
The Limitation Of The Training Discourse For Continuing Professional Development Of Judges

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Abstract:

This paper deals with the constraints faced in the effective delivery of judicial training. It discusses obstacles that may confront the judicial professionalization project aimed through the training discourse, thus failing the training discourse in its judicial reform objectives. The paper focuses on the institutional arrangements that undermine the goal of judicial professionalization, specific environmental factors that demotivate judges in the learning process, and the socio-legal environment that hinder raising skills and abilities in judges. Important research questions investigated herein are: what kind of impediments are there in the path of professionalization of the judiciary? Are these impediments universal in character? What specific impediments constrain raising knowledge, skills and professional abilities in judges? How much failure can be attributed to the trainees, trainers, system and the status of trainees?

Introduction

The constraints faced in the judicial trainings are delineated from four sources: (i) literature review from sociological and psychological studies that provide why training adult professionals proves to be a difficult task; (ii) field experience in the training discourse; (iii) experience of others, about the hostilities and difficulties they faced in the training discourse; and (iv) the online debates and discussion groups formed amongst justice sector professionals who share their hardships in judicial reform projects. This paper uses these four resources to discuss how trainee judges contribute to limiting their own learning, how trainer characteristics hinder the achievement of training objectives, and finally how the systemic arrangement and institutional set-up block the path to reformative success through the training discourse.

Prof. Cheryl Thomas from London University author of a comparative analysis project on the nature of judicial training offered throughout Europe, identified six types of constraints faced in the judicial trainings in the European context: funding, time, geography, judicial dominance, institutional inertia and resistance to new training approaches.¹ This paper summarizes further analysis grounded in eight years' experience in the field of judicial training. I have divided the paper into three parts. Part I discusses constraints faced as a consequence of inadequate and faulty institutional arrangements made for the training discourse; Part II provides how trainings fail on account of trainee judge characteristics; and Part III locates these constraints in the relationship between judicial trainer and judge trainee.

Part I: Institutional arrangements made for judicial trainings

1.1 The Structural mess

To understand the background in which judicial trainings are administered in India, it is useful to know the structural setting of the judicial system. India has pyramid hierarchy for its judiciary. At the highest point of the pyramid is the Supreme Court of India with 31 judges. Decisions of the Supreme Court are law of the land under article 141 of the Constitution of India, and therefore binding on every entity. Below the Supreme Court are 21 high courts with about 800 constitutional judges. Precedents of these 21 high courts are binding on the district judiciary in their respective geographic jurisdictions. The district judiciary is subordinate to the high court judiciary and under the administrative control of the latter. It, too, is organized on the hierarchical lines. The lowest level court in the hierarchy is designated as the court of Judicial Magistrate First Class (JMFC) when taking up criminal matters, and the court of Civil Judges Junior Division (CJJD) when hearing civil disputes. The majority of JMFC or CJJD are fresh law graduates who clear the competitive exams to obtain an appointment as a judge. A small percentage comprises practicing advocates who gave up the practice of law to join the judiciary so as to avoid uncertainties and economic insecurities associated with legal practice. To them, the judiciary offers safe and secure employment with a fixed monthly income.

When these judges complete five years successfully, they become eligible for promotion to the next higher post of Civil Judge Senior Division (CJSD) on the civil side, or the post of Chief Judicial Magistrates (CJM) on the criminal side. The jump from this second step in the hierarchical ladder to the third step consists of being appointed or promoted as an additional district judge (ADJ). This takes considerable time and also is highly dependent upon several factors which no one clearly spells out at least to the public. Performance is certainly one criterion out of all, but there is a struggle within

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¹ Thomas, Dr. Cheryl. Review of Judicial Training and Education in other jurisdictions. Judicial Appointment Project between JSB and University of Birmingham School of Law, London: JSB, May 2006, p. 11-114.

the judiciary to accept or deny openly whether this is the only criteria employed for promoting the judges to this higher post. Also, competition for this post is increasingly challenging because there are fewer positions and because practicing advocates can compete for them directly from the bar by passing an open examination and being directly appointed. From the post of ADJ, one is eligible for promotion to the highest and most prestigious position within the district judiciary - of district and sessions judge. Administratively this judicial position has significant powers and responsibilities, including maintaining performance records for all subordinate judicial officers. Moreover, around 20 to 30 percent of district and sessions judges are considered eligible for elevation to the position of high court justice, which is ranked as a constitutional judgeship and carries significant respect, facilities, power, status. As a consequence, the competition for appointment to the high courts is extremely rigorous.

This structure of the Indian judiciary combines elements of common law and civil law systems. High court judges and the Supreme Court judges function as judges in any common law jurisdiction function – as equal partners with the legislature and executive in governance, whereas the district judiciary is a career judiciary having all semblance of the judiciary in any civil law country. The career oriented district judiciary in India, unlike the constitutional courts – the Supreme Court and 21 high courts – is highly dependent on the various state law ministries for its administrative support, staffing and oversight. Even though they are governed by the rules framed by the high court, which has constitutional obligation to supervise the district judiciary, the judges of the district courts do not consider themselves as an independent judicial professional but as the state government employees. This opinion gets formed because of their appointment. Most of them are selected as judges by passing a competitive exam conducted through the state government's civil service bureau known as state public service commission. Judges of the respective high courts are present only at the stage of conducting interviews.

