Institutional Framework for Legal and Judicial Training in South Asia

(with Particular Reference to Bangladesh and Nepal)

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Abstract

The training of lawyers, judges, and other justice system professionals is an important element in the sustainable development of a country. Yet organizing training for professionals in the legal and judicial sector has always been a challenging task, particularly in developing countries. Resource scarcity, combined with a lack of capacity and political will, unhealthy competition among institutions, and lack of long-term visions and goals for sectoral development have all inhibited adequate training opportunities. These factors have also resulted in the slow establishment and operation of legal and judicial training institutions. In many countries, these institutions are subjected to ad hoc decisions by the executive, and thus often suffer from lack of necessary legal, judicial, and technical expertise.

This working paper is intended to share, in a very modest way, the experience of two countries in the South Asian subcontinent—Bangladesh and Nepal—which have made remarkable strides in developing, planning, managing, and facilitating legal and judicial training. It is hoped that the paper will be useful for readers interested in exploring the issue of training and capacity building in the legal and judicial sector.
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I. Introduction and Scope

Judiciaries in all countries are called on to address delicate issues concerning liberty, property, and access to public services. To assume such responsibility efficiently and effectively, they must have adequate physical, financial, and human resources. Indeed, the justice system depends primarily on the quality of its human resources for its efficiency. The quality of these resources is evaluated in terms of qualifications, experience, and integrity. Given these criteria, the correlation between legal training and the efficiency of a judiciary is well established.

Judicial Training Institutions

The traditional view that training judges is unnecessary has long prevailed in most parts of the world. However, that view is now outdated. In the United States, judicial training began in the 1950s. In England, formal training of judges began in 1979, for which purpose a Judicial Studies Board was established. In many other countries in Europe, judicial schools have been providing training for several decades. The question today is not whether the training of judges is needed, but, rather, how and who should have the responsibility for training judges and other justice system professionals in order to optimize their services vis-à-vis the citizenry.

While judges in many countries are still personally responsible for developing their own knowledge and skills, continuing judicial education has been acknowledged as a responsibility of states for the last couple of decades and has become a common element in legal and judicial reform. Judicial training may include a variety of subjects and is designed not only to improve knowledge, but also to bring about attitudinal changes. While it may assist the judiciary to develop into an impartial independent dispute-resolution mechanism, training also emphasizes attitudinal change to improve judicial integrity. From a management angle, some countries have adopted the view that the judiciary itself should be responsible for the overall control, direction, and management of judicial training, while others rely on autonomous or semi-autonomous judicial training institutes.

Judicial Training Institutions in South Asia

Many countries in South Asia have established training institutions, albeit under different names, to meet the training need of judges and other officials associated with the judiciary. Indeed, Sri Lanka established a Judges’ Institute under an Act of Parliament in 1985 and Pakistan established a Federal Judicial Academy in 1988 (subsequently given autonomous status by the Federal Judicial Academy Act of 1997). Similarly, in Bangladesh, the Judicial Administration Training Institute was established in 1995, and in Nepal, the National Judicial Academy was established in 2004.

In India, following a 1993 conference of the Chief Justices of the High Courts that emphasized professional education, the State Judicial Academies of the respective High Courts began to train judges of their subordinate jurisdictions. Later a federal-level Judicial Academy was established by order of the Supreme Court and placed under the tutelage of the Chief Justice of India. This academy began functioning in Bhopal in early 2000s and is now the largest judicial training academy in the world.

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1 The term “justice system” is used here in a very broad sense, comprising not just the judiciary, lawyers, and justices, but also the police, prosecutors, prison systems, human rights bodies, non-state mechanisms (e.g., tribal chiefs), and civil-society organizations involved in justice work.

In the same vein, a Research and Training Bureau of the Judiciary has been providing judicial training in Bhutan. Established in 1994, the Bureau is responsible for research on the sources of Bhutanese laws, court etiquette and manners, formal address and titles, and legal terminology, as well as conducting in-service legal education (including sessions on procedural code, information technology, and Bhutanese literature). The Maldives, on the other hand, have yet to establish an institute for training judges.\(^3\)

It is important to note that even though no one single legal model or institutional framework applies to these institutions, judicial education in most of these countries follows what is called the Peer Group Model, which is quite popular in most common-law countries. Indeed, under this model, training institutions are led by judges, who themselves lead trainings in mainstream areas.

**Scope of the Paper**

There is certainly no dearth of publications (books, articles, working or discussion papers, etc.) on legal and judicial reform initiatives. Similarly, there has been ample discussion of the legal and judicial training and capacity building associated with such initiatives. Most publications on the topic written by World Bank staff, as well as by academics and practitioners working in different regions and continents, deal with both theory and practice and cover quantitative as well as qualitative aspects of reform initiatives.\(^4\)

This paper has a slightly different objective: to share country and regional experience. It does not purport to deal with grand theories or principles, or to present an exhaustive review. Rather, it aims to share interesting country and regional experiences on an institutional framework for capacity building which are linked to ongoing Bank operations.

Keeping the above in mind, this working paper looks into two cases in South Asia, those of Bangladesh and Nepal. Both are least-developed countries (LDCs) that have taken the approach of relying essentially on autonomous or semi-autonomous judicial training institutes, bodies that are relatively new. After brief introducing the judiciaries of Bangladesh and Nepal, the paper reviews their respective initiatives to reform (or strengthen) judicial institutions, with a particular focus on those created to build capacity and provide training. It then assesses the similarities, contrasts, strengths, weaknesses, and problems of these institutions and discusses the prospects for improving capacity building programs through such institutions.


II. The Judiciaries of Bangladesh and Nepal

The judiciaries of Bangladesh and Nepal are constitutionally independent. However, the fact that there is no delivery of justice at various levels and court administrations remains a major area of concern. Similarly, there is a widely held public perception of corruption in the judiciary. Lawyers are also considered part of, and as perpetuating, such corruption. Resource deficiencies are another common problem.

The Judiciary of Bangladesh

The roots of the Bangladeshi legal system go back to ancient times on the Indian subcontinent. The system developed gradually, passing through various stages in a continuous historical process. The process of evolution has been partly indigenous and partly foreign. The current legal system emanates from a “mixed” system in which the structure, certain legal principles, and specific concepts are modeled on both Indo-Mughal and English law.

Bangladesh became an independent and sovereign nation on December 16, 1971. In order to ensure legal continuity, the Laws Continuance Order of 1971, effective as of March 26, 1971, legalized and made effective all the existing laws inherited from Pakistan, subject to the Proclamation of Independence of 1971. Thereafter, Presidential Order No. 5 of 1972 set the judiciary of the country in motion with the appointment of the judges of the High Court. Subsequently, Presidential Order No. 91 of 1972 established the Appellate Division. According to the Constitution of Bangladesh, the apex of the judiciary is the Supreme Court, which comprises the Appellate Division and the High Court Division. The Chief Justice of the Supreme Court, who is appointed to the Appellate Division, is constitutionally known as the Chief Justice of Bangladesh.

Further acts and ordinances were introduced in later years. These include the Ombudsman Act (Act XV of 1980), the Administrative Tribunals Act (Act VII of 1981), the Income Tax Ordinance (Ordinance XXV of 1984), the Land Reforms Ordinance (Ordinance X of 1984), the Family Courts Ordinance (Ordinance XVIII of 1985), and the Companies Act of 1994. Pursuant to the recommendations of a Law Committee set up in 1976, the Law Reform Ordinance of 1978 amended civil and criminal procedural laws, laws related to court fees, and the law on arbitration. At present, a permanent Law Commission in Bangladesh suggests suitable changes to existing laws, as necessary, so that the national laws can meet the demands of modern times.

