



Judicial Education in Nepal: Achievement and Challenges

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1. Introduction

Judicial education is essential to creating an efficient judiciary, and in a broader sense, it is the key to promoting standards of justice in a society. Judiciaries in all the countries today face a number of internal and external challenges. While internally judiciaries grapple with issues such as efficiency, expansiveness and effectiveness of the justice, maintenance of the rule of law and accountability of the judicial institutions, they are required to face the ebb and flows created by emerging international economic order, human rights norms and convergence and divergence legal order which, in some ways, influence the dispensation of justice at the municipal level. Judicial education prepares the human resources associated with the judiciary for addressing these challenges.¹ It is inextricably linked to independence and efficiency of the judiciary. It is true to say that a well trained judge is a more independent judge. Thus, an extremely proficient judicial

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¹ Ananda M. Bhattarai, Judicial Education and Skill Development: The Nepali Experience, in *SEARCHING FOR SUCCESS IN JUDICIAL REFORM* (ed. Livingston Armytage), APJRF & Oxford Univ Press, 2008 at pp 262-294.

education institution is a requisite factor for strengthening the judiciary, promoting its accountability and for ensuring independence of the judge.²

Judicial education in Nepal is a relatively recent experiment. In the span of a half decade, it has made some noteworthy achievements even though the challenges facing it are numerous. In this paper I will highlight some of these achievements and challenges with a view to draw the attention of judicial educators and policy makers at the international and regional level. I start with background information on the constitutional framework in which the Judiciary is functioning and institutional framework and the mandate in which the National Judicial Academy (henceforth NJA) is operating. This will be followed by a quick visit to some noteworthy achievements. In the final part, I will raise some challenges that the NJA is trying to tackle and the know-how that is emerging from its initiatives.

2. Constitutional Framework of the Judiciary

The Interim Constitution of Nepal 2007, which replicates the values of independent judiciary encapsulated in the 1990 Constitution, accepts the judiciary as an independent organ of the state. As per the Constitution, the powers relating to justice in Nepal are to be exercised by the courts and other judicial bodies as per the provision of the Constitution, laws and the recognized principles of justice.³ The Constitution guarantees independence to the Supreme Court as well as all other courts in deciding matters falling under their jurisdiction. The judges are appointed by the Chief Justice on the recommendation of the Judicial Council, a professional body created by the Constitution.⁴ The Chief Justice is, however, appointed by the President on the recommendation of the

² WHITE PAPER ON THE ONGOING TRAINING OF JUDGES (approved by the Plenary Session of the General Council of the Judiciary held on 17 January 2007) Consejo General del Poder Judicial Centro de Documentation Judicial, Madrid 2008 at p 34

³ NEP CONST ART 100

⁴ The Five-member Council is headed by the Chief Justice where the senior justice of the Supreme Court, a senior advocate or advocate nominated by the Nepal Bar, and a jurist nominated by the Prime Minister work as members. The government is formally represented by the Minister for Justice. *See id*, Art 103,109,113.

Constitutional Council. The Judicial Council is also responsible for the transfer, disciplining and removal of judges other than the Supreme Court justices. The latter are subject to impeachment by the Parliament.⁵ Thus, the Constitution endorses that judges must be selected by a professional body on merit by taking into account *inter alia* their qualification, competence, experience, faith in and contribution to justice, reputation gained in public life and moral character.⁶

In principle, the judiciary enjoys independence in determining its competence with regard to cases and controversies of judicial nature. It has exclusive authority to decide whether the dispute submitted for its decision is within its competence as defined by law. Besides, everyone is required to abide by the orders and decisions made by the courts in the course of hearing of law suits, and extend necessary cooperation to the courts. The interpretation given to law or any legal principle enunciated by the Supreme Court holds the binding force of law.⁷

3. Institutional Framework and Mandate of the National Judicial Academy

The NJA generally follows the model of judicial education institutions created in South Asia.⁸ It is an autonomous statutory body established under the leadership of the Chief Justice and to be led by either a sitting or retired judge. The NJA Act provides for representation of all the pillars of the justice sector in the Executive Committee.⁹ The main objectives set out for the NJA are to:

- work towards enhancing competence and professional development judges, government attorneys, court officials and other officers of the Nepal judicial service and private law practitioners by developing programs of judicial education;

⁵ *Id.*

⁶ See also UN Basic Principles on Judicial Independence, 1985 Principle 13

⁷ *Id* Art 115, 116

⁸ This is generally in line with the models of judicial academies in South Asia. See Federal Judicial Academy Act of Pakistan, 1997; See also the institutional structure of Judicial Administration Training Institute (JATI), 1995 at www.minlaw.gov.bd/jati.htm

⁹ The Executive Committee is chaired by the Executive Director in which the Law Secretary, Secretary to the Judicial Council, The most Senior Deputy Attorney General, Registrar of the Supreme Court and Secretary of the Nepal Bar are members.