1.2 Environmental factors posing hindrance to the learning process

Above structural location of the district judiciary in India, coupled with the poor quality infrastructure made available to the district courts and poor quality of legal training that judges have to undergo, makes the task of judicial training extremely difficult. The discussion below clarifies it further.

1.2.1 Infrastructure to do the judicial work

In the Indian context, the most important reason for lack of motivation in training is inadequacy of infrastructure to do the judicial work. Take, for instance, a criminal case before the trial court where an opinion of forensic expert would be essential for the judge to determine the truth of an allegation made. If the state does not have sufficient forensic labs and trained forensic experts who can send the report about evidentiary sample to the court in reasonable time, judges must wait until the results are delivered to them to decide the matter, thus delaying the court proceedings. While training young CJJD/JMFC in Maharashtra Judicial Academy on the usefulness of forensic science in their judicial work, I found that they had no enthusiasm for the subject. On closer interaction, I learnt that the state of Maharashtra has only five forensic labs to cater to 2000 courts, and due to the heavy workload, these labs are unable to complete and transmit the reports to the court on a timely basis.

One judge reported that she has been waiting for the DNA test results for four years, resulting in inexcusable delay in a case assigned to her and leaving her very frustrated that she will be held responsible for keeping this case file pending for so long in her court. The others all echoed her frustrations and narrated similar problems they face when forwarding any document to the handwriting expert for verifying the signatures or writings that are contested. Another judge highlighted yet another difficulty with this kind of evidence. In prohibition statutes which bar drunk driving, the police neither collect a blood sample to test the alcohol level in the body in many instances as prescribed by the law, nor do they forward samples, when they do take them, to the lab for testing within the period stipulated by the statute. In such cases they wondered how magistrates can help if the blood sample is not seized as per the procedure prescribed by the law. And when the courts, due to absence of reliable evidence, do not punish drunken driving offenses, society blames them for not responsibly processing such cases. These limitations on access to forensic science and incompetent police made judges reluctant participants in an educational module that encourages reliance on the forensic science to verify the charges.

The same problem occurred again when an attempt was made to draw judges' attention to the utility of electronic case and court management. In September 2011, the U.S. Department of Justice and the U.S. Trade and Patents Office in India conducted a course for the senior district judges in Maharashtra to raise awareness on the issues relating to the trademark and copyright infringement. In this program, Judge Morrison England of the U.S. District Court, Eastern District of California demonstrated how the new reforms from past 12 years have changed the federal courts in the U.S. tremendously. He practically demonstrated to trainee judges from Maharashtra how he accepts e-filings, e-documents and digitally signs and writes his orders and judgments through his I-Pad even without being physically present in the court or the country. Senior trainee judges, rather than accepting the benefits that accrue if they take advantage of the advancements in the judicial profession around the world, started questioning the usefulness of all this progress. This

negative response to the electronic court management process stems from the fact that the government of India has not allocated laptops to all the judicial officers in the trial courts, and not completed the computerization of all the trial courts. Therefore, even now there are trial courts with no computer and internet connectivity, no soft sources of law which can be easily accessed and incomplete libraries for reference. Most of the judges do not know how to use computers and draw a blank when acquainted with their benefits.

1.2.2 Legal education quality

Problems of obsolete laws demand judicial innovation to meet the demands of modern and complex societies under the laws that did not anticipate future directions of progress of society. Frontline judges selected right after their law graduation can sit as judges without even any type of internship in a court. Equipped with *poor legal education*² they are unable to apply these obsolete laws to the present circumstances.

It is not that there are not lawyers who take interest in their own learning and are very bright, but most such talented men and women avoid joining the trial court bench because of the conditions that persist in many of those courts. Except for some newly constructed courts in some metropolitan cities, the physical conditions make these courts very stressful and depressing places. Poor physical infrastructure, dilapidated buildings, little furniture, lack of sanitation and hygiene, gloomy settings with no sitting arrangements for litigants, broken windows and dirty conditions characterize many of these courts. Libraries and information resources for lawyers and judges are non-existent, photocopying equipment is heavily burdened, corruption amongst clerical staff who handle filing and record keeping is widespread. Ambitious men and women prefer better working conditions. They prefer to join the bar, engage in the practice of law, and then pursue a judicial career via direct appointment to a judgeship in a constitutional court which offers a much more attractive environment – physically and intellectually. The upshot is that the trial court judiciary generally comprises an inferior quality of judicial officer, one seeking a secure job that promises monthly emoluments. Thereby, trial court judgeships are reduced to the status of almost routine civil service government jobs in the justice system.

Part II: Trainee judges' characteristics

There are number of reasons for unsuccessful training that can be attributed to trainee judges. These are:

2.1 Poor legal scholarship and secrecy

The major constraint in the training discourse are judges themselves who believe that their work is confidential, that the public has no business inquiring into their analysis and reasoning in how cases are adjudicated. Some of them view training as a useless endeavor and waste of exercise. Their poor scholarship prompts them to view criticism as a threat to their job security. More and more judges of mediocre scholarship are now making it to the top. This is aptly described by Krishna Iyer as:

