CPD and Current Challenges: Law Incubators

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Background

Pakistan faces multiple systemic challenges, the specific problems of crippling poverty coupled with the ‘crisis of education’ particularly exacerbates and multiplies each problem we face as a society. Pakistan is second in the rankings of countries with maximum number of children not enrolled in primary schools – with at least 7 million such children out of school.¹ Legal education is not exempted from this general malaise. Dr. Osama Siddique’s groundbreaking recent book “Pakistan’s Experience with Formal Law: An Alien Justice”, documents the deplorable state of legal education in Pakistan and gives some shocking statistics with respect to the beleaguered system of law and justice. The paucity of available district court judges is staggering. For every 100,000 residents of a province there are 1.5 available judges in the Punjab, 1 judge in Sindh, 1.75 in KP and 1.5 in Baluchistan.²

Despite popular perception, the availability of lawyers is even worse. For every 10,000 Pakistanis there are 6 lawyers (who are enrolled to practice in all Pakistani courts) and 3 district court lawyers. Further, for every 10,000 residents in different provinces there are, in the Punjab 2.5 lawyers, in Sindh 2.75 lawyers, in KP 5 lawyers, and Baluchistan 2.5 lawyers. These are extremely low numbers compared to other jurisdictions: for every 10,000 residents there are 37 lawyers in the U.S., 30.5 in Brazil, 25.5 in New Zealand, 25 in Spain, 25 in U.K., 20.5 in Italy, 17 in Germany and 7 in France.³

The state of legal education and lack of formal training mechanisms only compound this condition. There are no credible bar examinations or institutionalized continuing legal education and professional development programs. Moreover, the state of law schools in Pakistan, being historically underfunded and ignored, has done little to improve teaching and research standards.⁴ Teaching is largely left to practicing lawyers and part-time faculties⁵ and despite the domination of the legal practitioner as a law lecturer, ‘clinical legal education’ at law schools is virtually non-existent. Whereas ‘local’ LLB programs vary in quality and between urban and rural landscapes, those who can afford to, opt for ‘external programs,’ which test students solely on the laws of England and Wales.

² Ibid, p.20.
⁴ Ibid. 30.
⁵ Osama Siddique, Legal Education in Pakistan: The Domination of Practitioners and the ‘Critically Endangered’ Academic” Journal of Legal Education, Volume 63, Number 3 (February 2014)
“A vital nexus between the quality of legal education and the quality of justice is universally recognized. A socially relevant, high standard of legal education produces elements of change and champions justice. Quality research inspires and fuels an environment of analysis, debate, critique, and as a result a culture of tolerance and democracy. Additionally, such education boosts the caliber and professionalism of legal professionals, judicial institutions and society in general. Lawyers and legally trained individuals form a vibrant, informed and proactive civil society that strives for political, social and economic justice. Legal reform is critical in transforming the justice system in Pakistan.”

These deficiencies affect not only the lawyers and the legal and judicial system as a whole, but more significantly, the average citizen and litigant. Dr. Osama Siddique in his abovementioned book conducted a pertinent and empirical “Lahore Litigants’ Study” at the Lahore District Courts where detailed interviews were conducted with 440 randomly selected litigants. The findings are not surprising albeit very disappointing. 42% of the participants would opt for alternate remedies to the courts in the future, including: ‘Khandan’ (family), ‘Mohalla’ (neighbourhood), ‘Biradari’, ‘Panchayat’ ‘local influential people’, ‘local large landowner’, and ‘local bureaucracy’. The most frequent complaints were ‘cost of litigation’, ‘attitude of lawyers’, ‘complexity of legal system’, ‘corruption’, ‘judicial attitudes’ and ‘distance of court from home’. The perception of our entire system of justice, of our profession and its place in our society as a force for progressive social change is therefore in question.

**CPD and Challenges**

The next step, then, is, how can CPD contribute to this challenge and make a positive contribution? While focusing on fostering expertise and promoting specialization in law by CPD providers for intermediate and advanced lawyers is indeed important, at the same time, CPD providers have to focus upon enhancing the competence and skills of young lawyers and recent law graduates.

The state of experiential training in Pakistan for law graduates is entirely ad hoc and non-systematic. The landscape is dominated by family run or solo practitioners interspersed with corporate law firms and in-house departments, and neither focus their time nor their resources on providing foundational training to recent law graduates.