- undertake research in areas of law and justice; and
- establish itself a legal information centre.

During the creation of the NJA one thorny question pricking the mind of the policy makers was who should be included in or excluded from the target community of the proposed NJA. Training of judges by a wing of the Executive was repugnant to the very idea of judicial independence. But creation of multiple training institutions was not also desirable in a resource starved and conflict ridden country like Nepal. In view of this, the NJA was established as a common institute for majority of the justice sector actors such as judges, court staff, government attorneys, government legal officers working in different government departments. Besides, the private law practitioners who in many other countries are trained by their own institutes and associations were also included in the target community of the NJA. This, in operational terms, meant that the NJA has to provide on the job education and training to 273 judges working in different tiers of the court, 351 court officers, 3714 other para-legal staff, 238 government attorneys, and 130 government legal officers and over 12,000 private practitioners in Nepal.¹⁰ Further, the NJA is also required to work for enhancing efficiency and professional skills of personnel performing legal tasks in quasi-judicial bodies.¹¹

4. Achievements

After working closely with the justice sector actors for little over five years now, the NJA has made some significant achievements in terms of developing local ownership and infrastructure, reaching out to the clientele groups and undertaking research in different areas of justice, and thereby, making contribution for improving the system of justice in Nepal. It has established itself as a central institution for judicial education and research in the justice sector.

¹⁰ See Second Strategic Plan of the Nepali Judiciary, 2009-13 at p 49 Both Attorney General's office and the Law Ministry have a couple of hundred junior support staff.

¹¹ The two pillars excluded from the sweep of the NJA are the police and the jail and correction authorities. But as the NJA is required to make justice prompt, easy, and accessible, it can very much link these sectors in its activities. For the function and duties of the NJA see the Strategic Plan of the NJA 2006.

4.1 Developing Local Ownership

Prior to the establishment of the NJA judicial education was almost a foreign idea to Nepal. Even though some kind of training was imparted by the Judicial Service Training Center (estd. 1982, henceforth JSTC) under the Ministry of Law and Justice, training by a government institution was perceived to be incongruent to the notion of independence of the judiciary. Hence, judges had stopped participating in the programs conducted by the JSTC since the promulgation of the new Constitution in 1990. Therefore, when the ground work for the establishment of the NJA was being done many issues such as the adoption of appropriate principles and methodology, design and format of programs, their evaluation and monitoring came to the fore. The NJA quickly internalized the inputs it received from the experts of the Asian Development Bank, and other local experts drawn from similar training institutions and tried to address these issues.¹² Now, there is a local ownership emerging in determining the training needs of a particular target community, fixing of objectives of the course, development of curriculum, identification of resource persons, management of the program and evaluation and monitoring.

4.2 Infrastructure Development

Under the ADB project the NJA was conceived to be a residential institution. The government had allotted a site for the construction of its building and other structures in the outskirts of Kathmandu. But this idea was shelved after the withdrawal of the Bank from the project. Then, when the NJA started operating from the premises of the Supreme Court in the down-town of Kathmandu with a small team, the Executive Director and the faculties began to realize that locating the NJA in the core area of the city and discarding the concept of residential training was a better planning option. Due to this, therefore, now the NJA has been allotted a new site with a building in the city area and the renovation is in the final stage. It has also received assistance of the government in the development of infrastructure and logistic facility. And more recently, some donors such

¹² In fact, the NJA project was conceived in 2000 under the loan project titled as "Corporate and Financial Governance" See supra note 1 at p 267-68. The prominent local institution is the Academic Staff College of Nepal, established to train bureaucrats.

as the USAID, the European Union have come to its assistance in further enriching it with equipments and logistics.

4.3 Reaching Out to the Clientele Group

Right from its inception, the policy makers were against the idea of creating empire in the name of judicial education. As a result, today, the NJA operates with a small team of core faculty deputed mainly by the Supreme Court which is supported by a larger pool of extended faculties.¹³ The extended faculties are invited as resource person in the courses where they are supposed to have expertise; and their frequency of visit to the NJA is commensurate with the evaluation by the participants. Now, with the help of core and extended faculty the NJA has been able to reach out to the clientele group with knowledge, skill and behaviour related programs which can be gleaned from the following table:

¹³ The extended faculties are drawn from all the pillars of the justice sector. They first participate in the Training for Trainers program where they are given inputs the objective of judicial education, adult learning cycle and skills necessary for enhancing learning skills in them. The number of extended faculty is around two hundred, vide personal communication with Mr Nripa Niroula, Registrar of the NJA.