"...choices are almost personal, uncontrolled by socially accountable canons and compromises among the thesis. The candidates once selected or rejected are jettisoned or again midwife for unknown grounds. The bar and the public are in the dark. Judges, transferred for suspect behavior emerge as chief justices of a high court or even members of the Supreme Court. One high court judge who rarely attended court or wrote a judgment was made chief justice of Kerala High Court by the bizarre wisdom of the feudal few of the apex court accidentally at the top. To be brief, in the art of choice, the process is a riddle wrapped in mystery, inside an enigma. Management of the judiciary needs vigilance, research, social perspective and national commitment, people's concerns and socialist, secular convictions."³

2.2 Lack of motivation

Many trainee judges, on account of their closed mindset, traditional value systems, narrow thought process, limited exposure, and egocentric position, remain unmotivated if they are unable to climb up in the hierarchical career, questioning the utility of the educational discourse against their practical court work experience.⁴

² See S.P.Sathe, "Access to legal education and the legal profession in India" in R.Dhavan, N.Kibble and W. Twinner (ed.) Access to Legal Education and Legal Profession 165 (1989); R. Segal, S.R. Bhosale "Legal Education in India: Restructuring and Reshaping" Indian Bar Review 1999 Dec. 26: 37-46; Dr. G.S. Pathak in Prof. S.K. Agarwal ed. Legal Education in India, Problems & Perspectives (1973) p. 2-3.

³ Iyer, V.R.Krishna. The Majesty of the Judiciary. New Delhi: Universal, 2007.

⁴ H.M.Hutchins, L.A. Burke and. "Training transfer: an integrative literature review." Human Resource Development Review, 2007, vol. 6: 263-296 at 267.

2.3 The problem of participating in self-learning

Not all adults feel comfortable with the idea of participation, very much want the training to be 'done to them,' and are either reluctant or refuse to contribute to their own learning. Most adult professionals, including judges, are able to help themselves in the various situations of work and life they are accustomed to, but some feel helpless in the new educational and learning situation.⁵ Contrary to popular belief that adult educational methods work successfully for adult professionals, senior judges unwillingly participate in the role play and simulation exercises. Only newly appointed judges are found enthusiastic.

2.4 Training and the tendency to maintain status quo

As observed by Tracey et. al., reactions to training play a critical role in the training process.⁶ Positive reactions influence an individual's willingness to use newly acquired knowledge and to attend future training programmes. Reactions may be classified into – affective and utility reactions. Affective reaction refers to the extent to which a trainee likes or enjoys training, whereas utility reaction refers to the perceived applicability or usefulness of the training for subsequent job performance.⁷ Utility reaction creates in judges the tendency to resist any change that is being proposed. In the Indian context, I found that this tendency emanates in judges from three sources – personality of the judge, socio-cultural upbringing of the judge, and the quality of education that is undergone by the judge.

2.4.1 Personality

Personality is an important dimension that restricts learning new ideas in the training discourse. Almost on all batches of the frontline judges that I have administered the MBTI personality test⁸, it emerged that the majority of them are comprised of ISFJ and ISTJ type. This personality resists change, reforms, and innovations to be brought in to the existing system. These personality traits prompt the judges to oppose judicial reforms. This becomes quite evident when judges are told to acquire new skills. There is huge resistance to proposals for proposed court reforms such as doing away with the stenos, typists and additional clerks used for manual filings in the courts. Many judges show reluctance to accept computer automated operations. This same personality also presents itself as a hindrance when legislature introduces progressive legislation. Judges of these personality types challenge the judicial education discourse that calls for change in attitude or approach.

2.4.2 Socio-cultural upbringing

Judges from the rural areas are not accustomed to new inventions that are changing the world, and their cultural and educational background does not encourage investment in self-development. Therefore, even when they have good salaries, they spend little or nothing of that salary towards their own intellectual development. There is reluctance to spend even 1 % of the salary earned to learn new things by investing in books or journals or computers for themselves. This socio-cultural background shows that judges do not give much importance to their own professional development.

The rural upbringing with too much stress on caste, color, religion and culture in the lives provides yet another challenge to the training discourse and also to the learning process. There is a group that does not believe in equality of gender; does not like men and women sitting together in classroom; shies away from taking part in any collective activity; resorts to character assassination of female litigants, advocates and fellow colleagues; pays too much attention on outer exterior of people who appear in the courts; and draws conclusions about character from this outer exterior. These prejudices then find their way into the decision- making process.

2.5 Prior –experience

Even when adult professionals are well aware of the fact that their experience is not perfect and in need of some correction and completion, it becomes difficult for them to admit these imperfections, because they define themselves largely by experience, and they have a deep investment in its value.⁹ It goes without saying that if a judge unwittingly relies on irrelevant past experience and has thereby become obsolete as times change he/she is unlikely to be cooperative and open-minded as an active and eager participant in the training course. To my experience, difficulties of this kind are many, and they threaten to a high degree the effectiveness of the learning process during the training discourse.

⁵ Malcolm S. Knowles, *The Modern practice of adult education: andragogy versus pedagogy*, New york, 1970; p. 40

⁶ J. Bruce Tracey, Timothy R. Hinkin, Scott Tannenbaum, John e. Mathieu. "The influence of individual characteristics and the work environment on varying levels of training outcomes." *Human Resource Development Quarterly*, vol. 12, no. 1, spring 2001: 5-23, at p. 10.

⁷ *Id.* at 12

⁸ Created by Isabel Briggs Myers the author of the world's most widely used personality inventory, the MBTI or Myers-Briggs Type Indicator – is developed and modeled around the ideas and theories of psychologist Carl Jung, a contemporary of Sigmund Freud and a leading exponent of Gestalt personality theory.

