the basic features of the Indian Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of the Rule of Law. Judiciary must, therefore, be free from pressures or influence from any quarter. The Constitution has secured to them their independence. The concept of 'judicial independence' is a wider concept taking within its sweep independence from any other pressure or prejudice. It has many dimensions, namely, fearlessness of other centers, economic or political, and freedom from prejudices acquired and nourished by the class to which the judge belongs. Indian judiciary, therefore, is taken as "most essential to protect the liberty of the citizens"[2]

In all aspects of judicial management, training of the judicial officers to meet new challenges is an essential prerequisite[3]. Training and development of the human resources of the judicial department is an issue that should be addressed earnestly to attain higher efficiency levels. The 54th Report of the Law Commission observed that the law is predominantly an instrument of social engineering in which conflicting views of political philosophy, economic interest and ethical values struggle for recognition, which requires to be viewed against the background of history, tradition and development of legal techniques. As such, working knowledge of all the disciplines is essential for a Judge.[4] The 77th Report of the Law Commission of India emphasized the need for training of the officers of the subordinate judiciary. It was recommended that there should be a training course of about 3 to 6 months for recruits to the Subordinate Judicial office. The recruits should, by such training, be acquainted with procedural requirements for dealing with different stages of cases, including the writing of judgments and interlocutory orders and dealing with administrative matters. Matters like framing of charges by the magistrates in criminal trials,[5] ensuring that all incriminating pieces of evidence are put to the accused while recording statements of the accused under Section 313 of the Code of Criminal Procedure, 1973,[6] etc., are matters to be taken up at the time of training itself. To enable judicial officers to meet the various kinds of situations that they have to face in court, there should be a course of training for all judicial officers before they start functioning.[7] In its 117th Report

2 High Court of judicature of Bombay vs. Sri Shirishkumar, (1997) 6 SCC 339
3 Indian Institute of Management (Para 4.11, 8.4 a to d. Also see 10.2, 10.47)
4 P.332
5 Law Commission of India, 77th Report, P.57, point (73A)
6 Ibid Point (73B)
7 Law Commission of India, 77th Report, prs. 9.8 and 13.2

(1986), the Law Commission of India recommended that a Central Academy should be set up at a suitable place in the country for providing intensive training to new entrants to the Indian Judicial Service.[8] This issue was also dwelt upon at the Joint Conference of Chief Justices, Chief Ministers and Law Ministers in 1985 and again in the Chief Justices' Conference in 1988.

In the first All India Judges' Association case,[9] the issue of in-service training came up for discussion before the Supreme Court. The Court directed that an All India Institute of In-Service Training for higher officers of the judiciary including the District Judges and a State Level institute for training of the other members of the subordinate judiciary within each of the States and Union Territories should be set up.[10]

The National Judicial Academy was set up immediately after this judgment. It was established on 17th August, 1993 at Bhopal (Madhya Pradesh) as a registered society, fully funded by the Government of India. It fulfilled the long felt need of training judicial officers who require training in law and judicial disciplines. Among other objectives, the Academy aimed to provide training and continued judicial education to the judicial officers of the States/Union Territories and to enhance the capabilities of the existing training institutions for judicial officers of the States/Union Territories to improve their quality of training.

It is interesting to observe that while justice may be as old as Socrates, research indicates that the notion of formalised judicial education was first introduced in the early 1970s. Earlier, training was either unstructured or unformalised in on-the-bench judicial apprenticeship and mentoring. Since then, the steady spread of a more formalised approach can be observed throughout the jurisprudential world, across common law and civil systems, across continents and nations of diverse tradition, ideology and culture, in developed and developing economics, and transitional and post-conflict states.

8 Chap.IV, p.13-14
9 (1992) 1 SCC 119
10 Ibid p.139, pr.57

Over the past decade in particular, this trend has been embraced by international development, and it has become increasingly common for multilateral and bilateral donors to sponsor judicial education and training projects as sub-objectives of broader programme strategies to strengthen governance systems and the rule of law around the world.[11]

Recognition of the need for judicial education is now firmly established in many jurisdictions around the world. There are various reasons for the emergence of judicial education. The major rationales for judicial education include independence, improved service delivery, social accountability, and institutional capacity-building.

