

## **JUDICIAL TRAINING – SOME INCEPTIVE CONSIDERATIONS**

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Training has always been used for equipping persons with the expertise necessary for performance of tasks. In its present systematized form it was developed initially for developing human resource in industries as an essential component of personnel management. Its principles were then developed for application to the personnel in business. Since then the principles have been adapted for training persons in other organisations including the governmental organisations and services. Training is now an accepted tool for development of human resource in an organisation and is an important limb of the discipline of Personnel Management. In India also almost each of the services has a training facility with specialised programmes for its members. They provide not only induction training to the members of the service but also organise seminars, in-service training and distant continuing training by the~ publications.

Necessity for training of the judicial officers had also been felt for a long time having been voiced on record by Rankin Committee about seventy years back and reiterated by Fourteenth Law Commission. Since then its need has been pointed out in a number of reports, books, conferences and even in the judgments of the apex court. It was the subject of the entire one hundred and seventeenth report of the Law Commission. But it did not attract the attention of the managers of the system till about a decade back when a few states started Judicial Training Institutes. A society has also been established to run a National Academy of Judges which facility has still to start functioning. It is hoped that in not very distant future the Judges at all levels will have the benefit of training.

At this stage when the judicial system is awakening to the need of training and the process of training of the judicial officers is at threshold, it is necessary - to reassess the training programmes undertaken so far and to think about the manner in which training is to be organised and imparted to realise full potential of the process in equipping the judges with the wherewithal to perform their task efficiently and effectively in dispensing justice-fair and robust to the litigants and also to examine if the process can be utilized not only to update the personnel but also to make the judicial system potent and pragmatic enough to meet all the emerging 'challenges.

### **Induction Training**

The most important task of training is to prepare the persons selected to function as judges, to effectively perform as such, by a training programme which is called induction training. To make this component of training

meaningful it is necessary to chart out the training programmes only after conducting a detailed analysis of the jobs, which the officers will be required to perform. It is only when) description and job specifications are available that the training managers will be able to identify the precise expertise needed for performance. The level performance so identified is the target level that has to be induced in the trainees and attainment of which is the object of the entire exercise.

It is with reference to this job specification that the training needs are primarily worked out. The expertise available with the selectees as a group is worked out considering the minimum qualification prescribed for entry, as each the entrants can be presumed to have attainments to that extent. The gap between the available expertise and the wherewithal needed for performance indicated by the analysis of the job description will provide the primary data for working out of training needs. This has to be tempered by needs perceived by contact groups, like the appellate judges, lawyers, litigants etc. and the ones felt by the officers themselves, when they find some inadequacy while working, to fully identify the training needs.

Today there is hardly any institution engaged in imparting training to the Judicial officers which has even attempted to find the job requirement of a judicial officer by analysing the job content. None of them has scientifically deduced the training needs but are running the programmes on subjective perception of the training needs relying on the surviving memories of the feeling of inadequacy felt by the manager of the training when he entered the portals of Courts.

When there is a scientific method to work out the training needs available, and the method is being used by all the training organisations of repute and standing, running training programmes on subjective perceptions renders the training susceptible to error and also makes it liable to change with the change in personnel managing the training. To say the least it is unscientific.

The training input consists of knowledge, skills and attitude which are the three main components of expertise needed for performance of any job. It is usual to overemphasise the information segment at the cost of the other two in training institutions engaged in training the judicial officers. Information, specially about laws is one part of the equipment new inductees to the judiciary possess in some measure, having passed at least law examination and also having studied the subject for the competition, It is the skills and the right attitude that they need the most and which, so far are not a part of any law school curriculum nor are likely to be learnt in two or three years, practice at the bar prescribed by the Supreme Court and can not therefore be assumed to be possessed by any fresh recruit to the service.

While imparting training, some of the training institutes also provide training in some skills. But even at their best they are confined to some of the technical skills -making the trainees frame issues or charges, or to require them

to write orders and judgments. Even the technical skills more necessary for the new incumbents-actual appraisal of evidence, deciding about the relevancy of facts and other decision making skills, are conveyed if at all, as abstract principles and as information and not as doing units or skills. The other types of skills, namely the human skill and the conceptual skill are not attempted to be imparted at all while they are equally If not more important.