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The Bangladeshi court system is based on the British model. The judicial system consists of a Lower Court and a Supreme Court, both of which hear civil and criminal cases. The Lower Court consists of administrative courts (magistrate courts) and session judges. The Supreme Court’s High Court Division hears original cases and reviews decisions of the Lower Court, and the Appellate Division hears and determines appeals of judgments, decrees, orders, and sentences of the High Court Division. The highest court of appeal is thus the appellate court of the Supreme Court. At the level of local government, the country is divided into divisions, districts, sub-districts, unions, and villages.

The Supreme Court serves as the guardian of the constitution and enforces the fundamental rights of citizens. It consists of a Chief Justice and a number of other judges, all appointed by the president. A judge can remain in office until the age of sixty-five. The Chief Justice and the Judges appointed to the Appellate Division sit only in that Division; other judges sit in the High Court Division. The High Court Division superintends and controls all subordinate courts (at the administrative levels of district and thana) and functions as the Appellate Court. In addition, it superintends a number of special courts and tribunals, such as the Administrative Tribunal, Family Courts, Labor Tribunal, Land, Commercial, Municipal, and Marine Courts. At the district level, the district court is headed by a District and Sessions Judge, who is assisted by additional District Judges, subordinate judges, assistant judges, and Magistrates.

In addition to the constitution—the fundamental law of the land—there are civil and criminal codes. Civil law in Bangladesh also incorporates certain Islamic and Hindu religious principles relating to marriage, inheritance, and other social matters. The Bangladeshi Constitution guarantees a fundamental right to every criminally accused person in Bangladesh (whether or not a citizen) to have a “speedy and public trial” by an “independent” and “impartial” judiciary.

It is worth noting that a landmark decision on Secretary of the Ministry of Finance v Masdar Hossain determined how far the Constitution actually secured the separation of judiciary from the executive organs of the state, and whether the Parliament and the executive followed the constitutional path. In essence, the case was decided on the issue of how far the independence of judiciary is guaranteed by the constitution and whether its provisions have been followed in practice. In that context, the court identified five preconditions for judicial independence: (a) security of tenure; (b) security of salary; (c) institutional independence of subordinate judiciaries; (d) judicial appointments made by a separate Judicial Service Commission; and (e) administrative independence and financial autonomy.

It is appropriate to note that Article 22 of the Bangladeshi Constitution contains a fundamental principle of state policy to the effect that "the state shall ensure the separation of the judiciary from the executive organs." However, although the constitutional commitment to this principle is spelled out clearly, no positive, effective steps have yet been taken to separate the judiciary from the government administration. Although the Supreme Court gave specific guidelines on how to

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10 See Chapters I, II, and III of Part VI, Constitution of Bangladesh.
11 See Article 35(3), Constitution of Bangladesh.
12 52 DLR (AD) 82 (1999). In delivering its judgment in the Hossain case, the Supreme Court of Bangladesh tried to differentiate between the terms “independence” and “impartiality,” saying that it would subscribe to the view of the Supreme Court of Canada in Walter Valente v Her Majesty the Queen (2 RCS 673 [1985]). Valente held that "the concepts of 'independence' and 'impartiality,' although obviously related, are separate distinct values or requirements. 'Impartiality' refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. 'Independence' reflects or embodies the traditional constitutional value of judicial independence and connotes not only a state of mind but also a status or relationship to others ... particularly to the executive branch of government ..."
do so in its judgment, the executive, with the permission of the Supreme Court, has postponed the separation fourteen times already.\footnote{See Debapriya Bhattacharya, “Globalization and the State: Human Development and Capacity Building Needs; A Review of Asian Country Experiences,” in Globalization and the State: Challenges for Economic Growth and Human Development (New York: United Nations, 2004), 28.} Implementation is still pending.

**The Judiciary of Nepal**

Although Nepal has never been a part of the British Commonwealth, due to its close interaction with India, its legal system is much influenced by common law.\footnote{See Johanna Bond, “Nepal,” Legal Systems of the World: A Political, Social and Cultural Encyclopedia, ed. H.M. Kritzer. It may also be noted that the system of law and justice in Nepal, until recently a Hindu kingdom, has its roots in the ancient Hindu religion and culture. This tradition continued until 1950, when the country was opened to the external world. With the onset of democracy in 1950, Indian legal and judicial values were imported by succeeding generations of law graduates who came from India. See generally, Ananda M. Bhattarai, “The Judicial System of Nepal: An Overview,” in Fifty Years of Supreme Court of Nepal (Kathmandu: 2006), 13–34.} The foundation of an independent judiciary in Nepal was laid in 1950 with the establishment of the Pradhan Nyayalaya.\footnote{The term “Pradhan Nyayalaya” was changed into Sarbochha Adalat in 1956. Both terms are translated as “Supreme Court” in English.} Since that time, the system of justice has grown consistently and continuously, despite political upheavals. The current constitution and laws draw a neat structure of courts, with a Supreme Court, 16 Appellate Courts and 75 district courts. Due to its relatively wide network of courts—staffed by over 250 judges and around 4,500 other officials—the Nepalese courts have fairly good geographic accessibility.\footnote{However, other forms of accessibility, including money, language, culture, infrastructure, cumbersome rules, biases, and so forth, are still present.}

While District Courts are jurisdiction trial courts that exercise both civil and criminal jurisdiction, the Appellate Courts hear appeals against the decisions of District Courts and of quasi-judicial institutions. In addition, they are also empowered to issue prerogative writs, such as habeas corpus, mandamus, and injunctions.\footnote{Judicial Administration Act of Nepal, S8.} The Supreme Court, which is the apex of the judicial system, exercises both ordinary and extraordinary powers, including the power to issue prerogative writs and carry out judicial review of laws and executive decisions.

Although Nepal today is in a state of transition in terms of its constitutional framework, and is drawing up provisions for an independent judiciary, the current Constitution of Nepal, promulgated in 1990, recognizes the judiciary as one of the three pillars of the state. This principle marks a clear departure from earlier legal enactments in that it attaches importance to the judiciary, specifies its powers, lays down a framework for its independence, and determines the basic features of judicial administration. The constitution not only aspires to an independent system of justice, but one that can competently interpret the Constitution and laws, thereby ensuring that all laws and executive decisions are in consonance with the letter and spirit of the constitution.\footnote{Preamble, Nepalese Constitution, Chapter 11, Articles 84–96.} Specifically, the constitution notes that courts and other legal institutions in Nepal must impart justice “in accordance with the provisions of the Constitution, the laws, and recognized principles of justice.”\footnote{Article 84, Nepalese Constitution.} This last statement opens up space for the judiciary’s work to be informed by legal values that are recognized in both international and comparative law.
III. Reform Initiatives in Bangladesh and Nepal and the Role of Development Agencies

The following brief review of legal reforms in Bangladesh and Nepal reveals an interesting difference in approach. Bangladesh seems to have taken a relatively comprehensive approach to the reform of the legal and judicial sector by combining several line agencies, multiple sources of funds, and several sub-sectors under the umbrella of one big program (the macro approach). Nepal, on the other hand, seems to have taken a very fragmented approach, dealing separately with line agencies, several sources of funds, and multiple sub-sectors in smaller, separate programs (the micro approach).

Reforms in Bangladesh: The Macro Approach

After a long period of strategizing and planning, in 1998 Bangladesh undertook a reform of its judicial and legal system to enhance its efficiency. Reforms were introduced to improve the legal framework, streamline the courts system, strengthen judicial capacity, and provide improved access to justice. The government prepared a comprehensive reform program, part of which is funded by the World Bank. The program is being carried out as part of the government’s strategy to improve governance, especially in ways that will enhance the quality of the legal, regulatory, and institutional framework for private-sector development.