Judicial education provides the judiciary with the means to consolidate its independence. This is of paramount concern where the judiciary is constitutionally responsible to dispense justice by interpreting and applying the law of the land to any matters in dispute which are brought before the Courts. Central to this role of dispensing justice is the need for fairness: that the law is being applied fairly and evenly to both parties in any dispute. Not only must the courts be fair; but they must also appear to be fair in order to establish credibility and secure the confidence of the community in its integrity. Credibility rests on visible independence: independence from any vested interest whatsoever – whether that be governmental, commercial or personal. With judicial independence comes the need for accountability and transparency on the part of the judiciary. Judicial education and training provides the means for the judiciary as an institution to consolidate develop and perform this crucial, yet fragile, role in society. Recognition of this need is reflected in the observation of Nicholson.[12]

> Judicial education is now an accepted part of judicial life in many countries. It is an enhancement of the mental qualities necessary to the preservation of judicial independence...

11 Livingston Armytage
12 Nicholson R.D., Judicial Independence and Accountability: Can they Co-Exist?, 67 Australian L.J.404, 425 (1993).

> Judicial independence requires that the Judicial branch is accountable for its competency and the proposition is now accepted as beyond debate.

The mission of any continuing judicial education is to improve the quality of judicial performance by helping judges to acquire the tools for professional competence. The concept of competence illuminates the issue of what makes a good judge. It includes mastery of theoretical knowledge, developing problem-solving capacity, cultivating collegiate identity, relating to allied professionals, conceptualising the judicial mission, maintaining an ethical practice and self-enhancement. At an operational level, the goals and objectives of judicial education are to meet the education, training, and development needs of judicial officers. These needs are defined through a variety of analysis techniques and then addressed through the provision of specific education services.[13]

Catlin has observed:-

> 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[14].

Judicial education has also become increasingly accepted in Britain over recent years, where the Judicial Studies Board has observed that[15]:

13 Houle C.O., Continuing Learning in the Professions (1980):Tyler R.W., Basic Principles of Curriculum and Instruction (1949): Armytage L., Educating Judges (1996)
14 Catlin is the founding head of the Michigan Judicial Institute.
15 Judicial Studies Board, Report for 1983-1987, 13

> Judicial studies are no longer a novelty....No competent and conscientious occupant of any post would suggest that his performance is incapable of being improved, and, since there is a limit to what can be done simply by self improvement, almost all judges are able to perceive the need for organised means of enhancing performance.

The universally recognised mission of judicial education is to enhance the competence of judges and thereby to improve the performance of courts to provide services applying the law and resolving disputes. Beneath this overarching mission, objectives may vary but are likely to aim at building competence by improving the knowledge, skills and outlook of judges. Examples of some programme objectives are to focus on orientation and induction training, or to conduct seminars to improve legal knowledge or workshops to develop judicial skills or computer literacy. Priorities are those matters identified by the judiciary as needing to be addressed first in its training programme.

This policy-based decision has resulted in the expansion of the training programme with the following curriculum of new training packages:

Legal research skills

Computer research skills

Decision-making skills

Judgment writing skills

Communication skills

Assessing evidence skills

Case management skills

Alternative dispute resolution skills

Other examples of setting objectives include the decision of the Philippines Judicial Academy to reduce the preponderance of its face-to-face conference activities by introducing a distance-learning strategy to enable judges to participate in training remotely, using IT web-based media. In Australia, the initial priority for the focus of training services was to newly appointed magistrates because as a matter of policy the Judicial Commission of New South Wales determined that it would offer the largest and most immediately apparent benefits by addressing the needs of new appointees in the subordinate courts. It was only after the subordinate courts' induction programmes were firmly established after five years, that the Judicial Commission reviewed this policy and priority, and expanded its serves to the superior courts on a continuing professional development basis.

Objectives of Judicial Education:

I Impartial

C Competency

E Efficiency

E Effectiveness

ICEE = Community Confidence in the Judiciary[16]

The objectives of judicial education[17] are identical to those of judicial reform and it includes the following concepts.

"Impartial" stands for both the reality and the perception of impartiality. This includes the concepts of:

1) an impartially minded and independent judiciary respected for its integrity:

16 Judge Sandra E.Oxner, Chairperson, The Commonwealth Judicial Education Institute, Halifax, Canada.
17 This section is based on a Paper on Judicial Education and Judicial Reform Written by the author and published by JUTA in 1997.

2) transparency – from the appointment process through to the rendering of judgments comprehensible to the public;

3) a transparent and accessible judicial complaint process; and

4) an articulated, annotated and publicised code of judicial ethics and conduct so that the community is aware of the standards they have the right to require of a judiciary.

"Impartiality" and "Independence" are often used interchangeably. "Impartiality" is used here to describe the desired judicial character and state of mind. Judicial independence refers to freedom from improper pressure in the decision making process from any quarter. This concept of judicial independence identifies roles and responsibilities for the judiciary, the legislature, the executive, the media, the legal profession and the public. Judicial education places emphasis on attitudinal change to improve judicial integrity and independence and to eliminate open and hidden biases from the judicial mind in fact finding, particularly in relation to gender and ethnic issues.