As a result, young lawyers in Pakistan face a particularly steep learning curve upon entering the profession due to the absence of clinical legal education in law schools and the informal and ad hoc, ‘family’ structure of law firms, with no mechanisms in

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place for adequate mentoring of recent law graduates. Law graduates are expected to ‘hit the road running’ and have little or no time to hone their practice skills.

**CPD and Law Incubators: U.S. Case Study**

Legal systems in many countries across the world face similar challenges. The absence of clinical training in law schools places the burden of competency training on employers. Due to the economic downturn in the United States, for example, a majority of law graduates are forced to create their own job opportunities, by embarking upon solo practices. These practitioners have faced high rates of failure due either to their lack of business skills and/or malpractice claims. Law schools and Bar Associations in the United States have begun to take steps to address deficiencies in legal education.

The United States is witnessing a transformation in legal education with the advent of law school-based postgraduate centres or law incubators. The incubator movement began with the City University of New York School of Law, which launched its first “Access to Justice” post-graduate incubator in 2007. The man behind this institutional change is Senior Fulbright Scholar, Dr. Fred Rooney, who is now hailed by the American Bar Association as the “Father of Incubators”.

As of this year, 36 post-graduate incubators are successfully functioning in the United States with over 200 young and in-training lawyers, handling thousands of legal cases for low and moderate income communities across the United States.

Some definitional discussion is necessary at this point. A post-graduate law incubator is an 18-24 month program where incubator participants are offered intensive training to fine-tune their skills as both lawyers and as micro entrepreneurs. Training, which includes CLE/CPD courses provides participants with the skills required to eventually launch successful solo practices. Through professional legal training, participants learn to effectively represent low-income individuals and families in areas such as housing, immigration, real property, family and consumer credit, and critical areas of public interest law. It offers training in business skills and law practice management in order to ensure sustainable and economically viable solo practices. Incubators are intrinsically connected to continuing legal education / CPD as they are designed to develop within recent graduates the necessary levels of professional competency, business acumen, and community networking skills needed before launching into full-scale solo practice.

All incubators in the United States have strong ties to law schools and CLE/CPD providers where lectures and courses of CPD and law practice management are frequently given to recent graduates working in incubators. In addition to law schools

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9 Interview with Dr. Fred Rooney dated 18 August 2014, available on file with the author. See also the American Bar Association’s Incubator/Residency Programs directory for further details and information [http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main /program_directory.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main /program_directory.html)
sponsoring such incubators, other organizations such as CPD providers, legal aid organizations and bar associations play a key role as critical partners. They offer CLE, natural mentoring through shadowing senior attorneys and community outreach opportunities to in-training lawyers. In addition, these incubators work closely with entrepreneurship centers at universities and other institutions and offer innovative solutions to social issues.\(^\text{10}\)

The severe economic downturn in the United States adversely impacted many recent law graduates job prospects and simultaneously the same poor economic conditions increased the general need for low cost legal services. The creation of Post-graduate law incubators and residency programs was a creative response to these issues by the legal community and in particular on the part of the law schools. Recent graduates work in law school sponsored firms to provide services to low and moderate-income communities as well as pro bono clientele. These incubator residency programs have gained much traction and support from the judiciary, bar associations, alumni networks, legal aid and non-governmental organizations, as well as local and state governments in the United States.

It would be useful here to give you a snapshot of the some successful and self-sufficient incubator programs in the United States\(^\text{11}\).

- City University of New York School of Law’s “Incubator for Justice”

This is one of the most well-known incubator programs in the United States and was established in 2007. This program helps recent graduates establish solo practices, while at the same time helping to increase access to legal services among underserved communities. Program participants are furnished with low-cost office space and staff support for the 18-month duration of the program. Incubator participants have access to a network of solo and small firm practitioners who function as mentors and who provide young lawyers with shadowing opportunities. Participants further receive training in basic business relevant to solo and small firm practice, such as billing, management and record keeping. Additionally, participants are encouraged to develop client bases by offering service low bono and pro bono in areas that are underserved by private practitioners.


\(^{11}\)For more information see Hanover Research Report on “Law School Solo Practice Incubators and Legal Residency Programs” (2012) available on the Internet
• University of Missouri-Kansas City School of Law’s “Solo and Small Firm Incubator”

The program commenced in 2010 and provides affordable office space for approximately nine tenants, as well as practice management assistance. Incubator participants also receive mentoring from experience attorneys and retired judges. The institution features coursework aimed at helping recent law graduates become legal entrepreneurs. Students may participate in summer courses as well as spring and winter workshops at the incubator, which provide instructions in various topics of interest related to the foundation and operation of a law firm.