This strategy is also focused on establishing a sustainable mechanism for enhancing the rule of law. More specifically, the program aims to: (i) use a more efficient and transparent judicial system as a catalyst for ensuring the rule of law and cost-effective dispensation of justice; (ii) reform the court system by introducing modern commercial laws and dispute-resolution mechanisms; (iii) ensure the integrity of the financial sector (which is seriously undermined by a deficient legal framework, faulty recovery processes, and absence of enforcement); and (iv) improve gender sensitivity via better court processes.

World Bank funding supports measures to enhance the efficiency, effectiveness, and accountability of the civil justice system, with a particular focus on reducing and/or eliminating the case backlog, expediting the clearance rate, and improving access to justice. The activities financed by the World Bank can be grouped into roughly three main components. The first and most substantial component deals with judicial capacity building. It focuses on strengthening case management, improving court administration, installing an automated court management information system, and improving facilities to provide training to district court judges in such areas as general administration, substantive and procedural law, case management, gender sensitivity, judgment writing, judicial ethics, and performance standards. To complement these activities, the second and third components focus on improving access to justice, promoting legal literacy and public awareness, and enhancing capacity for legal reform by strengthening institutions such as the Law Commission and the Law Ministry’s Drafting Wing.

Indeed, the project places a huge focus on training and capacity building. The legal and regulatory capacity building component includes the revision and/or reform of economic laws; promulgation of a commercial arbitration law; establishment of a center for settlement of

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22 Ibid. It should be noted that several program components are being implemented by the Judicial Administration Training Institute (JATI) of Nepal (see Part IV of this paper). Actually, JATI has been a recipient of Bank funds for its own capacity development, but is also involved in delivering several training programs under the project as an implementation partner.
23 Ibid.
commercial and investment disputes, as well as an Ombudsman office; removal of bottlenecks in such agencies as the Board of Investment, the Securities and Exchange Commission, the Registrar of Joint Stock Companies, and the Privatization Board; strengthening the Law Commission’s capacity to prepare proposals for law reform; and strengthening the Law Ministry’s capacity to draft legislation. The judicial capacity building component, on the other hand, includes reviewing and improving court organization, as well as the accountability of judges and court officials; introducing improved budgetary arrangements for the judiciary; strengthening the capacity of the courts, including improvement of caseloads and case-flow management; and identifying and removing impediments to public access to justice.24

Reforms in Nepal: The Micro Approach

During the period 1960–1990, the government of Nepal implemented judicial reform through a number of legal and institutional measures. Among these measures, the Muluki Ain (the national code) was overhauled and updated.25 In 1970 and 1983, respectively, a high-level Judicial Reform Commission26 and a Royal Judicial Reform Commission27 then recommended several substantive, procedural, and institutional reforms that were taken up by successive governments. Nevertheless, the judiciary performed in a lackluster manner during this period.

With the reestablishment of democracy in 1990, the judiciary was made the custodian of the national constitution. It therefore needed to shoulder its constitutional and legal duties, keeping in mind the growing aspirations of the Nepalese people. Apart from tackling arrears and clearing up the docket,28 the judiciary was required to rationalize the distribution of courts based on the caseload; reform procedural laws; streamline the court process; improve the execution of its own judgments; improve the infrastructure; and introduce modern management techniques.

The Supreme Court in 1997 created a committee to examine these challenges. This committee carried out an in-depth study of the prevailing situation and recommended the introduction of case-flow and court management, records, statistics, and information system management; human resource management (both judicial and non-judicial); physical resource management; and budgetary fiscal management.29 Following these initial recommendations, another Court Strengthening Committee Report, released in 2001, suggested various additional measures to reform the Nepalese judiciary. As a follow-up, the Supreme Court prepared a Strategic Plan of the Judiciary in 2004. This plan analyzed and identified the system’s strengths, weaknesses, opportunities, and threats (SWOT analysis) and proposed reform measures to improve the quality of service of the judiciary in the core areas delineated by the constitution and national laws. Further, it identified 16 areas of strategic intervention and proposed a budget for each proposed activity.30 The Supreme Court is currently executing the Strategic Plan.

24 While the Ministry of Law and the Supreme Court have overall responsibility for implementing the program and monitoring its progress, day-to-day implementation is carried out by a Project Implementation Unit, headed by a Project Director, who has responsibility for planning, budgeting, and managing all facets of the project.
25 The most notable reforms to the Muluki Ain were the abolition of untouchability, discrimination on the basis of caste, and cruel and inhuman punishment.
26 Among other bodies, the Commission recommended the enactment of a Summary Procedures Act for small causes.
27 The Royal Commission undertook a comprehensive review of the works of the Court, Prosecution, quasi-judicial institutions, and the Commission for the Control of Abuse of Authority, then made recommendations for making their work more effective.
28 Although the courts in Nepal processed over 85,000 cases in the 1990s, less than half of this number was decided.
29 See Supreme Court of Nepal, Report on Court Management Reforms, 1998. The Committee was created under the leadership of then Supreme Court Justice K. P. Upadhyaya.
For methodological simplicity, the modest reform initiatives in the legal and judicial sector of Nepal are considered here in two sets: one set is sponsored by the World Bank and the other, by institutions like the Asian Development Bank (ADB), the U.S. Agency for International Development (USAID), and other development donors. The primary focus of both sets of initiatives is legal capacity building. It is important to clarify that, due to its limited scope, this paper will only explore those reforms financed by the World Bank in detail. The initiatives of other institutions will be touched on only to the extent that they relate to training and capacity building. The paper does not, however, imply in any manner whatsoever that the initiatives sponsored by the World Bank are the most significant among current legal and judicial sector projects in Nepal.

**Initiatives Funded by the World Bank**

With the exception of a number of sporadic regulatory and institutional reform initiatives built into other projects (e.g., infrastructure, private and/or financial sector development, and social projects), the World Bank’s first involvement in the legal sector of Nepal began in December 2003, when it was invited by the then Attorney General of the country to conduct a rapid assessment of the Office of the Attorney General (OAG). This assessment identified a number of bottlenecks, including resources, insufficient administrative support, outdated and complex working practices and procedures, a shortage of reliable data, insufficient access to legal information and case law, and inadequate staff training. It also identified a need to modernize the OAG’s modus operandi so as to ensure efficiency, limit delays in the prosecution and processing of cases, and reduce overall transaction costs.31

The World Bank grant to the Nepalese legal sector—its first in the sector—aims to assist the OAG in: (a) strengthening the capacity of its staff by designing and implementing a training strategy; (b) improving case administration by designing and implementing a master plan to enhance the functioning of the OAG; and (c) improving prosecution.32 The grant focuses on strengthening the capacity of the OAG through continuing education. (Lack of legal training had consistently been denounced as having a negative impact on its level of competency.) Staff operated without appropriate training, undermining any chances of improving overall case management and administration. There was, therefore, an acute need to introduce a training program, including refresher courses on traditional as well as new topics (e.g., modern business practices, investment law, e-banking, e-commerce, cyber law, competition law, and overall governance).33

A visit to the OAG revealed that all court-related files in Nepal were paper based, with little or no computerization. Briefs were still prepared longhand, with files archived and cases catalogued by hand. The manual processing of documents added to the significant delays in prosecution. It also gave rise to the practice of paying court clerks to speed up the processing of particular cases, oftentimes compromising the integrity of the system. In order to improve efficiency and ensure speedier prosecution, the computerization of OAG services and management is therefore being financed. Computerization, while not an end in itself, was an urgent component of modernizing the overall administration of the OAG.34

Another important element of the World Bank grant is the harmonization of prosecutions among courts. Indeed, due to the absence of a standard manual, prosecutions at different levels and

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32 Ibid.
33 Ibid.
34 Ibid.
regions of the courts were not uniform; prosecutors were devising and applying their own approaches, styles, and standards. The grant will therefore fund the preparation of a Prosecutors’ Manual for use by all prosecuting staff, which, in addition to being a useful tool for prosecutors, will help ensure proper monitoring of cases.35

**Initiatives Funded by Other Donors**

After funding several regulatory and institutional reform components under the aegis of different projects, in December 2000 the Asian Development Bank approved financing for a project to improve legal enforcement mechanisms. The project sought to ensure satisfactory corporate and financial governance in the country. The establishment of a National Judicial Academy (NJA) was one component of the project; others included the establishment of a legal information center, a commercial bench, and a secured transaction registry. As part of this project, Uniquest, a technical service provider, was asked in 2002 to look into the training and construction aspects of the NJA component.