⁹ Malcolm S. Knowles, *The Modern practice of adult education: andragogy versus pedagogy*, New york, 1970; p. 44

2.6 Barriers to learning

Illeris points out to three barriers to learning: mislearning, defense against learning, and resistance to learning.¹⁰ Mislearning is caused by lack of qualifications, lack of concentration, and misunderstanding; defense against learning is being selective in what one learns and resistance to learning is obstruction to learning something in situations that are experienced as unacceptable. Illeris states that there are many individual and situational reasons for non-learning. Learning processes may be blocked or derailed for a variety of reasons, partially or totally. Judges are not free from such barriers.

2.7 Open acceptance for the need and benefits of training

Kadens reveals that judges may not openly acknowledge benefits they derive from training:

*'Even those who admit to having had a learning curve remain coy about what they did to teach themselves how to be judges. When asked directly, however, judges readily admit to the difficulties of learning their jobs' (2009:143).*¹¹

Pischke in his paper about continuous training in Germany found out that trainees are reluctant to spend personal time for training activities. Most of those who had undergone training clearly indicated that they would not have participated in the training without the financial assistance received from their employer side or another source.¹² This reluctance to invest in personal development shows lack of commitment to continuing education on part of professionals. Judges too, whether in India or elsewhere often participate in learning only when it is provided it free of cost.¹³

A stark difference is found in the attitude towards judicial education between some civil law and some common law countries. Where judicial education is publicly recognized and accepted for judges in most advanced and some developing civil law countries, in some developing common law countries, many judges prefer to keep the process hidden from public awareness, presuming that judges already know everything they need to know. To that extent, we have this process going on under the blanket of titles like conferences, retreats, workshops, seminars, etc. This difference according to Kadens emerges because:

*'In civil law countries, the judiciary has long been viewed as a career, an honorable one, perhaps, but just one amongst many choices a young lawyer could make. The law student or law school graduate selects the judicial track, receives focused training, and progresses up the hierarchy of courts as his or her abilities, interests, and experience warrant. In such a system, the fact of judicial education is openly acknowledged. In common law countries, by contrast, a judgeship long ago became a reward for a successful career as a practitioner. It was not the career the young lawyer prepared for; it was, and remains, the plum he hoped he might earn by service in another branch of the law.'*¹⁴

2.8 Attachment style of individual learners

Another constraint in effective transfer of training relates to attachment style of individual judges. Developed primarily by Bowlby,¹⁵ attachment theory holds that from infancy people form an internal working model of other people as well as themselves, based upon the perceived accessibility of their primary care taker. Attachment styles systematically influence how people seek and process information, interact with and evaluate others, engage in tasks and regulate their emotions.¹⁶ The two variables that determine a person's attachment style are (i) one's belief that one is worthy of love and (ii) one's belief that significant others can be depended upon to be accessible.¹⁷ At present, three attachment styles have

¹⁰ Illeris, K. How we learn. Learning and non-learning in school and beyond. London: Routledge, 2007.

¹¹ Kadens, Emily. "The Puzzle of Judicial Education: The Case of Chief Justice William de Grey." Brooklyn Law Review, 2009, Vol. 75, issue no. 1: 143-200.

¹² Jörn-Steffen Pischke, Continuous Training in Germany, Discussion Paper No. 137, March 2000, MIT, Cambridge and IZA, Bonn at p. 8

¹³ Report of EU 2012

¹⁴ (Kadens 2009:145).

¹⁵ Bowlby, J. (1969). Attachment and loss. New York: Basic Books. See also, Bowlby, J. (1979). The making & breaking of affectional bonds. London: Tavistock Publications.

¹⁶ Lopez, F. G., & Brennan, K. A. (2000). Dynamic processes underlying adult attachment organization: Toward an attachment theoretical perspective on the healthy and effective self. Journal of Counseling Psychology, 47, 283-

300. See also, Rice, K. G., & Ali Mirzadeh, S. A. (2000). Perfectionism, attachment, and adjustment. Journal of Counseling Psychology, 47, 238-250.

¹⁷ Gary P. Latham and Peter A. Heslin, Training the Trainee as Well as the Trainer: Lessons to be Learned From Clinical Psychology, Canadian Psychology, vol 44, issue 3, pp. 218-231

been identified – secure, anxious-ambivalent and avoidant. According to attachment theory, people with secure attachment style view others as trustworthy and themselves as worthy of care; anxious ambivalent attachment results in a high dependence on others for a sense of well being. There is over-involvement in close relationships characterized by incoherence in discussions, unnecessary intrusions and interruptions, and exaggerated emotionality.¹⁸ The desire for closeness, combined with a fear of rejection often triggers angry protests when a significant other is perceived as ignoring them or as inaccessible.¹⁹ An avoidant attachment style stems from consistent rejection of attempts at closeness. This sometimes culminates in a positive view of self and a negative view of others because of their perceived lack of availability.

Attachment styles determine how trainee judges will view training activity as well as their work or job. Considerable research and empirical studies prove that attachment styles affect task exploration and engagement.²⁰ They further demonstrate that secure attachment style is the most positive style and people with this style work without undue distraction, ambivalence or anxiety.²¹ On the other hand, anxious ambivalent people find relationship concerns affecting their work and productivity and they often get feeling of being misunderstood, unappreciated and fear other's impression about their work.²² It has been also found that people falling in the third category – with avoidant attachment style use their work as a means to minimize social interactions. Different attachment style of individual judges implies great variations in the participation by judges in their learning for any given training program.