Impartiality, integrity and accountability (leadership and attitude focused) related	Competence Related (knowledge focussed)	Efficiency Related (both knowledge and skill focused)	Effectiveness Related (more skill focused)
<ul style="list-style-type: none"> • Judicial ethics, integrity, accountability • Access to justice, legal aid • Preventing and combating corruption, • Good governance • Team building, appreciative inquiry • Protocol and Etiquette, Self awareness • Understanding Leadership Roles, • Team Work/Team Building, Interpersonal Relationship, Learned Optimism • Retreat of Supreme Court Justices (discussing policy and management issues of the judiciary) 	<ul style="list-style-type: none"> • Courses on substantive, procedural and constitutional law, law of writs, evidence law, commercial law, Human rights law • Forensic science/DNA typing and profiling • Law and development • Transitional justice • Legal research and web based research • New Public Management in the Judiciary • Women, Children, Dalits, Indigenous and Minorities Issues, WTO, Victims and their rights 	<ul style="list-style-type: none"> • Court management • Case flow management, Bench and court room management • Record management • Mediation • Information and communication technology • Fair trial • Calendar system and delay mitigation • Use of ICT • English language and legal english 	<ul style="list-style-type: none"> • Judicial skills • Judgement and order writing • Human rights • Gender justice • Juvenile justice • Execution of judgement, • Writing charge sheets, appeals, written memorials • Treaty negotiation • Correct Nepali Writing • Legal Profession & Administration of Justice • Art of Advocacy • Art of Drafting, • Writing legal opinion

Source: Based on NJA Annual Reports (2004-08), for earlier version see also *supra* note 1 at p 274.

The above mentioned courses have legal as well as inter-disciplinary components. As can be gleaned, relevant aspects of science, matters relating to the performance of judicial activity (e.g. court management, case and time management) and other auxiliary skills (e.g. forensic medicine, DNA typing) and other supplementary subjects (English language, ICT) are included in the courses. The programs are designed in the orientation, workshop and seminar format lasting from three days to three weeks. Besides, the NJA has designed and implemented a five-week in-service training for officers of the court and government attorneys which carries weight in their career development. Now, it is engaged in finalizing the training need report, and conducting training for the para-legal staff of the court, the largest group of staff in the judiciary.

4.4 Research and Publication

As mentioned above, undertaking research in the field of law and justice is another important mandate of the NJA.¹⁴ Since its inception, it has prioritised research and publication. The research that it has undertaken so far relate to addressing problems affecting speedy and effective justice,¹⁵ improving the quality of judicial education¹⁶ and judicial reform.¹⁷ More importantly, the NJA has brought out a research journal titled NJA LAW JOURNAL since 2007, which publishes contributions of judges, jurists and law professors from Nepal and abroad. In a country lacking quality research publications the work of the NJA has been appreciated both in Nepal and abroad.

5. Challenges facing the NJA

There are numerous challenges that the NJA is yet to properly address. I will highlight a few of them here.

5.1 Mandate

When plan to establish the NJA was in the offing a major concern was about avoiding duplication of work and saving scarce financial resource of the country. At some level, it was also thought that bringing different groups together would provide excellent opportunity to the participants for sharing and exchange of experiences with colleagues holding different duties and responsibilities. It would also avoid hierarchical tendencies, keep judges and others abreast of the difficulties and concerns of its various sectors and

¹⁴ See NJA Act 2006 S. 5 which among others calls upon the NJA to undertake research for correcting the drawbacks, weaknesses and mistakes identified in the field of law and justice' and 'disseminate information on various subjects regarding law and justice'

¹⁵ Under this, three research initiatives namely research on *Current Status of the Directives Issued by the SC: (2006)*, *Study of the Case Flow at the SC: (2007)* and the study on *Execution of Judgment: Current Problems and Possible Way Forward: (2008)* are noteworthy.

¹⁶ Under this head, *Gender Justice: Collection of Cases and International Instruments and Trafficking of Persons(2006)* *Report of the Proceedings on Regional Conference on Trafficking (2006)*; *Current Court Practices in Juvenile Justice: Case Study Report(2007)*; and *Juvenile Justice: Source Book(2007) and Manual, Human Rights in Administration of Justice: Resource Book and Manual(2009)* are noteworthy.