Two additional activities, the preparation strategic and training plans for the NJA, were later undertaken with the support of USAID in fiscal year 2005–2006. The strategic plan, based on a SWOT analysis of the Academy, established its mission and vision, and identified areas that needed to be strengthened within the next three years. The Training Plan was similarly prepared to be executed within two years.

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35 Ibid.
IV. Importance of Training and Capacity Building

The need for institutional training of judges had long been felt in Bangladesh and Nepal, both to relieve litigants from confronting inordinate delays, exorbitant costs, and uncertainty in the disposal of court proceedings, and to facilitate easy access to justice. This feeling accelerated with the passage of time as the judicial system came to be seen as an instrument for strengthening democracy and establishing the rule of law. Moreover, to keep pace with socioeconomic developments in the national and international spheres, the judiciary needed to be dynamic, sound, and capable of meeting the requirements of the time. In order to achieve these objectives, it was necessary to train judges and others involved in the administration of justice, an activity that was given topmost priority in the reform initiatives.

Judicial and Legal Training in Bangladesh

The Bangladeshi system of judicial training was long unequipped to meet the challenges faced by the country. For example, apart from attending a limited number of ad hoc external and donor-sponsored internal seminars, the judges of the Supreme Court had never had an opportunity to participate in any form of formal, collegial education program. As for District Court judges, they underwent a training program when first appointed Assistant Judges, but this program varied in length and content, depending on available resources. Although the program was part of a two-year probationary period during which judges were supposed to learn their jobs, it was greatly curtailed in practice due to work pressure.

Establishment of a Training Institute

This training situation prevailed until about 1985, when a five-year pilot project sponsored by the Asia Foundation was initiated by the Bangladesh Institute of Law and International Affairs. Under that pilot project, a number of judges attended a series of short term-training courses aimed at developing competency in substantive and procedural law, as well as imparting some knowledge of management and general administration. It was soon realized, however, that a more permanent arrangement was needed. Accordingly, in 1989, a proposal was prepared, again with help from the Asia Foundation, for a judicial education institute. The idea remained in abeyance, however, until 1995, when a Judicial Administration Training Institute (JATI) was finally established as a statutory public authority. The Institute commenced operations in 1996.

**Management, Operation, and Governance of JATI**

In accordance with Section 11 of the JATI Act, a person who is qualified to be a judge of the Supreme Court can be its Director General. The Director General is its full-time Chief Executive Officer and responsible for implementing the decisions of a Management Board, which is headed by the Chief Justice of Bangladesh. The Director General is also required to discharge other functions of JATI, as per the instructions of the Management Board.39

JATI’s main objective is to arrange for training of judicial service appointees, lawyers, and other professionals associated with the judicial system in order to enhance their professional efficiency (see Box 1).40

**Box 2. Functions of JATI**

JATI is generally responsible for a number of functions, which include:

(a) providing training to judicial service appointees, law officers entrusted with government cases, advocates enlisted with the Bangladesh Bar Council, and officers and staff of all courts and tribunals subordinate to the High Court Division of the Supreme Court;

(b) arranging and providing training in legislative drafting and drafting of other legal documents to nationals, as well as trainees from abroad, in cooperation with international donor agencies;

(c) conducting and publishing research on court management;

(d) arranging and conducting national and international conferences, workshops, and symposia to improve the judicial system and the quality of judicial work;

(e) publishing periodicals, reports, etc., on the judicial system and court management;

(f) advising the government on any matter relating to the judicial system and court management;

(g) determining the subjects of study, curriculum, and all other matters relating to training programs under the JATI Act;

(h) awarding certificates to those trained by JATI;

(i) establishing and managing the libraries and reading rooms;

(j) carrying out any work, as determined by rules, to activate the judicial administration system; and

(k) taking all necessary actions for fulfilling the above responsibilities.

*Source: Adapted from the JATI website, www.minlaw.gov.bd/jati.htm.*

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39 Pursuant to Section 6 of the Act, the Management Board is indeed high profile and comprises: (a) the Chief Justice, who is also Chairman; (b) two judges of the Supreme Court, either sitting or retired, nominated by the Chief Justice, the senior of which becomes the Vice Chairman; (c) the Attorney General of Bangladesh; (d) the Secretary of the Ministry of Law, Justice, and Parliamentary Affairs; (e) the Secretary of the Ministry of Establishment; (f) the Secretary of the Ministry of Finance (Finance Division); (g) the President of the Supreme Court Bar Association; (h) the District and Session Judge for Dhaka; (i) the Dean of the Faculty of Law, Dhaka University; (j) the Dean of the Faculty of Law, Rajshahi University; (k) the Vice Chairman of the Bangladesh Bar Council; (l) the Rector of the Bangladesh Public Administration Training Centre; (m) the Registrar of the Bangladesh Supreme Court; and (n) the Director General of the Institute, who also serves as Secretary of the Management Board.

40 The *Bangladesh Gazette* notification dated July 9, 1995, outlines JATI’s functions. Also see the JATI website, www.minlaw.gov.bd/jati.htm.
Judicial and Legal Training in Nepal

As already noted, reform of the judiciary became a priority in Nepal as of 1990. Continuing legal education was considered the primary vehicle for advancing reform. In the new political context, the judiciary was entrusted with the immense responsibility of protecting democracy, the rule of law, and fundamental freedoms. In order to shoulder that responsibility, judges needed to keep abreast of changes in laws, philosophies, and society. This awakening of judicial education in Nepal was actually part of a general initiative on judicial education originally launched in South Asia in the 1980s.

Establishment of a Training Academy

Since 1995, Supreme Court Judges and Chief Judges of the Appeal Courts had recommended the establishment of an autonomous training institute for judges. A Report of the Court Management Reforms Committee in 1998 also emphasized the need to establish a judicial academy in Nepal to provide judicial education that would orient judges to emerging ideas of law and justice and enhance their professional competence.

These recommendations were implemented after the Asian Development Bank provided funds for a new project in 2000, which included the establishment of the National Judicial Academy (NJA). Several drafts of the Act that outlined the structure of the Judicial Academy were prepared and repeatedly circulated among different government agencies and the Supreme Court. The National Judicial Academy (NJA) was finally established in 2004 by ordinance. An autonomous statutory body, its mission is to impart judicial education to judges, judicial officers, and other target groups of the judicial sector, as well as to conduct research in those areas of justice delivery where reforms are required.

The agreement with the ADB had a profound influence on the structure and function of the NJA. While the agreement focused on enhancing the competence of the human resources of the judiciary, including private attorneys (especially those practicing in the area of commercial law), the judiciary was interested in enhancing the competence of a narrower group that excluded private practitioners. The ordinance, however, envisioned the NJA as an institution that would meet the objectives of “[E]nhancing the professional competence and efficiency of Judges and other officials such as the support officers of the courts, government attorneys, government legal officers and private attorneys; and to undertake study and research in areas of law and justice.” The broader vision of the ADB thus prevailed at the time the NJA was established. However, the training of private attorneys (discussed below) remains a serious problem in the country.

