LAW & our rights
www.thedailystar.net/law
"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-*Article 27 of the Constitution of the People's Republic of Bangladesh*

The Daily Star

LAW *opinion*

Reviewing our legal education

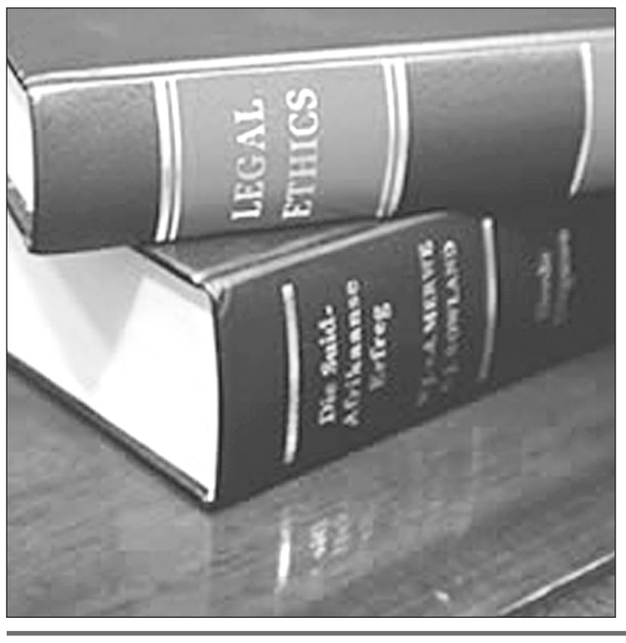
DR. M. SHAH ALAM

NOT long ago, Law Commission of Bangladesh in collaboration with CIDA Legal Reform Project Part A, undertook a review of legal education in Bangladesh under a pilot project. Judges, lawyers, law teachers, law students, members of the civil society, representatives of the private sector, professional groups as well as various legal institutions throughout the country were consulted in various ways. They all underscored the need for reforms of legal education and the comprehensive discussion paper was prepared under the project. The paper critically analysed and evaluated the present state of legal education in the country, attempted to identify its problems and made recommendations for their resolution. It is believed the Law Commission will further work on them to precisely formulate the recommendations and propose necessary legislative action for their implementation. I was privileged to be associated with the work of the project. May I share below some of my views on legal education with the readers of The Daily Star.

Considering that legal education has immense impact on the quality of judiciary and on the rule of law in various spheres of national life, and that the present state of legal education in Bangladesh does not sufficiently respond to the needs of modern society and economy, its reforms have become a national need. Our law curriculum, teaching methodology and institutions that provide legal education have generally remained where they were decades ago, incapable of producing law graduates that our nation needs to cope with its enormous problems.

First of all, objectives of legal education need to be clearly defined. It is not only principles and provisions of law and legal system that legal education needs to provide, it must also emphasise justice and social value of law. It is not only to prepare professionally qualified skilful lawyers and judges with sound substantive and procedural knowledge of law, it is to commit the law to the service of the people, to facilitate their access to justice. Law has a great social engineering role to play for poverty alleviation, redistribution of national wealth and protection of rights of the marginalised sections of the people. These objectives of law ought to be reflected in the curriculum, teaching methodology and motivation of the law students and teachers.

Law is a practical social science. Therefore, both academic and vocational nature of legal education is important. There is a great need to combine these aspects of law to create opportunities to provide quality legal education. In Bangladesh academic aspect of legal education predominates with the result that methods of teaching law are mostly lecture-based. It is necessary to emphasise the need for practical methods of teaching law i.e. socratic method, problem method, case study, moot-court and mock trial, clinical legal education etc. For would be lawyers introduction Bar Vocational Course (BVC) for one year to qualify them to sit for bar examination merits serious consideration.