¹⁷ Under this the NJA has completed the Mid-term Review of the Strategy Plan of the Judiciary (2007): and also prepared the Guidelines for in-camera hearing (2007)

promote better harmony and cohesion among all the pillars of the justice sector.¹⁸ However, now it is realized that the mandate given to the NJA was too broad. It was an onerous responsibility for an infant organization like the NJA to have such diverse community as its clientele at least under the present organizational framework. The idea of bringing these groups together was not welcomed in the judicial community where hierarchical thinking is still pervasive. Besides, diverse training needs of the clientele group cautioned against mixing less homogenous groups in one program or bringing incomparable groups in size such as the private practitioners and the judges together. Now, therefore, it is felt imperative to trim the mandate of the NJA and take out the private practitioners from its scope and ambit of work.

5.2 Faculty Development Challenges

As mentioned before, the NJA's experience of working with core and extended faculty is unique. The intermingling of the core and extended faculty gives ample opportunities to judges and officers and creates a synergy in the overall capacity building of the Nepali judiciary. However, it is not without challenges. First, the NJA does not enjoy full autonomy in the selection or retention of the core faculty. The faculties sometimes get transferred back to the court or to their mother institutions without the consent of the NJA. Besides, due to time and resource constraints, the extended faculties working in offices outside Kathmandu are not easily available as resource persons. Secondly, while blending the qualities of a good educator and a good judge in one person is a perennial challenge in all the countries, it is more so in Nepal. Good judges are not easily available as their demand in the court is higher than in judicial education. The shortfall could be partly met by roping in resource persons from other areas such as the Law Colleges but the Peer Group Model of judicial education that Nepal follows does not grant them the central role as it does to judges. Finally, capacity enhancement and tutelage of prospective faculty through government or donor investment was not undertaken prior to the establishment of the NJA. And as very little has been done since then, its institutional competence to properly execute its mandate has been in some ways impeded. Very

¹⁸ The Consultative Council of European Judges in its opinion 4(2003)) favors idea of bringing groups of the justice sector together, cited in supra note 2 at p 36.

recently, the Judicial Council has appointed quite a few foreign educated judges to the Appeal and District Courts.¹⁹ This may allay the faculty development challenges to some extent, but their competence as educators is yet to be confirmed.

5.3 Selection of Participants

Another challenge facing the NJA relates to the selection of participants. The NJA develops an annual calendar of programs for respective organizations with prior consultation, but it is not allowed to choose the course participants. Except in the ToT programs, they are nominated by their respective organizations which neither possess the database relating to the training-need of participants nor the requisite information on their aptitude or interest, nor any projection of institutional need. These organizations do not ask the prospective candidates prior to their nomination whether they are interested to participate in the given program. As a result, some participants take the programs as an excuse to stay away from work or a trip to Kathmandu on official expenses. This dilutes the very objective of judicial education for which the NJA is created.

5.4 Institutional Capacity building for Specialization

The NJA seems to be moving from short-term programs of general nature to specially focused areas so as to encourage specialization among judges. The judiciary, on its part, also seems to be moving towards specialization. It has already established commercial bench, juvenile bench in different courts, revenue tribunals and a special court to hear corruption cases. More such bench or courts are likely to be established in the future. In order to meet the need for specialization of the judiciary, more specifically to facilitate smooth transition from the conflict, the NJA as a nodal training institution, should have diversity in the faculty and other resource persons who can design, organize and implement programs in specifically focused areas and undertake research in different areas of law and justice.

¹⁹ In Sept 2009, the Judicial Council appointed 7 judges in the Court of Appeal and 3 in the District Court who hold LLM or similar degrees and PhD from different foreign countries.

5.5 Decentralization

This is yet another challenge facing the NJA. Today, it operates from Kathmandu where most of its programs are conducted. Even when some of its programs are organized in the regional centres, local partnership is hardly sought. Given that the country has already embraced federalism, there is a need to decentralize training either by establishing branches in the region or forging suitable local partnership.

5.6 Distance Education

In a mountainous country like Nepal, it is not always possible for judges and court staff to go over to Kathmandu for participating in the program of interest. Distance education, aided by appropriate information and communication technology (henceforth ICT), can act as a viable alternative to regular programs. It can bring more participants in the loop of judicial education. Now that ICT has revolutionized distance learning in many countries, the NJA should quickly move towards this direction and create E-learning possibilities and establish facilities such as virtual communications, virtual forums, virtual classroom, and electronic blackboard for educators and learners which can be used in distance education. Since the NJA has already started developing software for e-learning it should hire the services of technicians and researchers to quickly adapt the above mentioned technology in distance education. While doing so, it should of course, remain conscious about possible disadvantages created due to the detached nature of the program and possible adverse motivation resulting from there.