41 See, generally, Kalyan Shrestha, “Judicial Education as a Vehicle for Change,” in Fifty Years of Supreme Court of Nepal (Kathmandu: 2006), 60, 62.
42 Even though the training needs of the judiciary were to some extent fulfilled by the Judicial Service Training Center (in existence since 1982 under the authority of the Ministry of Law and Justice), after the new constitution was promulgated in 1990, it was considered anachronistic to have the government train judges. This practice ran counter to judicial independence, hence the need for a separate, autonomous institution.
43 See National Judicial Academy, Annual Report 2004/05, 2.
45 The ordinance was issued March 19, 2004, and renewed several times. It has since been introduced in Parliament and will soon be adopted as an Act.
46 From the point of view of the judiciary, the exclusion of private practitioners was justified because their training needs and interests differed drastically from those of other groups.
47 See NJA Ordinance, 2004, Section 3.
Management, Operation, and Governance of the NJA

The NJA Ordinance presents an outline of the activities of the NJA, which can be broadly categorized into four main groups: training; research, consultancy and coordination/liaison.48

As laid down in the ordinance, the activities of the NJA (see box 2) are guided by a 13-member Governing Council headed by the Chief Justice. The Council is responsible for determining the Academy’s training and research policy; approving its long-term policies, annual programs, and budgets; reviewing its activities; and enacting necessary rules and regulations for its smooth functioning. In addition to the Governing Council, the ordinance also provides for a seven-member Executive Committee led by the Executive Director. The Committee is mainly responsible for drawing up training and research policies, annual plans, and budgets, as well as evaluating the trainings and other activities of the NJA. The day-to-day activities of the Academy are carried out by its Executive Director.49

Box 2. Functions of the NJA

The National Judicial Academy of Nepal is responsible for:
(a) conducting training, orientation, interactions, and workshops for judges, employees of the Nepalese judicial system, and lawyers;
(b) undertaking research and publications pertaining to law and justice;
(c) providing consultancy services and disseminating information;
(d) coordinating with the Supreme Court; Attorney General’s Office; Ministry of Law, Justice and Parliamentary Affairs; Judicial Council; Judicial Service Commission; and the Bar Council on the training and professional development of judges, employees of the Nepalese judicial system, and lawyers;
(e) conducting training, orientation, interactions, and workshops for officials of quasi-judicial bodies;
(f) extending cooperation for legal and judicial reforms;
(g) orienting target constituencies to new technology and practices in the field of law and justice;
(h) developing judicial training as an inalienable component of judicial administration;
(i) linking training with efficient, speedy, and accessible justice;
(j) introducing programs to make the legal profession competitive, competent, service oriented, and effective;
(k) organizing seminars, conferences, meetings, and workshops to resolve problems in the field of law and justice, and inviting eminent scholars to them;
(l) working as a liaison with similar institutions in other countries to improve the quality and effectiveness of legal training;
(m) working to link the government with other international institutions working on capacity building programs in the field of law and justice;
(n) procuring resources for the programs, development, and sustainability of the NJA from the Nepalese government, international institutions, and friendly governments and persons; and

48 Ibid., Section 5.
49 Currently, a retired justice of the Supreme Court who is also a noted constitutional law scholar serves as the Executive Director of the NJA.
(o) working to involve its target communities in foreign training, observational tours, etc., to enhance their efficiency and professional development.

Source: Adapted from the NJA Ordinance of March 19, 2004.

Major Programs of JATI and the NJA

Since training and capacity building have been acknowledged as crucial to both Bangladesh and Nepal, the efforts and achievements of both JATI and the NJA, despite their short life spans, are noteworthy.

Achievements of JATI

JATI conducts a number of core training courses. Within a period of five years, from June 1997 to May 2002, it trained 1,397 judges, advocates, and court support staff. As part of this work, it introduced the first batch training of court support staff (i.e., administrative officers, nazirs, and bench assistants) in 2000. Each training program is different in nature and intensity and based on a specific curriculum. Improvements are made to course contents and methods to achieve optimum results.

Study tours are an integral part of JATI’s judicial training. Trainee-judges, for example, visit many relevant institutions, including the National Parliament; the Supreme Court; the Ministry of Law, Justice, and Parliamentary Affairs; the Dhaka Central Jail; the Defense Staff College; the Islamic Institute of Technology; the Bangladesh Academy for Rural Development; the National Juvenile Correction Centre at Tongi; and other institutions of repute. Such tours are intended to make trainees aware of the activities of these organizations and help them gain knowledge of other important issues beside the law.

Several donor agencies provide capacity building support to JATI. This support is aimed at enabling the institution to provide well-structured professional training, thus increasing the judicial efficiency of subordinate courts and enhancing the judiciary’s understanding of its roles and responsibilities. Among these donors, DANIDA focuses its support on: (a) management and institutional development; (b) development and application of training plans, as well as analysis tools for determining training needs; (c) development of training curricula, training materials, and audio-visual aids; (d) training of trainers; and (e) development and implementation of training courses for the target groups of JATI. From the very beginning, JATI recognized the importance of faculty development and has sent its faculty members to such countries as Japan, India, Canada, and the United Kingdom to give them exposure to the judicial training programs and facilities of these countries.

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50 They include (i) District or Joint District-and-Sessions Judges (6-day); (ii) Basic Course for Newly Appointed Assistant Judges (60-day); (iii) Senior Assistant Judges (21-day, and occasionally, 3-day short courses); (iv) Public Prosecutors (6 to 21 days); (v) Government Pleaders (6 to 21 days); (vi) In-service Training Course for Ministerial Officers of the Subordinate Courts and Tribunals (1 to 2 weeks). See JATI website, www.minlaw.gov.bd/jati.
51 See ibid.
52 DANIDA-managed activities fall within the purvey of the Danish Development Policy on Human Rights, Good Governance and Democratization (HRGG), which essentially focuses on respect for human rights and the practice of good governance based on the rule of law.
Achievements of the NJA

In the last few years NJA has carried out a series of activities, including the training of trainers (TOT); an assessment of training needs; preparation and development of curricula; organization of orientation programs for new lawyers; holding training, workshops, and retreats for judges, judicial officers, and different target groups (which supposedly include lawyers); as well as some research and publication.

Although Uniquest conducted a preliminary training need analysis for the NJA, the Academy repeated the survey in 2006 with technical assistance from USAID because the initial survey had a very low response rate from target groups. The development of a quality curriculum has been a challenge for the Academy, as it must take into account the needs and problems, as well as the practical ground realities (rather than the technical niceties) of various target groups. NJA organized three trainings for curriculum development in 2004–2005 and subsequently prepared basic training curricula for the following groups: (i) District Judges; (ii) Officers of the Court; (iii) District Government Attorneys; (iv) Assistant District Attorneys; (v) private attorneys; (vi) bench officers; and (vii) government legal officers. Most of the curricula developed to date deal with fundamental issues pertaining to these groups.

In fiscal year 2004–2005, the NJA organized a total of 18 trainings, workshops, seminars, and orientation programs for district court judges, as well as a full-course training on business law for District Judges, Court of Appeal judges, and government and private attorneys. While the initial target groups were district judges, attorneys, and legal officers in the field, the NJA gradually expanded its activities to reach judges of Appeal Courts and the Supreme Court in fiscal year 2005–2006, when the number of programs for different target groups increased to 25.

Apart from mainstream activities funded by the government, the NJA has successfully organized programs on specific thematic areas in partnership with different regional and international organizations, such as the United Nations Development Fund for Women (UNIFEM), SARI/Q (a Delhi-based nongovernmental organization), the Mainstreaming Gender Equality Project, and the Public Private Partnership for Urban Environment. For instance, it organized two national-level workshops and a South Asian-level workshop on human trafficking for judges in fiscal year 2005–2006. Finally, the Academy’s TOT programs have reached more than 130 people, 40 of whom attended a program on gender justice organized with the support of SARI/Q.