The judges have to deal with other persons-the litigants, accused, witnesses, lawyers and others including the member of the staff. How to deal with them to optimise the level of performance and reaching a just decision with least harassment to the persons involved can only be done if the human skills are sharpened. They have to be introduced to the principles of interpersonal behaviour, trained to behave in a manner as would inculcate faith in them so that they can elicit information needed from the witnesses and understand the social context of the acts. To effectively manage the office they have to be exposed to the qualities of leadership amongst other behavioural input.

For really effective judicial functioning it is essential to have conceptual skills also to be able to see beyond the matter immediately before the judge and - to realise the impact of the decision and also to examine whether it would harmonise with the fabric of the society visualised by the Constitution. Even at lower levels the impact of the decision in context of the legislative intent has to be seen Such a skill is a necessary component of the expertise needed to interpret a law where the impact of the contending interpretations has to be visualised beyond the parameters of the case before the court.

And most importantly no attempt is being made in any of the existing training facilities to induce necessary attitude in persons who are being trained to don the robes. This is the most vital part of the baggage of a Judge. All his learning and skill of decision making may be futile if he is not enthused to dispense substantial justice with even hand and is not sensitised to the problems of the litigants. His decisions may be quick and technically justified yet be not just. Or worse, he may be totally insensitive to the human problems inherent in the process and in the decisions. He may not project the image of all unbiased and independent judge affecting the credibility of the entire system. All the laws made to protect the interests of weaker sections will be inert verbiage unless the agencies implementing them are sensitized to the problems of the weaker sections so that they can at least be in tune with the legislative intent.

In this regard it may be pointed out that inducing appropriate attitude involves a threefold exercise of erasing undesirable traits, making the trainee imbibe the required ones and reinforcement of the traits so induced. It is one of the most difficult tasks to make a person shed an attitude he is possessed of, by making him realise that it is not the proper one. But the trainer has an opportune occasion when a person just joins the bench. Whenever a person enters a new field of activity he himself seeks the mores and the pattern of behaviour to be followed in that field. At that time his attitudes are already in a state of flux and

e is a ready receptacle. It would not need much of an effort to convince him to imbibe the desirable attitude. They can be more easily induced in him if he is exposed to them in appropriate manner. Therefore it is imperative that attempt be made at the induction stage itself to help a new entrant to imbibe the right attitudes. Once he has accepted some behavioural pattern himself and it is not the right one, it will be almost impossible to make him change that. It may also be pointed out that attitudinal training has to be carefully handled and mere lecture is the least effective tool for this purpose. Unless handled by an expert it can miscarry and produce a cynic instead of a dedicated judge.

### **Inservice Training**

*No training programme can equip a man for the entire career. Because of various factors like change in the nature of responsibilities, change in the social milieu and social demands, development of managerial techniques, other information and skills having a bearing on the judicial process, and unending churning out of laws by the legislatures and binding decisions by the higher courts a person would be rendered obsolete in a short period of time if he does not refurbish his baggage periodically. Ideally, training, should be repeated after every five to seven years in a person's career or even earlier when there is change in the nature of work.*

It will also be useful to have short programmes, or seminars concentrating on specific topics whenever any specific debility is noticed in the officers as requires being strengthened or any limb of the process or provision of law requires being considered for its being properly followed or when any question of general interest needs being discussed in a larger assembly.

### **Research- Training for Development**

The process of training necessarily requires supportive research facility to make it effective. To determine the content of the training itself, the jobs to be performed by the trainees are to be analysed. Once the training needs have been determined, material has to be prepared for being used in training and to be given to the trainees as background material. Case studies have to be prepared for discussion and exercises have also to be structured. Some input may require substantial research back up which may not be possible to be done by an individual trainer.

Training is used not only to update the personnel to run the system in the manner it is being run today but can also be used as an effective instrument of development of the system. The existing system should be studied for its effectiveness empirically and weak spots identified. Attempt should then be made to so devise a method that it becomes more effective. The improved method, to the extent it relates to manner of operating the system, has then to be injected into the system through training. This is to be a continuous process. In this management techniques may also be applied after due adaptation to sharpen the effectiveness of the judicial process.

