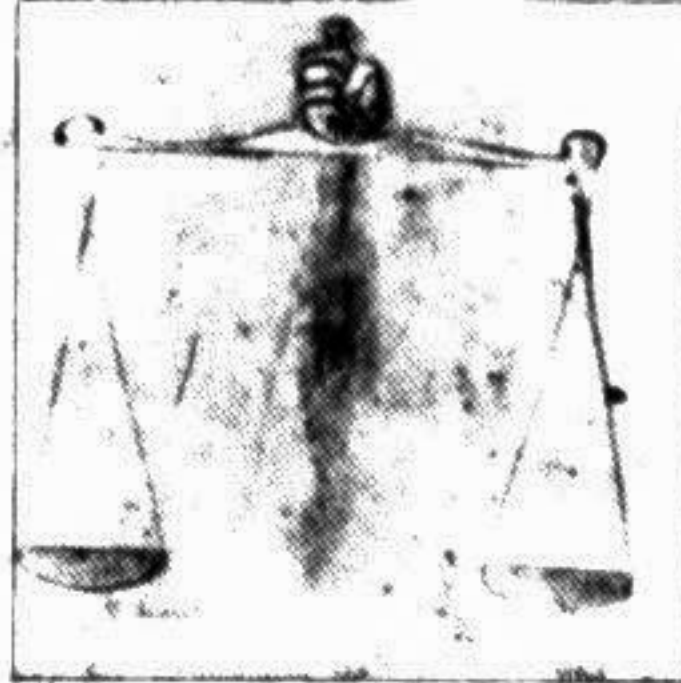


# Law and Our Rights



## How's My Banglish, M'Lord?

by Lamis Hossain

**A**FTER twenty four years of independence, the Supreme Court of Bangladesh still appears to be the conspicuous stronghold of a foreign legacy where members of the legal profession address each other in the Queen's English.

This tradition came under the spotlight when the new Chief Justice MH Rahman observed that, "the discord between the superior courts (using English) and the subordinate courts (using Bangla) over the question of language should not be allowed to continue for an indefinite period."

Understandably, patriotic fervour can run high when it comes to Bangla. Why should lawyers not use the language we have shed so much blood for? To find an answer, the Daily Star spoke to members of the profession on this issue.

The questions asked were:

1. Do you think that the use of Bangla in the district courts and of English in the superior courts is a cause for concern? Why or why not?

2. Are there inherent advantages in keeping English or should the court move towards the greater use of Bangla like the rest of the country?

3. To what extent should Bangla be introduced?

a) All court proceedings, forums, judgments etc should be in Bangla

b) Everything should still be in English, but the judgment should be translated into Bangla.

c) Any other suggestions

4. What are the main obstacles which may hinder the introduction of Bangla in the higher courts?

5. What is your opinion on the quality of Bangla used in the district courts?

6. Are enough law books being translated into Bangla at present? Do more need to be translated, or even written by Bangladeshis?

7) Apart from the question of language alone, what other steps do you think would increase the Bangladeshi people's awareness of and bring them closer to the legal system?

### Hasan Arif

Deputy Attorney General of Bangladesh

1. Superior courts are following the British legal system for the last 150 years. The Bengali is familiar with the court system in English. Litigants, judiciary, lawyers are accustomed to the use of English. It is not an impediment to dispensing justice. We can't switch to Bangla overnight without massive groundwork for a gradual transition. Given the above, the use of reliance on English will continue.

Confrontational approach to English and Bangla should be avoided. None is rival of the other. They do not exclude each other. We need both.

2. Since we have inherited the British legal system, we can keep abreast of developments of law in English and Commonwealth countries.

3. (a) There are practical difficulties in introducing Bangla. There is no uniform standard in Bangla legal literature, text and law annotation.

(b) Judgments of public interest could be translated into Bangla. Question is who will do it and of their competence.

(c) There should be efforts to use Bangla in district courts without sprinkling English words. Or without doing 'Gurichandoli' (mixing shadhu or standard Bangla with informal Bangla).

4. We have inherited a British legal system. There is a close relationship between British and U.S. legal system. Principles of law of both are interrelated. Law is a developing science. In order to keep abreast of developments in principles of law, we need English. Exposure to developments of law is only possible only through English language. The interaction in the international field of law is only in English, therefore it is advantageous to carry on the present system.

5. We have an advantageous position as a nation because of English. It is important the more we open up to multi-national companies. International agencies have made their confidence in our present system known. Moreover, as for Bangla legal literature, there has been no concerted effort by the Bangla academy or any other competent body (i.e. Ministry of Law) to translate legal literature. The legal literature existing and flourishing in all commonwealth countries constitute an ocean, whereas there is only an insignificant number of law books in Bangla (you can count them on your fingers).

6. The quality of Bangla in the district courts is satisfactory, as long as there is care to minimize use of English.

7. The Bangla media, journals, should give wide coverage to court precedents. They should have weekly/monthly supplements on law and judiciary to make people aware of rights and remedies.

You can have 'Gonosahjya', 'Gonosikka' but unfortunately you can't have 'Gonojudgment'.

Important judgments only could be published for the people, such as the Eighth amendment judgment which looks at what democracy is and what the constitution is.

### Kazi Aktar Hamid Advocate, Supreme Court of Bangladesh.

1. If it is incorrect to say that one has to file cases in Bangla only at the lower courts, one has the option to do so in English as well. The subordinate Court Judges are well educated. They understand both English and Bangla and enjoy the privilege to write their decisions in either language. Advocates are also at liberty to plead their cases either in English or Bangla. I think this process should continue. Those who complete studies in English would feel comfortable to use both languages and enrich our justice system.