Research contributes to improving the quality of judicial education and is therefore an important component of NJA activities. In fiscal year 2005–2006, the Academy conducted a series of research projects on the execution of directives issued by the Supreme Court. It plans further research on the execution of court judgments and the legal tools needed by the judiciary. The NJA also compiled and published an introductory booklet, reading material on gender justice, a report on workshop proceedings entitled “Combating Trafficking in Women and Children,” and an Annual Report for 2004–2005.

55 In NJA jargon, a program of up to five days to enhance the professional competence and efficiency of any target group is called an orientation, whereas a full course of at least 10 days is called a training. See NJA, Annual Report, 2004–05, 10.
56 Similarly, the NJA organized a consultation workshop on gender mainstreaming and a workshop on public-private partnerships. More specialized programs are in the pipeline on such topics as juvenile justice, public-private partnerships, gender justice, controlling corruption, human rights, and humanitarian laws.
Commonalty of Deliverables between JATI and the NJA

It is important to note that both JATI and the NJA were created in the context of sectoral reforms and, consequently, each has a short- as well as a long-term focus. Typically, however, these two foci are not adequately distinguished. Nonetheless, a number of similar trends, problems, and issues can be easily noticed between them. Available data suggests that training programs pass broadly through three different modes:

**Emergency programs.** These are short, mass-oriented programs that usually emphasize simple messages and information. They are commonly used to increase understanding of, and generate enthusiasm for, a reform program (e.g., introduction of new laws, new conventions, new practices, etc.).

**Remedial programs.** These programs are mass focused, but emphasize a broader range of basic skills and knowledge transfer. Their goal is to improve the average performance of judicial system employees, usually in conjunction with a national-level reform.

**Stable or permanent programs.** These programs are conducted where a minimum level of performance exists, have a more selective focus, and clearly separate entry-level, in-service, and specialized courses.
IV. Problems and Prospects

A Ghanian scholar has noted that: “Learning is the act of discussing and practicing ideas. . . with other people.” This understanding, although related to general learning, is relevant to legal and judicial learning. Indeed, regardless of its form, development, or cultural context, a judicial training program is normally intended to improve performance by: (a) preparing newly appointed judges and other auxiliary employees of the justice system for their duties; (b) guaranteeing greater uniformity and predictability of decisions; (c) updating judges in new methods, laws, and related areas of knowledge required in their work. When training is part of a reform program, it may serve additional purposes, such as: (a) building a reform coalition (or overcoming resistance to reform) within the judiciary and ancillary institutions; (b) introducing new methods and practices; (c) introducing new values, outlooks, and attitudes; (d) identifying problems that may have to be resolved by other reform interventions; and (e) building solidarity and a sense of common purpose.

Considering the above, there is no doubt that JATI and the NJA have played an important role in advancing their respective country’s reform movements and improving specific aspects of judicial performance. Although initial results have been relatively positive—projecting a clear demand for longer and more substantial training modules in the future—the overall performance of the two institutions has not been optimal. The explanations, based on a random survey by the authors, include a failure to link course content to specific reform goals, an over-reliance on classroom training and insufficient field follow-up, an absence of evaluation, failure to introduce new topics related to modern needs, and a failure to introduce complementary changes that would allow and/or encourage participants to apply their new skills and outlooks.

These non-optimal results should not, however, come as a surprise. These institutions are still new and in a phase of initial experimentation. Further, they are affected by two critical elements that always affect the ability of a developing country to provide training and implement capacity-building programs. The most obvious is resource scarcity, making it harder to mount training programs and putting a premium on cost effectiveness. The other element is the difference in how training functions in a stable system and in a system undergoing reform.

Nonetheless, training programs are still quite popular with donor agencies because they are easy to mount, almost infinitely flexible in size and resource requirements, and highly visible. Local political leaders also like them because they demonstrate a commitment to reform, are less intrusive than other interventions, and offer them opportunities for direct contact with lower-level personnel in their constituencies. Yet while it is relatively easy to set up a training program, it is difficult to do so well. Training institutions need to be fully aware of this reality.

Based on the foregoing, as well as content analysis of the two training institutions’ programs, it is possible to identify a number of areas, working methods, styles, and/or approaches where improvement would seem urgent.

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58 A fourth function, more common in civil-code countries, is to use training as a means of screening candidates for the judiciary. While generally not used for this purpose in common-law systems, successful completion of entry-level training may be used to screen other judicial professionals and support staff.
59 Discussions with several stakeholders in the field carried out in 2005–2006.
60 Although the effectiveness of these programs has not been gauged by user surveys, the above conclusion remains by and large accepted by most of the literature reviewed.
Mainstreaming Supply

It is important to improve the quality of training programs by establishing a system to selectively mainstream such programs and by providing adequate incentives to increase the number of qualified trainers.

The literature review and random author survey conducted in preparation for this paper show that in both Bangladesh and Nepal, the quality of training is generally rather mixed. In both the countries, many other institutions have proliferated in parallel to JATI and the NJA. The supply side has thus seen an exponential increase (e.g., NGOs, international NGOs, universities, private service providers, and the like). However, the quality of legal training does not seem to have necessarily improved. These newly created institutions do not appear to be concerned with quality or standards, much less the long- and short-term impact of their deliverables in the context of national reforms.

In addition, even among institutions that are sponsored by governments, little or no effort is made to provide either a sound full-time faculty or decent facilities (i.e., physical space, equipment, teaching aids, a library), which their proper functioning as educational institutions would seem to warrant. The institutional arrangements for laying down and enforcing standards of legal training also remain elementary.

The NJA appears to face an even more serious problem. It operates with the support of a small group of core faculty and a resource pool of extended faculty. While the core faculty are taken from the judiciary and seconded to work full-time at the NJA, the extended faculty are drawn from different groups of the Academy’s target communities, such as judges, judicial officers, government legal officers, professors, researchers, and private attorneys. In order to address the faculty shortage, the NJA had to conduct training of trainers (TOT) as a priority activity.

These trainings familiarized prospective trainers with the objective of the NJA and taught them skills in adult learning and teaching, facilitation, the design and planning of teaching sessions, the use of teaching and learning aids, and feedback and evaluation. Indeed, the TOTs have been helpful in widening the faculty pool and the NJA, as far as possible, invites resource persons who have participated in the TOTs to participate in its program. In spite of this progress, it is problematic to use trainers who have completed a TOT course because the majority are deputized to different courts outside of the capital area and cannot be used frequently.

The NJA therefore would appear to face the dilemma of whether it should continue to rely on extended faculty to supplement the core faculty, or develop and expand its own faculty so as to reduce its dependence on outsiders. The current practice of using extended faculty—basically judges, attorneys, lawyers, and other experts (e.g., forensic, DNA, or fingerprints experts, as well as experts in management, psychology, etc.)—obviously has certain advantages. Such faculty can authoritatively discuss matters relating to the writing of judgments and orders, the evaluation of evidence, and the like. Their participation in judicial education also provides them an opportunity to learn, which is ultimately reflected in their own performance. However, given that not all good judges are necessarily good facilitators, the quality of teaching could suffer in a wide pool, where invitations are often sent on a random basis and an appropriate roster system is lacking.

It accordingly seems that it would be beneficial for the NJA to reduce its dependence on extended faculty, using their services only in areas where an equally competent resource is unavailable among the core faculty. Indeed, competent and committed faculty with sufficient

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61 See footnote 59.
exposure to judicial education and planning are the sine qua non for the overall development of a judicial training institute.

Balancing Supply and Demand
It is important to provide training on a priority basis in areas and subject matters where demand is high and to rationalize those areas and topics where demand is not pressing.