Part III: Judicial Trainer and methods employed for trainings

Like all interactions between human beings, training is a complex business, involving both the personality and skills of the trainer, or facilitator, together with the teaching environment in which the training takes place and the willingness of the trainee to learn. Trainee judges are not solely responsible for the failure of learning from the transfer of training. Collins et. al.²³ in their work cast the heavy responsibility on the trainer and make trainer responsible for failure or success of learning. According to these authors, trainers have to create an atmosphere in the training duration conducive to successful learning by the trainees. Judicial trainers need to note the heart of Dewey's teaching: the aim of education is to teach learners 'how' to think and not 'what' to think.²⁴ The military-type instructions churned out during the judicial education discourse to judges who have been given vast discretionary powers under the various statutes do not prepare judges on "how" to think.

Some of the reasons for the failure of learning by judges attributable to judicial trainer are: (i) lack of understanding about andragogy as a discipline; (ii) lack of skills to motivate adult professionals to participate in their own learning and development; (iii) no scientific qualifications to undertake continuous educational activities; (iv) supply side deficiency; and (v) arbitrariness.

3.1 Judicial education institutional management in India

There being a divide between the career judiciary and the higher judiciary, the judicial education needs of both groups is addressed with different strategies. For the career judiciary, the lowest post to enter the judicial system being that of CJJD or JMFC, the consensus amongst the high courts is to train these officers for a one-year period in the judicial education institution before appointing them the bench. In the state of Maharashtra, under the high court of Bombay directive, once selected, candidates are sent to Maharashtra Judicial Academy for four months of residential training. After this training judges are sent to the courts for six months to obtain practical experience in judging. After completing six months in the courts where they sit along with senior judges and observe working of the court, they return to the Academy for another two months of residential training.

Again not all states in India follow this timeline; from state to state, there is variation. Ideally each state should have its own high court and its own judicial education institution but this is not the case. Several high courts have territorial

¹⁸ Searle, B., & Meara, N. M. (1999). Affective dimensions of attachment styles: Exploring self-reported attachment style, gender, and emotional experience among college students. *Journal of Counseling Psychology*, 46, 147-158.

¹⁹ Bowlby, J. (1969). *Attachment and loss*. New York: Basic Books.

²⁰ Bowlby, J. (1969). *Attachment and loss*. New York: Basic Books.

²¹ Horowitz, L. M., Rosenberg, S. E., & Bartholomew, K. (1993). Interpersonal problems, attachment styles, and outcome in brief dynamic psychotherapy. *Journal of Consulting & Clinical Psychology*, 61, 549-560.

²² Hazan, C., & Shaver, P. R. (1990). Love and work: An attachment-theoretical perspective. *Journal of Personality & Social Psychology*, 59, 270-280.

²³ Stewart Collins, Margaret Coffey, Francis Cowe. "Stress, Support and well being as perceived by probation trainees." *Probation Journal*, 2009, Vol. 56, No.3: 238-256.

²⁴ John Dewey, *Ethical principles underlying education*. In: *Early Works of John Dewey*. Carbondale, IL, Southern Illinois University Press, 1971, vol. 5, p. 54-83.

jurisdiction over more than one state. For instance, Bombay high court has jurisdiction over Maharashtra, Goa and union territories Daman and Diu, and Lakshadweep. Similarly, Gauhati high court has jurisdiction over seven sister states of northeast India – Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura and Sikkim. This extension of jurisdiction well beyond the boundaries of the state is justified on account low rate of litigation in some territories and therefore it was not thought fit to have a separate institutional judicial framework for these territories. For instance take the case of Gauhati high court. Even after having a jurisdiction over the seven sister states, this court has the lowest litigation rate because the population there prefers that its claims be addressed by alternative dispute resolution forums rather than the formal court dispute- resolution process.²⁵

Likewise is the case of judicial education institutions in India. Ideally there has to be one apex institution under the supervisory control of the Supreme Court of India and at least 21 others in different states in the supervisory control of the high courts. However, this is not the case. At the national level, under the administrative control of the Supreme Court, there is National Judicial Academy at Bhopal established and operational since the year 2004. At the state level, not every high court accords the same level of importance to judicial training. In fact, at the state level, judicial education dissemination is directly dependent on the priority that the high court gives to it. Therefore, state judicial academies, are not functional in all the states. Also, some states have established more than one institution to provide judicial training. Presently, Maharashtra and Tamil Nadu have more than one judicial education institution whereas the states like West Bengal and seven states in the northeast do not have functional judicial academies. They send their judges to Delhi for the judicial training.

Judicial education in most states is not backed by any sound planning and policy. Senior district judges detailed to judicial academies and entrusted the task of educating fellow judges often lack a vision for training and sometimes even do not fully understand the purpose of training for their colleagues. Occasionally a district judge posted at judicial academy has lots of enthusiasm. Also, enthusiasm for judicial training as opposed to cynical feelings towards its utility will not be sufficient to develop the discourse to raise intellectual abilities in judges to appreciate law and provide reasoned decisions. The discourse has to provide them judicial skills required for justice according to constitutional morality and mere enthusiasm for training on the part of management will not translate the training into a skill- development exercise. Enthusiasm is not helpful in stabilizing the core ingredients of the training. Few district judges have professional training in the principles of curriculum development, and many treat their posts in the judicial education institution as an extension of their court work. They know of no scientific principles to be employed in designing of curriculum, teaching methodology, faculty selection, mission and vision and goal for education, tools to be employed in monitoring effectiveness of the professional education.