5.7 Monitoring and Evaluation

Monitoring and evaluation is crucial to judicial education. The NJA already has developed some tools to monitor and evaluate the resource persons, the management of the program and participant's evaluation of the course. But, it is yet develop appropriate tool for evaluation and monitoring the impact of judicial education on the actual

performance at the field level. In this regard, an initiative that commenced in 2008 is the collection of judgement and orders of judges sent through a voluntary process. Around 50 district court judges sent at least five decisions authored by them that they thought were best. These decisions were then clustered into different six groups and sent to anonymous Supreme Court justices for comments and evaluation. A selected few judgements were then published. Here, the idea was to create a positive peer pressure on judges to write good judgments, publicize a couple of them and expose them to more public scrutiny and provide resource material for researchers and students who are interested to study the actual working of the lower judiciary. The NJA has expanded this to Court of Appeal judges this year.

Evaluation of impact of training on participants is a sensitive and difficult issue. It can be controversial as well if not properly handled because judges all over the world detest being subjected to evaluation. However, it is the key to assessing the effectiveness of any judicial education institution including the NJA.

6. Conclusion:

In different sections above I tried to highlight the achievements and challenges of the NJA. The NJA has made a few achievements but the challenges are galore. It is possible in case of a baby organization working in a poor and conflict ridden country to have this situation. However, the basic question that needs to be asked is whether or not the NJA is moving in the right direction, and whether or not honest efforts are being made to address the challenges. Viewed from this perspective, its activities do not defy optimism though indifference or lack of commitment of the judicial leadership sometimes have disappointed and disoriented the NJA family in the past.

There is no disagreement that judicial education is crucial for ensuring the independence of the judiciary. An independent judge is a learned judge. As a matter of fact, judges are expected to be engaged in perpetual study and learning. It is so because a profound knowledge of law on the part the judge is a guarantee for citizens that they will not be

judged according to opinions or even personal whims, but according to the legal system.²⁰ Therefore, as a minimum, the JEIs should encourage institutional and individual learning habits and assist in the creation of learning environment within the judiciary. In order to achieve this, mutually reinforcing partnership with judicial institutions and networking with other JEIs working in the region and universities may to be explored.²¹ Networking between the JEIs and exchange of judges and educators on sabbatical are other welcome measures which can be explored.

Quality judicial education is more essential in emerging democracies, especially in countries where the judiciaries are vested with the power of judicial review of the Constitution and laws and entertain public interest petitions. Here, the judges need to work hard for handling unconventional cases and issue orders in the larger public interest. The judiciary can promote just conduct by proscribing discrimination and exploitation. Ensuring the access to justice through judicial dynamism is one of the major functions of the judiciary especially in societies where barriers created by caste, education, culture, and economy, politics and bad governance inhibit people from bringing the disputes to the court. Courts also have the responsibility to empower the people to realize the constitutionally protected rights and promote standards of justice in society. The JEIs in such countries need to walk extra miles compared to those in established and prosperous democracies in terms of inculcating a proper balance of knowledge and skill component in judges.

The JEIs succeed only when they have the requisite support of the judicial leadership and when they are have quality human resource with them. While the question such as who leads the JEIs is crucial for dynamism, the JEIs on their part should be very conscious in hiring the service of quality human resources. In this regard, qualification and communication skills of the faculties, besides their integrity as judges or attorneys are important considerations. Quality control of the program, speciation, and localization are other issues that need to be kept in mind. Judicial education could be made mandatory at

²⁰ *Supra* note 2 at p 34.

²¹ *See* Ananda M Bhattarai and Kishor Upreti, Institutional Framework for Legal and Judicial Training in South Asia, Law and Development working paper series 2, World Bank (2006) at p 24.

the induction level but in principle, it should be kept as voluntary²² and linked only very indirectly to career enhancements. The JEIs should also allow the judge to make a rational balance between their court hours and training hours. And depending on the institutional need, per annum coverage could be anywhere between 30 to 60 percent of the target community.²³ And finally, the JEIs should ensure that courses they conduct should be focused towards translating the vision that the judiciary has set out for itself. They should in no way be engrossed in developing only collection of courses and programs that lack any logical consistency or focus. Perhaps this is the common know-how for the NJA as well as the JEIs in other parts of the world.

²² This has been the approach in comparative jurisdictions. For instance, the CCEJ in its opinion 4, (2003) recommends that ongoing training should as a rule be governed by the idea of the judges' taking it up in a voluntary manner, ...it is unrealistic to make in-service training mandatory.

²³ For instance, the French judicial school takes approximately 3,500 judges per annum. (i.e. approx 60% of the judicial corp) in at least one ongoing training activities In Italy it is 50% and in Spain it is 60%.. See supra note 2 at p 52.