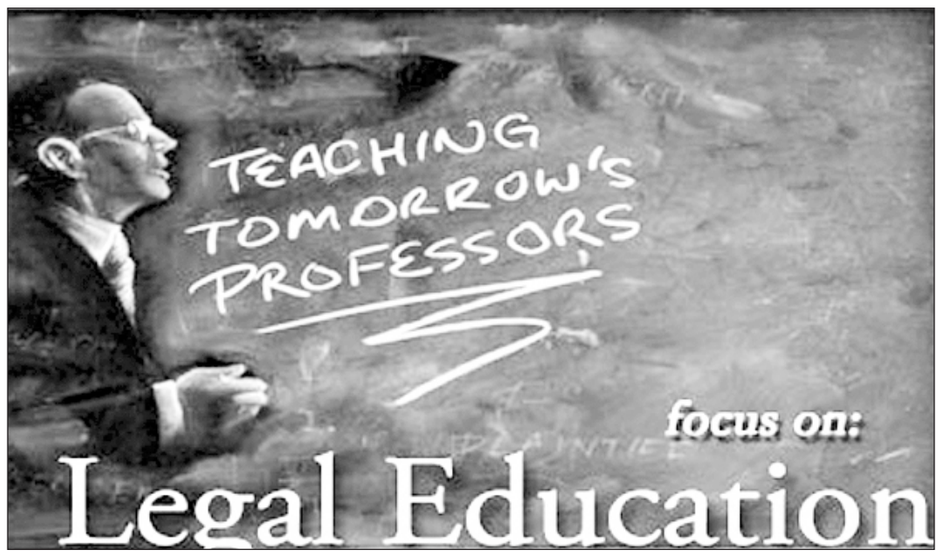


In Bangladesh there are two separate streams of legal education, first, private law college based two-year post-graduate course and the other is four-year undergraduate LL.B. (Hons.) course provided by law faculties of public universities. Recently, private universities have also started to open law faculties for LL.B. (Hons.) courses. There exists wide gap in the quality of legal education imparted in the law colleges and in the public universities. Poor quality of education in the law colleges is stet lack of funds, absence of government control as well as financial assistance, infrastructural inadequacy, lack of academic facilities, poor management, absence of full-time teaching staff, irregularity in admission and examination of students, and poor monitoring and control by affiliating National University, besides host of other factors. These factors very negatively tell on the curriculum, teaching methodology and performance of the students in the examination. Picture in the public universities may be better, but they also need major reforms for upgrading curriculum and teaching methodology as well as for endowing the students with social and ethical values of law.

Under prevailing historical and socio-economic conditions, it may not be advisable or even possible to do away with or to unify the separate streams of legal education, and go for either post-graduate stream as prevailing in the law colleges or undergraduate stream in the universities for awarding first degree of law. Both streams can continue to run. However, they, specially, college legal education the need to be improved and their gap narrowed down.

Since law is an all, pervading and all-embracing discipline and law graduates are expected to work in important sectors of national life including judiciary, and to underline special responsibility of the law graduates before the society, inter-disciplinary approach in legal education needs to be emphasised. Besides incorporating new branches of legal science relating to ICT, e-commerce and globalisation, fundamentals of economics, political science, sociology, history need to be incorporated in the curriculum. ADR, specially court sponsored mediation presents new hope for our justice delivery system. Law schools need to include ADR in their curriculum and devote more time to its study and research to further explore its potentials. Law curriculum also needs to put more emphasis on social and ethical values of law.

Our legal education needs to seriously explore the potentials of



clinical legal education to reap its diverse benefits. This North American concept of clinical legal education if carefully adapted to our conditions can bring positive and practically significant change in teaching law and to serve the purpose of law in Bangladesh. Clinical legal education is learning by doing. It is experiential learning. It is not merely practical method of teaching and learning law, it is also providing service to the people. When young students at the formative stage of their career are exposed to community legal services, they get sensitised to the problems and need specially of the marginalised sections of the people and feel motivated to continue to work for them when they enter professional life.