There have been various reports by committees constituted by the government of India from time to time, for example the Shetty Commission, to do away with the wide variance in the type of induction training programmes for judges in terms of duration, content and quality. From year 2006 to 2010, the National Judicial Academy at Bhopal conducted many consultation meetings with the then-directors of state judicial academies to help them evolve a common approach to judicial education, and it also developed a minimum core curriculum for judicial education, both for induction and for continuing education. However, the state judicial academies are free to adopt or abandon this proposed curriculum and even today, every state judicial academy is doing its own things with no coherent national strategy and systemic training objectives in place. The only standardization that these seven years of judicial training has yielded in my experience is in the topic of constitutionalism. Judges almost in every state are now made to realize through the judicial trainings the relevance of constitutionalism to their judicial work.

The time invested in training is directly related to the status of a judge in the hierarchical system. CJJD/JMFC judges are deemed appropriate candidates for a one-year residential training requirement. Judges at the next-higher level of CJSD/CJM at most are provided a one-month residential orientation course. Judges one level above them, ADJ, may not be provided more than 10 days of training. High court judges have no obligation to participate in training and typically do not spent more than two or three days at the National Judicial Academy in Bhopal in any seminar. Supreme Court justices from years 2004 to 2011 attended only two retreats, one in 2005 and one in 2008 of four days each. Not all judges are able to attend training programs during their careers, even with so many institutions engaged in training Indian judges. One widespread perspective on judicial training is that it should be required only of the subordinate judiciary; some even give it the color of punishment. For instance, there have been incidents of a judicial order that sends a judge to a specific course at the judicial training institute on account of judicial error.²⁶

²⁵ Chief Justice Madan B. Lokur in his address on court and case management issues to trainee judges in Maharashtra Judicial Academy acquainted everyone present with this fact.

²⁶ In Rohit Kumar v. State of NCT of Delhi 2008 CriLJ 3561, a Delhi High Court judge in an appeal from the order of ADJ found that he had not correctly applied the criminal procedure. He therefore in open judgment ordered the judge to undergo a 3 months refresher

Close observation of the district judiciary reveals significant challenges within the district judiciary. Every objectionable vice - wrath, greed, sloth, pride, lust, envy, and gluttony – can be identified.²⁷ There is a huge misuse of hierarchy and performance appraisal tools. I focus the remainder of this article on this segment of judiciary to enumerate the kinds of difficulties one may encounter in the process of judicial training.

3.2 Training in the absence of needs assessment

The state judicial academies managed by district judges are not equipped to assess the professional training needs of judicial officers from time to time in their state, in part because they have not been trained in evaluation techniques to determine the utility of training delivered. Further, although trainee officers are selected by the high court, the actual selection function often falls to the registry of the high court. Indeed, in some high courts some trainees are sent to multiple training sessions while other judges never have the opportunity to undergo training during their careers. Another problem is that trainee judges are not asked about their willingness to undergo trainings. This results in forced training for a judge who has no inclination or need to learn the subject. Also, some judges on the verge of retirement are sent for the training. They question the relevance of the training for them. High court registry offices cannot be blamed for poor selections because they already are heavily burdened with other tasks related to court management, budget formulation, protocol follow ups, etc. There is no system in place for assessing needs to match judges to programs.

3.3 Training by employing methodology of fear, sanctions and disciplinary techniques

Trainee judges are not solely responsible for the failure of learning from the transfer of training in the judicial education discourse. Collins et. al. in their work cast the heavy responsibility on the trainer and make trainer responsible for failure or success of learning. According to these authors, trainers have to create an atmosphere in the training duration conducive to successful learning by the trainees.²⁸ This means that the training has the potential to change learner mindsets at any age or any stage of the career provided that an appropriate methodology is employed by the trainer. Absent correct methodology, the trainings cannot shred hardened attitude of adults who feel reluctant to change.

My experience and interaction with the state judicial academies in India reveals amusing and unusual techniques deployed by the district judges who manage their day-to-day functioning. One prominently used is the technique of instilling fear to inspire respect for themselves and compliance with their directions. They create concern on the part of the trainee judges that the district judge teaching the class may tomorrow become a guardian judge, administrative judge or the principal district judge and may have some influence on the promotion, performance review, or disciplinary procedure against the trainee judges. This fear of the future ensures that trainee judges remain obedient in the class, do not question the utility of what is being taught, and maintain the standard of discipline dictated. At the end of the training period, an interview is conducted where the trainer judge tells trainee judges about their performance during the training period; a written report is subsequently forwarded to the high court for its information. This interview and reporting process make young entrants to the profession very nervous; it also produces responses from the trainees in the form of sessions or two or more hours during which they praise and sing songs to appease the trainer judge.

Also, the evaluation feedback form asks trainee judges to identify themselves by providing their name, place of posting, etc. Hence, if trainees criticize the trainer for poor delivery or inadequate mastery of the topic or record other comments reflecting bad management of the Academy, in all likelihood it would result in a quid pro quo on their personal performance reports that the academy prepares and sends to the high court. Such tactics are adopted by almost all the fully functional state judicial academies in India managed by the district judges.

