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Judicial Education And Training

— Naimuddin Ahmed

TO the common people "education and training of judges" will sound pardoxical, for judges are presumed to be wise people.

There was a time when it was said that the real education of a judge began when he assumed the actual charge of his court.

In an adversarial judicial system prevailing in almost all the Common Law countries including Bangladesh, the parties and their advocates, rather than the judge, control the pace and shape of litigations. They investigate, prepare and present their cases before the judge. "Party-presentation" and "Party-prosecution" are the two fundamental elements of adversarialism. The adversarial system representing the scale, the sword and the blind-fold, proved very successful in producing eminent judges, at least in the Indian Subcontinent, until around three decades back when the Bar considered itself an integral part of the judiciary for all purposes. In those days they considered it their duty to train up new judges in substantive and procedural laws. I remember, when I joined as a new judge about three decades back, the lawyers presenting their cases before the new judge would very anxiously see mistakes in interpreting and applying law and procedure were not committed. Misinterpretation of law and procedure before a court was regarded as a serious misdemeanour. Naturally, under such a system, the judges went on learning law and procedure as they went on deciding cases and no necessity was felt for continuing judicial education and training for judges.

Unfortunately, the situation rapidly changed during the last three decades at least in our country. The advocates, of course with certain exceptions, no longer lend vision to the judge through the blind-fold nor are they interested in assisting the judge in upholding the scale and the sword. On the other hand, mordern judges, the Bar often complains, are no longer as receptive as before and they do not have the patience and mentality to learn from the Bar.

To add to the difficulty, since the last World War the nature of litigations has undergone radical change. Even a quarter of a century ago litigations on intellectual property, international patent matters, international financial commitments, unauthorised technology transfer, industrial pollution, oil pollution, high-sea fishing, etc. were almost unknown in most developing countries. Cases of this nature are mounting every day and judges with conventional university education are finding it increasingly difficult to cope with such cases.

Further, the need for departure from the traditional role of a judge as a disinterested arbiter as in the adversarial system is being very strongly felt. To secure speedy justice the current trend is that judges should adopt a more active "managerial stance". It is felt that judges should not only adjudicate on merits of issues presented to them by litigants but should encourage settlement of disputes and supervise case preparations. It is also felt that both before and after trial judges should play a critical role in shaping litigations and even "influencing results". Judith Resnik describes two hypothetial cases to illustrate such managerial roles of judges. In Paulson Vs. Danforth Ltd. the judge intervenes and secures post-decree settlement and in the second case, Petite Vs. Governor, the judge intervenes to secure pre-trial settlement. In a word, the judge's role is becoming more and more inquisitorial even in an adversarial system.

The challenge of modern litigations can not therefore be effectively faced by judges unless they are well-equipped with continuing extensive training and education in law, procedure and what is called 'court craft'. This is true also of highly developed states like the United States. Dr. Paul Li observes, "there was a growing awareness that the quality of American justice would ultimately 'depend on the quality of performance of judges, Legal rules and court systems do not operate automatically, nor do cases decide themselves. Given the best laws and the most modern system, justice can never be much better than the people who administer it".

"Less than genuinely effective judicial performance lessens seriously the quality of justice....".

So, "the United States", Dr. Li concludes "has come to realise that judicial education is one of the most effective, and perhaps an indispensable, means for enhancing the fair and efficient administration of justice". The A.B.A. Action Commission's Standards Relating to Court Organization also provides in Section 1.25:—

"1.25 Continuing Judicial Education. Judges should maintain and improve their professional competence through continuing professional education. Court systems should operate or support judges' participation in training and education, including programmes of orientation for new judges and refresher education for experienced judges in developments in the law and in technique in judicial and administrative functions. Where it will result in greater convenience or economy, such programmes should be operated jointly by several court systems, or regionally or notionally. Provision should be made to give judges the opportunity to pursue advanced legal education and research".

This fact was also acknowledged in Bangladesh by two successive law Reforms Commissions, the Law Reforms Commission set up in 1967, and the Law Committee set up in 1976, although an earlier Law Reforms Commission set up in 1958, was silent on this point for reasons already explained. In their reports the Law Reforms Commission, 1967—70 and the Law Committee, 1976 strongly recommended setting up of a "Judicial Service Academy" for training of judges. (To be continued)