Research in law provides 'critical intellectual guidance to the study of law'. Legal research is an essential condition for legal scholarship. Legal scholarship defines and identifies links between law and individuals, law and society, law and development, law and politics. Without quality research and legal scholarship, it is virtually impossible to speak of quality legal education. In our seats of higher legal learning research is a much neglected area. This needs to be taken care of.

Legal ethics as a separate course is almost non-existent in our curriculum. The very purpose of legal education and profession could be frustrated by the lack of ethical values. Ethical value is not divorced from professional or social value. Human rights and gender issues also need to be sufficiently reflected in our curriculum.

Globalisation is leading the states to look beyond national horizon of law. Inter-dependence of states, massive international transactions at both public and private levels and emergence of innumerable common issues and problems have rendered transnational approach to law inevitable. International trade and foreign investment accompanied by rapid cross-border mobility of capital, labour and services have led to transnational or global legal practice, which is likely to be more frequent in the coming years. These developments have not been sufficiently reflected in our legal education, neither in curriculum, nor in teaching methodology, nor in the attitude of providers of legal education. Our curriculum continues to centre around traditional subjects of national law, and our judges and lawyers are averse to application of international law in domestic courts. Reluctant and less attentive attitude of our judges and lawyers towards international law are greatly explained by lack of transnational components of legal education in Bangladesh.

Academically sound and vocationally skilful law graduates would make great human resource for various sectors of our national development. Many of them would not become lawyers and judges, nor the bar and bench can absorb all of them. Legal knowledge, both substantive and procedural, along with inter-disciplinary experience and motivation and vision of legal education of those graduates who would decide not to become judges and lawyers, would need to be employed for services other than judiciary and legal practice, where their specialised knowledge of law would be required. It would be most appropriate and desirable to create job opportunities for them where they would be better able to apply their specialised knowledge. Given that law graduates have received modern and socially relevant legal education, their knowledge ought to be used and applied to the needs of the nation in various government, semi-government, autonomous, non-government and private sectors. It is recommended that the government create a separate service, consisting of law graduates who will have to qualify in competitive examination to be conducted by the Public Service Commission. Members of this cadre service, called legal service, or BCS (legal) in distinction from judicial service, would be employed at various ministries, government and semi-government agencies to deal with legal issues.

Bar Council's role in providing quality legal education needs to be enhanced. Its powers and functions need to be comprehensively increased in respect of creation and maintenance of standards of legal education in curriculum development, teaching methodology, evaluation and award of degrees. Bar council ought to have power to de-accredit law schools in case of non-compliance with its requirements. Representation of legal academics in the legal education committee of the Bar Council will need to be increased. Legal education committee of the Bar Council in collaboration with the legal education committee of the University Grants Commission (proposed to be formed) would exercise overall monitoring and controlling power over law schools.

The author is Professor of law University of Chittagong, presently working with Stamford University Bangladesh.

FACT*file*

AFGHANISTAN
NATO must ensure justice for victims of civilian deaths and torture

NATO leaders must set up a joint body, together with partners in Afghanistan, to pursue justice for civilians whose human rights may have been violated by the NATO-led International Security Assistance Forces (ISAF) in Afghanistan, said Amnesty International ahead of the NATO summit in Riga, Latvia on 28/29 November. Amnesty International is concerned that the legal basis for the presence of ISAF in the country places it outside Afghan law and beyond the effective reach of justice in members' own countries. "ISAF has a crucial role to play in securing the rule of law in Afghanistan. We urge NATO leaders to ensure that ISAF does not fall short of international humanitarian and human rights law in pursuing this aim," said Tim Parritt, Deputy Asia Pacific Director at Amnesty International.

"Any civilians who may have suffered human rights violations in the course of ISAF operations deserve to receive justice and we call on NATO to lead the establishment of a body to investigate such claims, ensure the prosecution of those found responsible, and ensure reparation for the victims."

Amnesty International is particularly concerned that:

* Aerial bombardments carried out as part of ISAF military operations have resulted in the killing of civilians, according to reports. These attacks may have failed to discriminate between civilians and military targets.