"Efficiency" includes efficient judicial court room management – placing the Judge and not the Bar in charge of case management, case flow and process efficiency, reform of rules and procedures to narrow the issues early. It encourages timely settlements and courts annexed and free standing mediation as well as other ADR practices. Efficiency also relates to appropriate physical structures and adequate equipment and access to such judicial tools as statute books, precedent cases, legal texts and other scholarly writing.

"Competency" relates to knowledge of substantive and procedural laws. It also includes "judicial skills" such as chairpersonship skills and oral and written communication skills.

It is not enough for a judge to be impartial, efficient and competent. He or she must also be effective in interpreting and shaping the law to achieve a just solution.

This may be achieved by the use of judicially developed techniques such as domestic application of international human rights norms, interpretation of constitutions, or through the judicial exercise of discretion. Integrity, legal competence and valour are required to bridge the gap between the law and a just solution or to prevent decisions on technicalities that unnecessarily avoid the merits of the case. Knowledge and understanding of the community in which one lives is a prerequisite for an effective judge. Knowledge and understanding of the philosophy behind economic reform is also a prerequisite.

A second aspect of judicial effectiveness is judicial predictability. A third aspect is the collective judicial responsibility of listening to the community's complaints about the justice system and using its influence to shape the justice system to respond to responsible complaints. For example, judges do not generally consider a low rate of implementation of their judgments and their responsibility. Difficulties in enforcing judgments can make successful litigation a hollow victory and bring the judiciary into disrepute. There are judicial, legislative and administrative ways of improving judgment recovery. In its role as guardian of the image of justice, the judiciary has an interest and responsibility in supporting this.

To be effective, a judiciary must be legitimate, trusted, respected and relevant. A judiciary must not only be impartial, competent efficient and effective, but it must be perceived to have those qualities. Transparency in procedure and process is required to achieve public faith, as is an understanding by the judiciary that they perform a public service and need to respond to community expectations. Judges, like other players in the justice system, often need intellectual leadership to help them to fully understand the importance of this and to encourage them to lend their support to the means to achieve it.

Having seen the need for judicial education, we may now move on to an important topic which is subject of discussion and comments from all quarters, (i.e.,) delay in disposal of cases.

- There is increased sensitivity that excessive delay in litigation is undesirable. It is not justice, if one has to wait too long to conclude an administrative adjudication. Justice delayed is justice denied, but at the same time, justice expedited may also be justice denied. Speed is not necessarily an indication that efficiency or effectiveness has been achieved. Speed may stem from a disregard for the rights of some or all the parties before the administrative agency.

- There is no single best way, each of us must review and adapt principles and practices to our personal working style and the cases that come before us. Some have highly complex factual issues, with extensive discovery, numerous exhibits, expert witnesses, and long records, others have 'quick and dirty' factual hearings.

- It is essential to first understand the present system, its strengths and weaknesses. Then you must visualize the system that would be ideal, compare the gap, between the two, and establish measurable objectives to move towards the ideal.

- A schedule must be developed to meet those objectives, as well as a strategy to meet the schedule, and perseverance, Effective case management begins by establishing case-processing time standards for the overall disposition of each individual case and all cases.

- Each significant event that occurs in a case should be defined in a time-based case-management information system.

- Establish a deadline for each stage of the case.

- For each deadline established, each case should be monitored by the number of days between events.

- Manual or computerized reports should be designed to identity cases that do not meet the time requirements.

- If a case does not meet time standards look at it and analyze at which stage delay occurred and why. Compare it to those that meet time standards. What was different?

- Analyze everything you do in terms of effective and efficient hearings. Think about how these principles and techniques can be applied to processing your cases.

- Adopt or adapt some of these principles and practices that will allow you to be a more effective administrative law judge and you will enjoy your work more.

- Focus on organizing work to work smarter, more efficiently, more effectively without having to work harder or longer hours to keep up with the ever-increasing work load.

- All face a common situation: more work, fewer support staff, fewer resources, and less time to do our work.

- An essential function of our work is moving cases from when the appeal is filed to when the final decision is issued.

- Setting standards and goals is ineffective unless accompanied by a system to check performance and compare performance to the standards.

- The ability to monitor both individual case progress and the success in meeting

disposition standards is essential to sustain an effective case management system.