The need for such improvement is patent in as much as some of the persons who were at the helm of the system recently went on record to say that the system is on the verge of collapse. Delays and harassment in the process are being considered to be inevitable concomitants, thereby absolving the managers of the system of any serious attempt to overcome these.

But what requires immediate and serious consideration is the quality of decisions rendered by the system.

It will have to be examined if after consuming so much of time and expenses, the quality of decisions is correct and credible. This doubt arises from the fact that of one hundred serious cases less than ten ultimately result in conviction. In a study of rape cases conducted in the Institute of Judicial Training & Research Lucknow, out of 368 cases decided in 1988 in various representative districts in U.P. selected for study, only 73 had resulted in conviction in the courts of first instance. If we consider the fact that some of the cases will have the conviction set aside in appeal, the ultimate rate of conviction would be much less. In some of the cases final report is submitted after investigation and they do not come up for trial. In sizeable number of cases especially relating to the sex crimes the reports are not lodged and in quite a few cases reports are not recorded. The ratio of the cases convicted to the incidence of crimes would work out to be much less than what patently appears from the statistics available. Recently the newspapers carried a report that the report made by an officer who had been Chief Secretary in this state and had been transferred to another post recently, was not recorded by the police when his household goods were thrown out by some officials of the estate department. If this happens to the officer who had held the highest post in the State Government what happens to attempt to lodge reports by lesser mortals can be easily visualised. Such complaints are received by the Magistrates every day when they order investigation. Many more can not and do not come to the courts. This deviance exists even when there is no discretion available to police in recording of a report.

Thus on a very liberal estimate not more than ten percent of persons who commit serious crimes are convicted in this country.

An ideal criminal justice system would be one which is able to reach out to every person who has committed a crime and after affording a fair trial to those accused, is able to punish each one of them while ensuring that no innocent person is convicted. Judged on these parameters our criminal justice system is woefully inadequate. And what is of more concern is the fact that this malady has not even attracted the attention of the managers of the system. And so there is no attempt, on their part to improve its efficiency. Whenever the credibility of the system is mentioned, the Judges with the members of the bar orchestrating in unison, eulogise the system for its credibility citing frequent demands by political or other leaders for a judicial enquiry whenever any fact has to be probed or any excess committed. This is a very dubious index of the credibility

of the system. What counts is the response of the consumers of the system. It is the person whose husband or father has been murdered or whose daughter has been raped or whose child kidnapped for ransom or any other victim of a serious crime who is the right person to assess and state about the credibility of the system in dispensing justice, as the system primarily exists to deliver justice to them and not for conducting commissions of enquiries. The demand for judicial enquiry at the best would show that the people demanding it consider the judicial personnel more objective than the other persons or the executive who might otherwise conduct the enquiry.

Acquittal of a guilty person is as much a failure of the criminal justice system as conviction of an innocent person. The victim of crime who has been promised punishment to any person who commits it, feels cheated, especially when he has to repeatedly appear before none too humane or sympathetic police or an indifferent court and undergo further humiliation and harassment. Abortive prosecutions have grim social consequences. For the present discussion it is not necessary to go into all the consequential repercussions but it is pertinent only to reveal the extent of failure of the system.

If training is designed taking the present model of functioning as the desired post-training level to be induced, we shall be perpetuating the present system. It is, therefore, imperative that the present system be studied to find the reasons for its breakdown and ways be devised to rectify the components which cause the failure. This improved method of functioning has then to be induced into the system by training the personnel.

In England one serious misuse of bail led to change in the law to make grant of bail appealable. More recently the judgment of acquittal in O.J. Simpson case has thrown open a debate about the race bias in the juries and the impact of extensive newspaper coverage on trials in U.S.A. In this country criminals after criminals have been successfully avoiding the consequences of their acts and moving around without a ripple being caused in legal, judicial or legislative circles. There is no reason not to study the ineffectiveness of the justice delivery system in India considering the present outcome of prosecutions.