* These operations have also contributed to the displacement of up to 90,000 people who have fled their homes because of the violence.

rrently used by ISAF may be resulting in the torture or ill-treatment of Afghan nationals who are handed over to Afghan security forces known to use such practices.

NATO should create a joint body together with its Afghan partners and the UN Assistance Mission to Afghanistan (UNAMA) to pursue justice for human rights violations such as these. The body could draw on the Trust Fund called for in UN Security Council Resolution 1386 (2001) to make any reparations to victims.

NATO members should ensure that ISAF complies fully with international law in the course of its operations and should cooperate with UNAMA and the Afghanistan Independent Human Rights Commission in doing this. ISAF should pay particular attention to its arrest and detention procedures, including the handing over of detainees to Afghan custody.

AI has for many years raised concerns about the use of torture and ill-treatment by Afghan security forces, including the National Security Directorate.

Source: Amnesty International.

LAW *alter views*

Dos and don's for diplomats

MD RIZWANUL ISLAM

DIPLOMATIC laws are among one of the earliest expressions of international law and even in ancient days the representatives of states were accorded with special honour and privileges. With the advent of modern communication technology the role and functions of diplomats have changed to a significant extent. On one account, just around a century ago when there was no e-mail or telecommunication technology they perhaps enjoyed much more authority as their sending states (i.e. the state which has sent him or her as a diplomat) could not communicate them instantaneously and instruct them as to the dos and don'ts. But on another note, as today's world is much more globalised and states have more interactions with each other the functions and role of diplomats have increased and become even more pertinent in international relations. Theoretically the principle of sovereign immunity is the justification of the special privileges awarded to the diplomats. From a pragmatic point of view as all states have their envoys in other states, it is in the interest of all states that the diplomatic agents are protected, e.g. they enjoy immunities from civil and criminal jurisdictions in the territories in which they perform their functions.

Although there is no dispute that diplomats should have special privileges and immunities, controversy often arises as to whether a diplomat's comment or conduct interferes with the internal affairs of the receiving state (i.e. the state in which he or she is acting as a diplomatic agent). Especially in our country this has quite often been a subject matter of controversy. The comments of the 'Tuesday Group' almost invariably features in our newspapers and it's no wonder that in the wake of the upcoming parliamentary election the conduct or comments of the diplomats working here in Bangladesh would be debated. Interestingly in majority of the instances the government has objected to the comments or conducts alleging them to amount to interference with the internal affairs of Bangladesh. But the opposition parties have mostly welcomed or at least not objected. However though this difference of opinion has been driven by political motives, the text of Article 3 (1) and Article 41(1) of the Vienna Convention of Diplomatic Relations, 1961 have also contributed to the debate or at least the exact position of international law on this point is not quite clear. Article 3(1) runs as follows:

1. The functions of a diplomatic mission consist, inter alia, in:

(a) Representing the sending State in the receiving State;

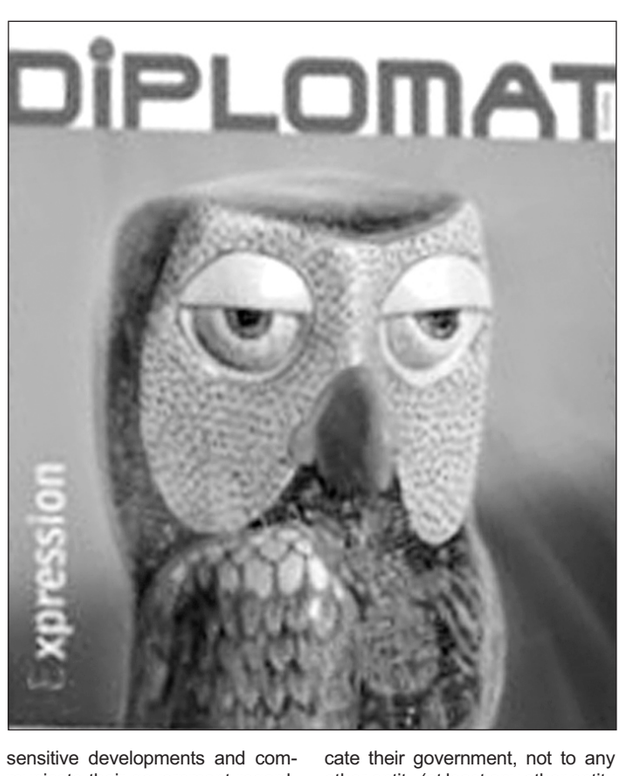
(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;