• Florida International University College of Law’s “LawBridge” Program

This program provides office space to participants in downtown Miami. LawBridge participants are coached in a variety of areas related to law practice management and meet regularly with mentors and marketing professionals. A locally-based, mid-sized accountancy firm provides each participant with accounting and tax preparation services during the two years of the program, and LawBridge participants meet regularly with bankers and other professionals to discuss various aspects of the business side of the legal profession. This program further offers lectures and continuing legal education coursework, as well as frequent contact with successful law practitioners.

• The University of Maryland Francis King Carey School of Law’s “Solo Practice Incubator”

The incubator started in 2011 and promotes civil justice through a partnership with Civil Justice Inc., a legal not-profit organization which is an affiliated program of the University of Maryland School of Law. The program is 10 months long and furnishes participants with training related to law practice management. Participants can also work on Civil Justice Inc. grant-funded initiatives which generates fees for attorney, thus providing participants with financial support for the duration of the program. At the end of the program, Incubator participants are afforded continued access to client referrals, case management, and mentoring through Civil Justice Inc. network.

• Columbus Bar Association’s “Solo Practice Incubator”

This incubator started in 2011 and is 12 months in length and equips participants with office space and basic office fixtures such as copiers, internet services and phones. The incubator also provides participants with training related to various aspects of managing a law practice such as billing, firm marketing and client intake. The program features onsite mentors who commit to a specific time per week onsite. Participants also benefit from a specifically designed CLE/CPD curriculum and can participate in networking opportunities. Participants receive referrals through Columbus Bar
Association programs and must consent to taking at least one pro bono case during their time at the incubator.

- Thomas Jefferson School of Law “Incubator”

Participants will spend 12-18 months and will be provided with office space, mentoring from law faculty and visiting faculty and alumni. In addition to the Incubator this law school is also developing a full year “solo practice track” designed as a series of mini-courses.

- Pace University Law School’s “Pace Community Law Practice”

This program accommodates under 10 recent graduates who will provide affordable legal services to individuals and community groups. This program features elements of both a legal residency and a solo practice incubator. Participants are classified as “Fellows” paid by the law school and housed in space on campus. The program also features a solo practice component, which provides seminars on issues related to practice management.

- Arizona State University Sandra Day O’Connor College of Law

This post-graduate residency program operates a non-profit training law firm designed to give interested graduating law students a ‘residency’ experience. This program will employ recent Arizona State University’s law graduates who will spend a set amount of time cycling through different law practice areas. Graduates in the program will be paid and receive benefits, and they will be hired with the ability to stay on staff for two years with the option to extend their time at the firm for a third year. However, the program participants will be free to leave the program at any time for a long-term job prospect. The proposed non-profit firm will differ from solo practice as it will operate much like a traditional law firm.

Apart from the benefits afforded to recent law graduates, the incubators also offer sponsoring institutions several opportunities and benefits. These are summarized below:

- Sponsoring institutions get the benefit of supporting post-graduates through continuing legal education and law practice management.
- Sponsoring institutions get to leverage their incubators with outside organizations such as legal aid centers and bar associations. These outside but partner organizations can be used to network and to attract clientele for the incubator. The potential for outreach does not end here – incubators can partner with all kinds of stakeholders, including government and international NGOs, who are interested, involved or impacted by the incubator’s areas of practice.
• Sponsoring institutions get the benefit of law firm platform, which can be seen as an extension of their institutions and a powerful medium to engage with bar associations and bar regulators.

• The incubator can be seen as a philanthropic opportunity where potential for social philanthropy is far reaching.

• The incubator’s potential as an alumni outreach tool is useful especially if the sponsoring institution is a law school. The incubator can act as a bridge to alumni working in legal market. Further an alumnus may return to the incubator and provide CPD to participants as well as mentoring and opportunities to shadow. In return the incubator participants can offer research, drafting and a variety of legal services at reduced rates.

• The incubator can meet the institutional sponsor’s commitments to social justice and other such commitments through its community outreach programs and providing legal services to low and moderate-income communities.

The development of law incubators in Pakistan can serve multiple needs at the same time. Innovative solutions are required in the face of central government inactivity, and lack of vision and resources on the part of the concerned provincial authorities. Private practitioners, academics and law schools in particular can play an integral, integrated role in the development of incubators in Pakistan. These can be used to develop networking opportunities, resources for the development and practice of CPD and clinical skills building, networking, develop knowledge sharing and referral systems for multiple practice areas, and enhance pro bono efforts.