- The principles for managing cases more effectively and efficiently fall into four categories:

    i) *attitude on reducing delay;*

    ii) *what to do about delay at the pre-hearing stage;*

    iii) *what to do about delay at the hearing stage; and, finally,*

    iv) *what to do about delay at the post-hearing stage. (This last stage includes tips on using technology in processing decisions.)*

ATTITUDE ON REDUCING DELAY

- Studies of litigation delay show that a key element is the "local legal culture". If the lawyers and judges have always done it a certain way and it has always taken this long, it will continue to take that long.

- The expectations of the judges and lawyers as to how long a case will take are extremely important.

- Lawyers will respond to the "local legal environment" you establish in your cases.

- To improve you must raise your own expectations and goals.

- You must set goals, objectives, and expectations as to how long each stage of

the adjudicatory process should take. Setting goals and objectives is essential to successfully implement change.

- The process of setting goals and objectives accomplishes to articulate the purpose of the effort.

- Second, it provides a basis for identifying the resources and time needed to implement the change.

- Finally, and perhaps most importantly, it provides the basis for evaluating the success of the program or procedure.

- Adopt and maintain a mentality or consciousness of moving cases expeditiously. Is the present situation ideal or can you improve it? Remember work expands to fill the time available. If a shorter time limit is set, the work can be finished. If a longer time limit is set, the work will slow down. Encourage all decision makers to infuse this attitude in the lawyers and support staff.

- Simplify procedures, develop good habits, routines, forms and checklists to insure you are not leaving anything out that is required by due process. Adapt others habits, routines, forms, and checklists to your specific needs and abilities.

- Analyze each stage of the cases heard. Analyze how long it should take if everything moves as fast as the law requires.

- Impose reasonable limits for each stage of a case. You can adjust them for a particular or exceptional case.

- Look at differentiated case management to process different types of cases

differently.

- Time limits for each type of case should be established.

- Develop procedures and forms for early identification of cases so appropriate cases can be given special attention where appropriate.

- Focus on the goal to be achieved.

- Establish reasonable time intervals for each stage of your cases.

- Compare the time requirements of the applicable law or regulations for each stage with the actual days elapsed in your cases.

- Set personal "time goals," i.e., standards and goals for how long it is going to take for processing each stage of a case.

- Judges do not like reporting on themselves to others, so establish a system of reporting to yourself.

- If your personal standards are higher than norms fixed and you achieve them, your evaluation will be that you exceed expectations.

- Keep track of how long things take, analyze at which stage or stages delays occur, analyze all delays, discover what caused the delay, who caused the delay, and then figure out if and how delay can be eliminated or reduced. Keep statistics, compare now approaches with the past. Evaluate what you do.

- Learn from experience. Always evaluate what you do, what works, what needs improvement, and has failed.

- Once deadlines are established do not – do not – use them as a new source of delay.

- If something should be accomplished sooner or faster, do not slow it down for that case to make the deadline. Do it and beat the deadline whenever possible.

- Talk to others about how they handle delay.

- Look for new ways to improve what you do and how you can do it more effectively and efficiently.

- Communicate with supervisors to see how your experiences can benefit the whole system.

- Read court-delay reduction literature, besides keeping up with developments in your substantive field of law, administrative procedure, and the law of evidence.

- Attend seminars, find a mentor, brainstorm with colleagues about efficient and effective case management they have tried.

- Adapt proven techniques to your own environment.

- However, never let speed concerns be an excuse for poor quality.

- It is most important that you devote your time to achieve: fair treatment of all litigants; namely disposition consistent with the circumstances of the individual case; enhancement of quality of litigation; and increased public trust and confidence in Administrative Adjudication.

PRE-HEARING STAGE

- ✓ Take control of the case as early as possible.

- ✓ As soon as a case is assigned to you, YOU are responsible for moving that case expeditiously. Group your cases so that you can conduct two, three or four cases on one trip to a region where you are holding additional charge. I set my cases and prepare my own notices for a courthouse in the county in which the petitioner has its business.

- ✓ Prepare the case before the hearing. Cull out key information the first time the case is reviewed to save unnecessary repetitive work later.

- ✓ If there is a jurisdictional problem, deal it first. Save the parties and yourself wasted time and effort. If the appeal is untimely, dismiss it immediately.

- ✓ Determine what the key issues are in advance.

- ✓ Keep the focus on what is relevant to the issues in this particular case.

- ✓ Know the case better than parties. That way you can clarify any confusion on the record.

- ✓ Never continue or adjourn a case without "good cause". If a case must be continued always set it to a specific date, or if it must be indefinitely, ensure the next action or status date is certain. Set the new date as soon as possible. Continuances are one of the major causes of delay and controlling unnecessary continuances is one of the easiest to ways to reduce delay.

HEARING STAGE

- ❖ Prepare and use an opening statement that clearly, concisely, and consistently explains what the case is about, an overview of what will happen, and the statutory authority.