Unfortunately the district judicial system has never been studied by jurists or academicians at the grassroot level. It will, therefore, be necessary for the research limb of the training facilities to study the process of criminal justice with reference to the ground level facts. An objective and careful reconstruction of facts in respect of any incident in which a serious offence is committed will disclose where the process goes wrong. In collection of the data the research limb can have a team of sociologists, consumer research experts and law students who with the help of the local social workers or N.G.Os. of repute may contact the people of locality to find the true facts and the response of the criminal justice agencies. The facts should be carefully verified to ensure their correctness. These facts when placed with the official record would clearly

disclose the deviations. Cause for each of these deviations has to be identified. Attempt can then be made to remove the aberrations and to correct the process.

One of the stock explanations offered for the low rate of convictions is that before a person can be convicted for a crime the case must be proved against him beyond all shadow of doubt and that a person is presumed to be innocent till he is so proved to be guilty. If we have set the standard of proof and assumption of innocence of persons in their trials we should also see that they do not become alibis for acquittals but should be squarely met in genuine cases normally, barring only some rare exceptions which may be there due to human error. As it is, the criminal justice system is overly concerned about rights of the accused and not at all bothered about the wrong caused to the society or individuals.

The system has therefore to be checked and its operation closely examined to find 'the infirmities as lead to miscarriage of justice. The corrected process has then to be infused into the system by transferring it to the judicial officers by training.

### **Trainers**

Another vital factor in the effectiveness of training is the set of trainers who are entrusted with the task of training.

It has to be clearly understood that teaching and training are two distinct processes. Teaching is content oriented in as much as the information to be supplied to the students is predetermined. It has no patent direct connection with any specific job. While training, on the other hand, is result oriented. A specific level of performance has to be induced in the trainees and whatever information, skills or attitudes are necessary for their attainments are to be transferred. The focus on the terminal expertise to be induced is so sharp that even during the course of training any part of the content may be changed, omitted or added if it is found to be necessary for that end. And, as has been mentioned above, the content is not confined for information alone but, also includes the skills and attitudes necessary for effective performance of the job for which the training is being imparted.

For this and other reasons it is only a person who has been performing the functions for which the training is being given, who can manage the training. The other reasons being that only a person who has handled the situations can visualise the environmental factors which exist at the working level and have a bearing on the functioning in the job. Additionally only a person who have himself performed will carry credibility with the trainees and his communication will be easily imbibed. Again as pointed out earlier the new entrant in the system looks around for models from amongst the persons already working in the system, to be emulated for his behaviour. A judicial officer of known competence, duly equipped with the necessary expertise and, more importantly, having healthy attitudes should be the right person to handle training. This factor need be emphasised because some persons are posted in

training institutions only because they are not doing too well in the field or only because they are to be posted at the place where the training facility is situated. Such postings are counterproductive. They are not only ineffective as trainers but are also likely to induce production of prototypes.

Academicians are experts in their fields and have necessarily to help in communicating information about their respective subjects in training yet they may not be able to visualise the totality of the environmental factors and some part of the routine functioning which may not be clearly understood from the reading of the laws. All the professional training institutions are therefore always managed by the persons belonging to the profession or service.

In addition to being a good judge a trainer has also to be a good trainer. He has to be well versed in the process of training. Training in judiciary being of recent origin there may not be many trained trainers available. It would therefore be advisable to select some persons suited to function as trainers and to let them undergo a short course in training, conducted by certain official training facilities. He should be competent to structure training programmes methodically, be able to select appropriate method for each input, should be conversant with the process of learning and be able to communicate well. He should himself have faith in the effectiveness of training in developing the expertise of a judge.

To sum up, if the judicial system has to be made more effective the judges should be provided training to improve their equipment. Training should be scientifically structured resting on the actual requirements necessary for effective performance after studying the tasks to be accomplished. Training should be duly supported by research. The system itself should be studied to find its weaknesses as result in miscarriage of justice and with the help of management techniques a more effective process evolved which should be transferred to the operating judges. This endeavour to improve should be an ongoing one. And competent Judges should be asked to manage the training after they have been exposed to the science of training. All this must be taken care of if the initiative to provide training is to be successful. "

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