3.4 Perception about successful career and judicial trainings

Perception, a product of many environmental factors, plays an important hindrance role in judicial training. Almost all young trainee judges join the judiciary with an optimistic attitude, but that perception soon devolves into a highly

course in criminal law at Delhi Judicial Academy and even asked to Academy to submit his performance at training report back to the court. Usually this decision could have been made at administrative side without exposing identity of the judge to the whole world and making him a topic of the gossip circles. Also, judicial training at the Academy run by his fellow colleagues or even his junior colleagues, makes one wonder, how sure one can be that at appropriate course would be offered to judge to give up his misconceptions.

²⁷ Even though recently former judge of the Supreme Court of India, justice Ruma Pal in her speech at fifth V M Tarkunde Memorial Lecture on 'An Independent Judiciary', acknowledge that the higher judiciary is guilty of these sins, I would like to add to her observation that the judiciary below this higher judiciary [which the constitution designated as the subordinate judiciary] is no less better, but far more worse. See Higher judiciary guilty of 7 sins: ex-SC judge pulls no punches, Indian Express Newspaper, 10 November 2011.

²⁸ Stewart Collins, Margaret Coffey, Francis Cowe. "Stress, Support and well being as perceived by probation trainees." Probation Journal, 2009, Vol. 56, No.3: 238-256.

pessimistic attitude about their career growth. They are brainwashed to believe that the career growth is linked not to their performance on the bench but to the extraneous circumstances like family background, financial capability, political connections, ability to keep superiors happy, good fortune and networks within the higher judiciary. This perception is nurtured by their peers and seniors who have spent considerable time in the judicial system. It persists because there is no transparency criterion or national policy communicated to everyone of the factors considered in promotions, demotions, transfer and removal of the judicial officers. This perception is created in the minds of young entrants by the senior hawks in the career judiciary who wish to exercise control over the future of these young entrants so as to create obedience, subjugation, loyalty and allegiance among the junior entrants. This pessimistic perception about career growth based on performance in the system demotivates the young entrants to take full advantage of their judicial training opportunities.

3.5 Treating different personalities on the same level

Ten Have (1973)²⁹ brings to our notice one major blunder that trainers commit; it is treating adult as a homogeneous group, shadowing on different personalities that emerge as a result of aging process. He acquaints us with six different types of attitudes that have been scientifically, medically and socially proved to exist in adults after age of 40. These six attitudes produce six types of adults³⁰. All of them have different educational and therapy requirements of which judicial trainers are not aware.

3.6 Lessons learnt from some specific training courses

I will now recall my personal experiences in the trainings to provide how the background of a judge stands as an impediment to learning process.

3.6.1 Refresher course for the Family court judges

Family court judges in Maharashtra State belong to two different cadres or groups. One group is appointed directly to the family courts through written examinations; the other group comprises judges transferred to the family court for a period of three years. The Supreme Court judgment in the year 2011 made clear that judges who are directly appointed to the family courts in Maharashtra cannot be considered for elevation to the high court. This decision meant that once a judge has been selected for appointment as family court judge then he /she will remain in that capacity until retirement at the age of 58 years. Therefore, family court judges can be transferred only from one family court in the state to another family court. They can be transferred neither to any other type of court nor, like their counterparts in the district judiciary, be considered for elevation to the high court. This separation has not been accepted well by family court judges because it effectively eliminates any possibility for promotion. They feel they also suffer because they have no opportunity to adjudicate different types of cases or to improve their status.

In July 2011, in the refresher course on the changing nature of matrimonial litigation for the judges of the family court, the high court registry had nominated judges from both the groups along with counselors who are attached to the family courts for encouraging mediation and conciliation amongst the litigants. On the first day, I experienced firsthand the frustrations of the family court judges who are not eligible for elevation. I learned in the opening session that judges who had put more than 20 to 25 years in service as family court judges felt entrapped within the system. They also were hostile, given their many years of experience, to this particular course because they felt they already knew so much that there was no need for them to undergo any additional training discourse at this moment in their careers.

The other group comprised newly appointed family court judges on transfer basis. These judges, prior to being transferred to the family courts, presided over cases in drug courts or other special criminal courts dealing with serious offences. Judges from this group lacked basic understanding of the objectives of the family court. In fact, one judge throughout the three-day course, displayed biases and prejudices against women in matrimonial discords. This judge had a problem with almost every trainer on the gender justice issues and had a strong reservation on maintenance and alimony to be afforded to women. These reservations that some judges displayed toward progressive legislation present a challenge to the successful transfer of learning in the training process.

In December 2012, in yet another refresher course for newly appointed family court judges, I found some judges to be highly conservative about outer appearances of litigants. Some expressed an open dislike of women litigants who dress well, wear makeup or show no remorse and hurt in the divorce proceedings. Also, some of them expressed dislike for nuclear families as they themselves resided in joint families.

²⁹ Have, T.T. ten. "Andragogy in later life." SCUTREA 1997. SCUTREA, 1973. 1-25.

³⁰ 1. The accepting type; 2. The expanding type; 3. The introverting type; 4. The struggling type; 5. The relaxing type; 6. The resigning type

Persuading family court judges abandon their personal cultural assumptions poses another formidable challenge to the training process. It is highly unlikely that they will give up their personal morality and do judging based on the constitutional morality.