This is a relatively new development, but its potential for continued success has been widely acknowledged through the mushrooming of similar incubators across the United States. The possibility of ‘doing well’ by ‘doing good’ is an attractive concept for lawyers, law schools, and the communities they serve.

**CPD and Law Incubators in Pakistan**

As discussed above, it is critical for CPD providers and organizations to focus on the training and developmental needs of young lawyers in Pakistan.

What follows is an outline of a potential CPD program for young and in-training lawyers.

It should be the object of an institutional sponsor to provide structured on-the-job training program to recent law graduates with a view to increasing their competence and ensuring their ability to provide the quality legal services required of a legal professional. Recent graduates should be taught practical bar vocational skills during the pupillage stage of their training and thereafter through to High Court enrollment. These recent graduates should also benefit from close peer mentoring through the provision of low bono and pro bono services to underserved communities in the vicinity of institutional sponsor.
Each year, not more than (10) law graduates may be selected and given the title of Associate Post-Graduate Fellow (Associate Fellow). Selection should be based on merit should endeavor to maintain gender equality and select candidates from a mix of economic backgrounds, but with a demonstrated commitment to social justice. While participating in post-graduate programs, Associate Fellows should provide legal services at affordable rates under the close supervision of experienced practitioners. Each Associate Fellow should be required to act as an ‘Advocate on Record’ for a minimum ten (10) litigation matters in district courts/tribunals. Each Associate Fellow should also assist another lead Associate Fellow in another ten (10) litigation matters and for the duration of the program, each Associate Fellow should be involved in a minimum of 20 litigation matters. It is recommended that Associate Fellows should be associated with the Program for a 2 years, where after upon completion of their Fellowship, they will be eligible for enrollment as Advocates of the High Courts.

Once in place, the incubator should be in a perfect position to prepare its Associate Fellows to use their privileged role as community-based advocates as a catalyst for social change and for ensuring greater equity in access to justice.

In addition to the minimum litigation experience above, for the duration of the Fellowship, the Associate Fellows should engage with: (i) communities in the vicinity of the incubator with unmet legal needs (assess and address legal needs of such communities) and develop a ‘Community Legal Resource Network’ (CLRN), (ii) NGOs and community organizations working in such communities, (iii) appropriate CPD streams if available (iv) district court judiciary, (v) district bar associations, (vi) law schools (in particular mentoring law students and assisting law schools develop clinical education programs), (vii) a legal publication as assistant editors and (viii) legal think tanks and international organizations involved in rule of law and access to justice initiatives.

The team should comprise of at least one dedicated coordinator and list of mentors comprising of experience practitioners associated with the institutional sponsor. The following CPD courses should be imparted to the participants associated with the incubator:

**Foundation CPD Courses:**
- Completing CPD Course on Legal Ethics & Professional Responsibility.
- Completing CPD Course on Civil Procedure and Practice.
- Completing CPD Course on Legal Drafting.
- Completing CPD Course on Court Decorum and Professional Etiquette.
- Completing CPD Course on Legal Agreements.
- Completing CPD Course on Law Firm Management and Best Practices.
- Completing CPD Course on Client Conference.
- Completing CPD Course on Legal Research.
- Completing CPD Course on Advocacy Skills.

(CPD Courses above are collectively referred to as “Foundation CPD Courses”)
It is recommended that the following resources should be made available to participants at the incubator:

Resources Provided to Associate Fellows

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<tr>
<th>Resource</th>
<th>Available</th>
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<tbody>
<tr>
<td>Free office space</td>
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<td>A stipend and thereafter remuneration from Incubator’s resources</td>
<td>✔️</td>
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<tr>
<td>Mentoring on substantive and procedural legal issues</td>
<td>✔️</td>
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<tr>
<td>Opportunities to shadow lawyers</td>
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<td>Assistance and training with practice management issues</td>
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<td>Participation in CLE programming</td>
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<td>Online networking on CLEIP platform as well as develop own online platform for networking purposes</td>
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<tr>
<td>In-person networking</td>
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<tr>
<td>Client conference and strategies</td>
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<td>Case referrals</td>
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<td>Pro bono and low bono opportunities</td>
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<td>Legal research resources (online)</td>
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<tr>
<td>Legal research resources (physical)</td>
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<tr>
<td>Other resources: office computers, printer, copier, and typical firm overhead</td>
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