- ❖ The parties think their case is the most important you have. Provide them full attention and respect. Explain the legal issues in understandable language and the procedures to insure the parties understand that they will receive Due Process from you.

- ❖ Place the parties and witnesses at ease. Their opinion of the entire justice system may well depend on how they are treated in this administrative adjudication.

- ❖ Ignore personalities, friendships, possible bias for or against a party, even if the party, attorney, or witness is obnoxious. Never allow those kinds of things to influence a decision. We are human, and sometimes may want to get back at someone who has made us angry, but as professionals we must put aside personal feelings and decide solely on the law and the evidence in the record.

- ❖ It is important to take notes. Not verbatim, although at times a short quotation is critical to a decision. Most of the time my hearing notes include key works or phrases. Using abbreviations saves time. Notes focus your attention and save

time in reaching and writing the decision. Taking notes should not distract your attention from what is being said. If taking notes is a distraction, find another way, because we must remain focused on the evidence as it applies to the issues.

- Knowing what the case is about before the hearing begins is crucial in order to ask pointed questions to clarify things. Once the record is closed there is no opportunity to answer unasked questions. One must be aware of what may be a prior inconsistent statement or how evidence conflicts with or supports other evidence.

- Handle all exhibits carefully. Make sure exhibits are marked clearly for identification. Make sure the proper foundation is laid for each exhibit.

- Anticipate objections that may come up and be ready to rule on objections.

- Make a good and complete record to avoid remand. The decision must be based solely on the evidence that is in the record, the applicable statutory law, the rules, court decisions, and agency precedent.

- Listen carefully.

- There are ten steps to follow to be more effective listeners.

A. Be interested in what is said.

B. Judge content not delivery. Ignore grammer, syntax, and personality.

The responsibility to understand is ours. We may and often must ask questions to clarify the record.

C. Do not get excited or emotional. Withhold evaluation until comprehension is complete.

D. Listen for ideas. Focus on the central ideas and principles. Discriminate between fact and wish, idea and example, evidence and argument. Note each relevant fact; screen out the irrelevant. One can master this, but only with effort.

E. Take notes as appropriate. The key to notes is the interpretation of what is said not just the repetition or what is said. Salient points, or key words should be noted and remembered.

F. Listening is hard work. Poor listeners do not work at it enough.

G. Resist distractions, daydreams, or emotionalism that results in confusion.

H. Exercise the mind. Develop an appetite for hearing a variety of presentations. Being aware of our weaknesses helps us become better listeners.

I. Keep your mind open. Be aware of red flags that upset or distract you.

J. Capitalize on thought speed. People think four times faster than people speak. Work at slowing thinking speed by using thought speed to your advantage. Constantly apply that extra thinking time to what is being said. (Taking notes slows your thinking down and focuses you on applying the words to the issues.) Mentally summarize what is being said.

POST-HEARING STAGE

- Strive hard in the search for truth. The best is expected, but be

realistic. Accept the possibility that you may be wrong (or reversed even when you are right). None of us is omniscient. Decide and move to the next case.

1. Be open to continuing growth – intellectually learning. Be prepared to overrule your own prior opinion. Embrace criticism (even though you may not always accept it) as an aid in judicial growth.

2. Decision-making in the administrative adjudicatory context is similar to other problem-solving.

    A. Define the problem – Define the issues clearly. Write the issues out in several ways to see them from different angles.

    B. Get the facts. This is the key. Collect and evaluate all relevant evidence so that you will be able to find the facts on each issue.

    C. Find the correct law

    D. Listen with full consciousness to all the evidence, follow as carefully as possible all the arguments, wait until you 'feel' one way or the other before making a decision.

- Write tentative findings of facts as soon as possible while everything is fresh. Make tentative conclusions of law. Write a draft decision, putting on paper key findings of fact and the thought process. The longer one delays in this step, the harder and more time-consuming the decision-making stage is.

- Do you understand the decision? Of course you do. But read it to see if it makes sense to the non-lawyer parties, the agency bureaucrats, those who will make similar decisions in the future, the attorneys, and the judge or justices who may review the case on judicial review.

- Use technology to aid effective and efficient writing.

- Technology helps us work as quickly and efficiently as possible without sacrificing due process or quality.

- Develop from language – Common expressions and usages – develop a stock of idioms.

- Outline the elements of the sections of laws that come up regularly.

- Ask someone else who's writing abilities you value to help you polish your stock language.

- Summaries of the evidence will have some common elements. This only gives you your first rough draft, you must edit. Be careful to not repeat yourself.

....Edward J.Schoenbaum[18]

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