3.6.2 Refresher course for the juvenile justice board members

In the year 2000, in order to conform to the mandate of the UN Convention on the Rights of the Children to which India is signatory, the parliament raised the legal age of a child under law from 16 to 18 years. Eleven years have since transpired, yet even today some trial court judges question the wisdom of the parliament requiring treatment under law of a person below the age of 18 years as a child. They prefer the earlier statute and argue that 16 years was sufficient to afford protection to children. Continuous seminars, conferences, refresher courses and workshops have not been able to change the mindset of the trial judiciary on the treatments to be afforded to adolescents aging 16 to 18 years. They even come out with the reasons to reduce the age of child from 18 to 16 saying that this group is largely involved in all kinds of criminal activities. The use of disciplines like psychology in the training discourse to shake this view has not proved very successful. The only way forward seems to be a strong message to be circulated to the trial court judiciary from the high court to stop challenging the parliamentary wisdom.

3.6.3 Orientation programme for the senior district judges

In a month-long orientation program for newly appointed or promoted district judges in Maharashtra Judicial Academy, I found district judges questioning the precedents of the high court and the Supreme Court of India; in their view, these precedents were immoral. For them, the constitutional courts are compromising Indian culture and values by validating same-sex relationships, live-in-relations, and sex outside of marriage; therefore, these should be discarded.

Since the cultural and moral value index differs from one set of judges to another, judicial trainers like me are challenged as to how to move forward. The gap in cultural and moral values, anchored in the education a judge may have undergone, plays a crucial role in his/her selection and appointment at different levels within the judiciary. I have learned that the best methodology to move forward under such circumstances is to insist that judges from all levels rely on the morality set forth in constitutional precedent rather than one's personal and cultural morality. The constitutional morality reflects the larger values of freedom, equality, dignity, equity and fairness that must be reflected in judicial decision making is a new concept to the trial court judiciary, but a minority of judges are sufficiently open minded to internalize this idea. In fact most of them found it to be an academic imagination and not practical approach for the courts.

3.6.4 Induction courses for frontline judges

The dynamic of training changes depending upon the power invoked by the judicial trainer. Trial court judges who undergo training react very differently to judges and non-judges. They do not question, for example, judge trainers for fear of reprisal on the utility of the ADR in their case management course. They pretend to be in complete agreement with the philosophy and utility of the ADR in court and case management. However, this pretension soon fades away if the academic trainer is substituted for the judge trainer. Suddenly a volley of questions is hurled at the trainer, demanding to know why there is a need to privatize the justice! This step-motherly treatment of the academic trainers has led to the exit of some eminent academic trainers from the judicial training field.

Conclusion

Whereas promotions to judgeships at the high courts and the Supreme Court of India are earned after undergoing high-quality legal education, success in the legal profession, standing in the bar etc., the trial court judgeship is all about an ability to crack a competitive exam. There is therefore a huge ideological difference between the two groups of judges in India. The level of education, experience and exposure to the world segregates these two into separate groups with dramatic differences in status. It then falls to judicial education institutions to narrow the gap in knowledge, understanding and competence of these two groups. However, one question remains: can this task be fulfilled by the judicial academies under the immediate supervision of judges from the career judiciary (although under the management control of the high court) on the very lines as if they are courts under the administrative control of the high court. My experience tells me that the senior district judges are reinforcing the very values from which the judiciary needs to free itself. If this situation is not analyzed and resolved, no long-term improvement can result from the judicial education discourse and no benefit will accrue to the system. With the system remaining as it is from where we began, the public expenditure on the judicial education discourse³¹ will not be sustainable in the long run.

³¹ 13th Finance Commission provides the grant of INR 2500000000 for the period 2010 to 2015 to state judicial academies so as to bring the desired judicial reforms through the judicial education discourse. See para 12.84, p. 221, chapter 12 of the thirteenth Finance Commission report available online on the website of the Finance Commission of India.

Further, while choosing trainers for the judicial trainings, the policy makers in the High Court and the Supreme Court, need to take note that many jurisdictions are now insisting on qualified trainers. In England and Scotland there are regulations³² requiring trainers in the further education sector to have qualified or be actively working toward a stipulated qualification.³³ There is the usual 'grandfather' clause allowing those already working to continue, but trainers new to the profession will have to be fully qualified.

Further, there is a need for a shift in the field of training – from mere emphasis on trainees who are recipients of training to the trainer who administers the training.³⁴ No actual benefits will accrue if the role of the administrator of training is completely ignored and marginalized. The trainer's capacity building is equally important to maximize the trainee's learning. Training of trainers has been completely ignored and hardly any attention is paid to the role of the trainer for organizational survival in a dynamic environment of hyper-competition.³⁵

³² (S.1.No.1209 Further Education Teachers Qualifications (England) Regulations). See Ofsted report in 2003, a DfES report in 2004 Equipping Our Teachers and a FE White Paper in 2006.

³³ (S.I.2007 No. 2264 – The Further Education Teachers, Qualifications (England) Regulations 2007).

³⁴ Gary P. Latham and Peter A. Heslin, 'Training the trainee as well as the trainer: Lessons to be learned from Clinical Psychology', Canadian Psychology, 2003. Electronic copy available <http://ssrn.com/abstract=1275117>

³⁵ Hamel, G. (2000). Leading the revolution. Boston, MA: Harvard Business School Press.