© Negotiating with the government of the receiving State;

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the government of the sending State;

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations;

The use of the term 'inter alia' in the first sentence of this Article indicates that this is not an exhaustive list of the functions of a diplomatic agent, rather this merely enumerates a list of functions that a diplomat has been expressly authorised to perform. The wordings of sub-Articles (a) to (c) and (e) are more or less accepted and not so controversial. The wording of sub-Articles (d) is particularly important here. This provision expressly allows diplomats to ascertain by all lawful means the conditions and developments in the receiving state, and report thereon to the government of the sending state. As there is no explanation of 'the conditions and developments in the receiving state', it appears that diplomats may attempt to ascertain even politically



sensitive developments and communicate their government regarding such developments. But the limitation imposed here is that they have been empowered to communicate their government, not to any other entity (at least any other entity is not mentioned in the Article). Hence arguably they are not allowed to communicate media or comment in public regarding such developments while functioning as a diplomat.

Another important constraint here is that diplomats are not empowered to express opinion; they are assigned with the task of collecting information. But unfortunately diplomats have not always functioned keeping in mind this limitation. The hotly debated incident of alleging a minister of current government for taking bribe is one such incident where the conduct of Danish diplomats have transgressed the rules of international law as expressed in the abovementioned Article.

Article 41(1) which deals with the duties of diplomats runs as follows: "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State."

This Article expressly imposes a duty on the diplomats not to interfere in the internal affairs of the receiving state. But the problem is what constitutes internal affairs is not defined anywhere in the convention. The scope of the term 'internal affairs' in relation to international law has changed over the years. In earlier times the treatment of citizens by the government was considered as completely an internal affair and not a subject matter of internal law. However the growing concern for human rights has settled that when a government commits gross violation of human rights, though limited to the people within the country's territory, it's not an internal affair.

Internal affairs in the context of diplomatic relations appear to be open to interpretation and it's no wonder that interpretations from different corners would differ. However an interpretative note to article 41(1) could resolve the issue, at least from legal point of view. As least developed countries like ours are heavily dependent on foreign aid, the diplomats of aid giving nations, who are working in these countries would nevertheless have the room for arguing that they too are stakeholders in ensuring good governance in these countries. So their diplomats may endeavour to ensure good governance and on this pretext they can interfere in the domestic affairs of the states receiving substantial foreign aid. Article 3(1) (b) could be used to support such contention. It may be argued that when diplomats do such kind of things they are protecting the interests of their sending state in the receiving state -- something which is permitted by Article 3 (1) (b). But such an interpretation is too wide and on its face contrary to the spirit of the Article.

Another contention that may be raised by them is that disorder and instability within a nation may disrupt international peace and security and diplomats should stand in the way of disorder and instability. But the answer to that would be that this is not a function of a diplomat who is employed mainly to represent his state and promote friendly relations with the receiving state. Grave matters such as international peace and security should be raised and discussed in proper international forum. The diplomats may be referring such issues to their own governments to work as a channel to communicate such matters to the international forum. But if the diplomats comment publicly in domestic forums of the receiving state that would rather complicate the whole thing by jeopardising the friendly relations between the states concerned -- something to promote which they are employed for.

The mistrust among leading political parties in countries like ours would also reinforce their argument, as it is natural that when you cannot run your affairs properly others will have a lot to say in your affairs.

The author is a Lecturer, Faculty of Law, Northern University Bangladesh.