If mainstreaming is important, creating the right balance between demand and supply is equally important. While JATI seems to have created a reasonable balance between supply and demand, the NJA appears to be struggling in this area. Its mandate appears too broad. It not only has to serve the training needs of about 5,000 officials involved in the justice sector, it is also supposed to serve the training needs of more than 10,000 private attorneys whose interests, concerns, and training needs are completely different from those of judges and government attorneys. In addition, it is expected to cater to the training needs of the staffs of a number of quasi-judicial institutions. Trimming the mandate of the NJA to the core judicial sector (i.e., the public sector only) thus appears essential for delivering quality services.

Coping with Evolving Needs
In addition to traditional courses, training institutions also need, where justifiable, programs in new areas of law that are gaining importance.

Given the evolving responses of Bangladesh and Nepal to globalization, capacity building in both countries must cope with modern challenges. Their current capacity-building needs can be identified as externally oriented and internally oriented, or “demand-driven” and “supply-driven.”

Externally-oriented capacity building (originating from extra-national pressure to maintain global economic integration) relates to a country’s general compliance with international law and multilateral trading rules, oversight of foreign investment and foreign aid-related practices, management of other capital and financial flows, development of overseas market opportunities for migrant workers, enforcement of intellectual property rights, and mainstreaming environmental concerns.

These tasks are important for attracting foreign investment, facilitating international trade, and meeting external expectations, such as expected compliance with international law and rules of bodies such as the South Asian Association for Regional Cooperation (SAARC), 62 the World Trade Organization (WTO), and the European Union (EU). 63 Conversely, internally oriented capacity building (which depends on the in-house competence of a country’s national administration) relates to developing domestic supply-side capacities for the provision of public goods, developing human resources, enabling a responsive civil service, and establishing a legal and judicial framework that supports trade and investment and provides equal access to justice to all citizens.


63 Addressing these demands also enables a country to participate in various bilateral and multilateral trade negotiations and to obtain membership in different global and regional trade bodies. Communication in the capacity building process works both ways, creating a feedback cycle. First, the state receives signals from the global marketplace (e.g., via trading partners or global trade bodies) and responds to them. The external partner then reacts to the state’s response and sends feedback, creating a continuous loop.
Procuring Political Will

Training institutions should consistently attempt to secure the support and attention of senior political figures. Managing political will, by creating awareness among those people who influence policy making in the country is useful for ensuring the sustainability of training programs.

As is the case with many developing countries, the key challenges to creating a reasonable balance between the supply of and demand for capacity building in Bangladesh and Nepal relates to ensuring good governance, creating a sound business structure, and building a better image of the judicial system. Building an enabling business environment and the capacity to take advantage of globalization, together with reinforcing the capacity of the legal sector to serve an infrastructure supportive of trade and investment, also remain important and timely. For all this to happen, however, political will, commitment, and stability are necessary. The tendency to revisit earlier decisions on judicial training each time there is a change of government (seen more often in Nepal) is very frequent. Not only is this tendency costly, it is also a disincentive to building a long-term training strategy.

Improving the Regulatory Framework

It is important for Bangladesh and Nepal to remove the legal, procedural, and institutional obstacles that impede the smooth operation of their training institutions.

Although both JATI and the NJA are operational, the regulatory framework and implementation rules, particularly for the NJA, remain cumbersome. These factors impede their ability to raise funds, develop and launch programs, and broaden their coverage in selected areas where demand is high. In some cases, the training institutes duplicate the roles of other institutions, creating confusion and inefficiency at the macro level. For instance, after the establishment of the NJA in Nepal, a Judicial Training Center that had long been operating under the Ministry of Law was supposed to transfer its training programs to the NJA and cease to exist. Due to the lack of incentives and the lack of clarity in the legal framework, however, this has not happened.

Regulating Behavior within the Profession

The organization of training and capacity-building programs should promote the development and maintenance of ethical standards and values as widely as possible.

Developing a uniform ethical framework for the judiciary and justice-sector institutions is critical in all countries. Providing training to disseminate ethical norms among all people involved in the judiciary (or the legal and judicial sector) is also important. This training entails “sensitization” to issues of ethics, professional responsibility, and accountability. Indeed, JATI’s course for District and Session Judges includes a module on judicial ethics and a code of conduct for judicial officers. In Nepal, such a training module seems to be lacking.

It is also important to complement ethics training with regular publications to popularize ethical values and continually give them utmost priority. Introducing subjects such as legal ethics is an important tool for dealing with the issues of biases and corruption (a very serious problem in both countries).

64 See NJA Ordinance, 2004, Section 3.
65 See Transparency International, Corruption Perception Index, 2005, which ranked Bangladesh as the 2nd and Nepal as the 36th most corrupt country in the world.
Managing Financial Constraints

Adequate resource mobilization is critical for the success of training institutions and the programs they conduct.

Pursuant to its charter, JATI can own, manage, generate, and raise funds to cover its expenses. Such funds may include grants from the government and local authorities, loans obtained with the prior approval of the government, proceeds from the sale of its property, and funds received from other sources. All operating funds are deposited in the name of JATI in a designated bank and can be withdrawn in accordance with procedures determined by its Board. JATI can invest the funds in any securities approved by the government.

The NJA can also own, manage, generate, and raise funds of its own. Such funds may include grants from the government; contributions from foreign governments, individuals, or international organizations (obtained with the prior approval of the government); and funds obtained from other sources.

Indeed, a certain level of financial autonomy is granted to both JATI and the NJA by their charters. Nonetheless, considering the vast demand for their services, the existing funds of the two institutions are insufficient. As a result, they cannot undertake everything they are empowered to do under their respective mandates. It is here that the role of donors becomes relevant in supporting these emerging institutions.

Enhancing the Role of Donor Agencies

Bilateral, multilateral, governmental, and non-governmental agencies all have a significant role to play in the success of these institutions.

It should be noted that contemporary donor policy and practice are quite different from what they were in the past. For example, the American “law and development movement” of the 1960s and 1970s focused on legal education. In the 1980s, as part of structural adjustment programs, the World Bank engaged in the reform of laws in economic and commercial areas to help develop legal environments favorable to investment. Typical initiatives included supporting the introduction of a particular law, revising a law, updating case law reports, reviewing existing laws, and organizing seminars or workshops as part of a specific operation in a particular country.

With the end of the Cold War, donor support for justice-sector reform changed its focus. The growing trend across the continent in the late 1980s and early 1990s has been to support multiparty democracy, enhance human rights, and for the last few years, improve governance. Today, almost every major bilateral donor and a wide range of multilateral organizations—especially development banks and countless foundations, universities, and non-governmental organizations—are either engaged in funding legal education or interested in becoming involved in such endeavors.

Enormous amounts of aid are presently being granted for the writing or rewriting laws in many areas, as well as for legal training programs. Aid providers are expanding their rule-of-law efforts to reach parliaments, executive branch agencies, and local governments. Assistance also extends to civil-society groups that use law to advance particular interests and non-governmental

organizations that push for reform. In this context, attempts by JATI and the NJA to mobilize resources from donor agencies should not be excessively difficult. However, they need to do a better job in marketing themselves.

In parallel, donor agencies should be particularly aware of the importance of harmonizing their efforts. Indeed, as already mentioned, numerous activities categorized as technical assistance in the legal field are currently being offered by various agencies around the world. To make cooperation more effective, these agencies need to avoid overlaps, duplication, and conflicts, which require a constant exchange of information among donor organizations. Equally important, the independent involvement of a single organization in a project inevitably has limits; cooperation among donor organizations is therefore essential to make full use of their respective expertise, knowledge, and resources.

**Increasing Access to Institutional Training**

*It is imperative to broaden the physical as well as the pedagogical coverage of JATI and the NJA.*

Both JATI and the NJA are located in their respective country’s capital cities and do not have any regional or provincial centers. Their location reduces their ability to train judicial officials who are based outside of the capital, as bringing those officials to the capital for training increases the opportunity cost of the training. It would therefore make sense for these institutions to develop centers and build infrastructure in other parts of the country, or at least to create a system of mobile training centers.

In the very near future, JATI will have a sizeable building complex of its own.\(^6\) The NJA, on the other hand, has been unable to mobilize funding for a building. It started its activities in a small space made available on the premises of the Supreme Court with a faculty of just three members and a couple of officers deputized from the Court.\(^7\) The expert legal assistance obtained with ADB funding was, moreover, withdrawn the same year it commenced its activities.

Logistical support to the Academy has also been significantly scaled down. Following termination of the ADB project in August 2006, the NJA is now heavily dependent on the Nepalese government for its funding and technical support needs. It is unlikely, however, that the government will allot it sufficient funding for its development. Short of remedying the financial problem, therefore, NJA’s survival will be difficult and its growth could be seriously jeopardized.

The NJA has one additional serious problem. Due to its heavy dependence on extended faculty, the institution would have difficulty operating outside the capital without appropriate arrangements for faculty replacement. Such arrangements would, moreover, take time. For that reason, the NJA for the time being seems to have a strong preference for owning its own infrastructure in the capital, with a medium-term plan to gradually expand the geographic coverage of its services.

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\(^6\) In May 2006, the Prime Minister of Bangladesh unveiled the plaque of the Judicial Administrative Training Institute Complex, which is to be built as part of the legal and judicial capacity-building project of the Ministry of Law, Justice, and Parliamentary Affairs. The seven-story complex is expected to be completed within 18 months and will feature a modern seminar hall, library, conference room, training room, videoconferencing room, cafeteria, and dormitory. See “Bangladesh PM’s Call for a Society Based on Justice,” *Bangladesh Sangbad Sangstha News*, May 22, 2006.

\(^7\) Although the NJA project was launched in an encouraging environment—the Nepalese government provided about 10 acres of land on the outskirts of Kathmandu on which an NJA complex would be constructed—due to a shortage of funds (donor agencies have withdrawn their support), construction has failed to take off.
VI. The Way Forward

An independent judiciary is not a fancy dream, but a constitutionally guaranteed, fundamental right of every individual in both Bangladesh and Nepal. Every effort, therefore, to equip and allow the judiciary to operate in that spirit and stature should be welcomed. This is a challenging task in a world that is changing rapidly. Change makes the work of judges increasingly more complex and create new challenges for them. In fact, the very role of judges in society, and the public perception of this role, will likely undergo further revolutionary changes.

Traditional patterns of decision making in the judicial area are actually no longer entirely relevant in the modern-day context. The world economy is witnessing a structural shift, with changes in trade, finance, and investment regimes. Rapid globalization and advancements in information and communication technology have resulted in the economic integration of both developed and developing economies, which have become more interdependent in light of the flow of goods, services, finance, and investment.

The issues of economic law that are likely to come before courts in a dynamic commercial sector will pose a major technical challenge for judges in these countries. The new sensitivity to the cause of the underprivileged and the need to empower the poor will also entail a vast attitudinal change on the part of judges. Judges' commitment to a substantial training program, therefore, remains a major indicator of their appreciation of the difficulties and responsibilities inherent in the performance of their function now and in the future.

Most of the time, judicial and legal training is not only a vehicle, but also a component of judicial reform itself. It is instrumental, for example, for addressing existing and emerging challenges and making the judiciary more accountable and socially relevant. It also provides judicial sector staff an opportunity to overcome both academic and professional deficiencies, internalize universal values of justice, and develop the necessary skills, attitudes, and commitment to the goals of justice envisioned in their national constitution.

Judicial training also offers a forum where target groups can come to understand social issues and interact with other justice sector stakeholders, thus developing a deeper comprehension of existing challenges to the justice system. Given that competence and efficiency are considered crucial elements for the success of the justice sector, judicial training is indispensable for reaching those objectives. This is true for any judiciary in the world, but all the more so for the judiciaries of struggling democracies like Nepal and Bangladesh.

Certainly judicial training in both countries faces severe, but not insurmountable, challenges. While anticipating that these problems will be resolved over time, these countries could move forward by initiating a few simple, additional changes and adjustments on their own.

Changing the Paradigm

*It is imperative that Bangladesh and Nepal recognize that the justice sector is unique, and unlike the past, avoid dealing with its problems on a piece-meal basis. The solution, whatever that may be, must consider the sector as a whole. All judicial or judiciary-related training must take this imperative into account.*

This approach requires strengthening links and improving coordination, both with the government and civil society. It also means starting from the beneficiary perspective, fostering local ownership of reform of the judicial sector, and using participatory needs assessments. JATI and the NJA should, for example, periodically organize training needs assessment workshops and
surveys to identify the perceived needs of the sector and cater to those needs as quickly possible. These assessments should not be limited only to judges and other justice system professionals, but should also include the consumers of justice. Certainly this last step will be difficult, but not impossible, to implement.

To conform to modern-day needs and ensure popular ownership and commitment, JATI and the NJA could adopt a rights-based approach to training. This approach would involve, on one hand, the rights of judges and judicial sector staff to receive training, and on the other, the different rights of citizens (about which judges and other justice sector employees should be knowledgeable). As a result, training programs could be designed on the principle that training is a right of those involved in the operation of a judiciary—both those on the supply as well as demand side.

Including traditional as well as modern topics would broaden judicial training. The timing, approach, and content of such training should, however, be decided by all stakeholders. Moreover, the programs of these two national institutes could also focus on creating awareness of the needs of poor, vulnerable, and marginalized groups by enhancing their access to justice, tackling discrimination, ensuring minority participation, recognizing indigenous systems, and paying attention to women’s rights.

Building Awareness

It is important for JATI and the NJA to enhance awareness building and improve their information and knowledge base (“infoware”), which will help them set their priorities correctly.

The lack of an integrated, multidisciplinary approach to teaching, inadequate incentives and motivational support, and hardship in the collection of real data and information are all areas where improvements would be welcome. For both technical as well as socioeconomic considerations, the continued collection, compilation, and analysis of reliable data on capacity needs are essential for formulating and implementing effective and sustainable strategies.

Forging Partnerships and Alliances

JATI and the NJA need to proactively develop institutional partnership programs.

Both institutions should seek support from training and/or academic institutions in developing as well as developed countries to collaboratively address an array of complex social and development issues and to find ways to tackle such issues through legal and judicial training. JATI and NJA should also further strengthen their respective capacity to address development priorities, as well as to prepare a responsible citizenry and a proficient workforce engaged in a global marketplace.

Judicial education has been discussed on various occasions during chief justice conferences of SAARC member countries. Since most SAARC countries have established judicial academies (or institutions), there is general agreement that it is now time to forge alliances and work together in areas of common interest and concern. This collaboration is especially relevant in South Asia, where special importance is usually attached to the study of comparative law and all judiciaries work with similar mandates and operational plans. Both JATI and the NJA need to push the idea of regional partnership further in the years to come. In addition, they should look for partnerships with international, regional, and national training institutions, as well as with civil-society organizations in SAARC countries that promote the cause of judicial education. Regional collaboration and international interaction can greatly enhance the capacity and capability of these institutions and these countries.
Working Creatively

Now that they have been in existence for a few years, JATI and the NJA should start thinking about their long-term sustainability.

In view of the many regulatory, policy, and financial constraints in Bangladesh and Nepal, the sustainability of the two training institutions remains an issue. They need, therefore, to creatively apply themselves in a way best suited to meet their own needs. If they fail to prioritize teaching and learning topics and create a sustainable policy to that end, the quality and quantity of their deliverables may be hindered. On the other hand, with a bit of creative ingenuity and adequate incentive, the goal of enhanced learning could be fostered in an effective manner for all judges, prosecutors, and lawyers.
Select References


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