English is extremely important to borrow and develop our justice system. The use of Bangla at the Superior Courts is a matter of time. One has to do some serious research work to prepare a case to plead here. There are not enough materials available in Bangla. One has to rely heavily on foreign materials. However, the Judges here can follow the Canadian example where they write decisions both in English and French simultaneously. Though it would be a bit expensive process, but lawyers along with most of the ordinary people would benefit from it as well.

2. All the court proceedings, forms, judgments etc. should not only be in Bangla, it is better if they are done in English as well. To introduce Bangla in full swing at the moment would create a lot of uneasiness among those joining the legal profession after higher education and training abroad. It will hurt the process more than it would help.

3. We should allow the process to take its own course. It is unwise to rush anything.

4. No. Not enough books are translated in Bangla. And certainly more quality books are needed to be translated. There are some Bangla law books but you certainly cannot use them to practice law because they do not meet the quality.

In addition, there is hardly any quality writer in the market writing does not pay enough as they buyers are very limited. Students of law, with few exceptions, are not taught to feel encouraged to read books outside their course.

The establishment of a Central Law Library where foreign legal materials would be easily available — particularly Canadian, American and British.

curriculum. Moreover, the kind of legal training offered at different Universities and Colleges is much below the internationally acceptable standard. After graduation, one can hardly write a seminar paper. How can you write books if you do not know how to do legal research? However, thanks to the Bangladesh Bar Council. Through its lawyers training program, the Council is trying its best to bring some changes.

5. I think one should give some serious thoughts to the following recommendations to bring people closer to the legal system:

-The establishment of an Independent Law Reform Commission whose function would be research and development in the field of law consistent with the changing need of the society;

-Recodifying the whole criminal and civil codes with three objectives: to make it modern, simple and systematic.

using English in the higher court. There could be more English in the district courts and more Bangla in the supreme courts. There is not enough expertise in English. It is not possible for lawyers to properly organise their thoughts and speech in English.

2. Judgment in English in the higher courts is a must because Indian and Pakistan judgments in AIR (All India Reports) and PLD (Pakistan Law Digest) are in English. We cite their judgments but ours are never cited there. To make ours 'citable', it has to be in English. One or two short orders could be in Bangla. There may be some exceptions. Whatever the lawyers use, the judges must use English.

3. It is better for judgments (to retain English), but otherwise there are no other advantages in keeping English. A Delhi Central administrative judge said that they use 'nothing - except English' (here, there is an attraction ('taan') to Bangla here, but the law books, references are all in English.

4. There is no objection to the use of Bangla in the higher courts. There is no fault in using Bangla. Communication is the main aim. It is the ultra modern and snobbish who would complain about the use of Banglish. Do you always use pure English or Bangla?

5. The Bangla in the district courts is not that good.

been done. From 1971, nothing has been done. The children of those who are running the State do not study here. The youth here also look to other countries.

There should be an option in early education to use either English or Bangla. We need to take a State level decision. We can't look outward and then avoid the foreign language. There is no dilemma. The government is doing this intentionally. The sons and daughter of those who go abroad come back with an advantage over those who study here. They don't teach either Bangla or English properly here.

7. This is not just a matter of language. There is no relationship with people and the law. Whether it is in English or Bangla, the client is not bothered about it. He is only concerned with the language you use with him and the verdict.

**Mohiuddin Farooque**  
Secretary General of Bangladesh Environmental Lawyers' Association (BELA)

1. One should consider why this question regarding the language of the court is being raised especially after the Chief Justice Mr M H Rahnman broke the ice. Unfortunately, four decades have elapsed since 1952 and the said Language Movement is being so enthusiastically celebrated! Use of Bangla has become mandatory but it is us who, if not prefer, just cannot avoid English. There are obvious reasons.

I think the linguistic dichotomy on the basis of district and superior courts needs expansion to include instances in all courts where English and Bengali both are used as a kind of 'Banglish'. To me, the language used in these two types of courts are dependent on the type of matters, questions, issues and persons that they are dealing with or being assisted by. But it is wrong to assume that all proceedings before the Supreme Court are in English. At least a large number of advocates who appear before this Court do speak in Bangla or 'Banglish' although the petitions or appeals, drafted are presented in English. One should ask their why is it, so that an advocate who files his case in English, argues or makes submission in Bangla? In such cases, the predominant answer is perhaps that the documents, in any form,

Dr Hamid is a member of the Canadian Bar Association and is the author of Human Rights, Self Determination and the Right to Resistance: The Case Study of Hawaii.

### Ozair Farooque Secretary of the Supreme Court Bar Association

1. The use of Bangla in the District courts and English in the higher courts is a cause for concern. It is difficult to practice a language when you have to move from using Bangla in the lower court to

The medium of education in Bangladesh is in Bangla, therefore there is a move away from English, but the standard books are in English. We can't maintain the use of 'Gurichandoli', mixing two streams of Bangla. But from the language movement in the 1950's to now: how many of us (lawyers etc) are using proper Bangla?

6. Not enough books are being translated (into Bangla) or being printed today. With State initiative, it would have

**BY PRESENTING THESE DOCUMENTS MY LORD...OOPS... MY LADY... I MEAN...OUR LADY... WHAT I MEAN IS MY HONOURABLE JUDGE...**



MARIER '95

## Legal Framework for Investment in Bangladesh—I Laws Lag Behind Commerce

Barrister Syed Ishtiaq Ahmed

**T**HE general body of commercial laws in Bangladesh dates from British India times. The basic law, the Contract Act, is of 1872. We have rather old insolvency, arbitration, admiralty, patent, trademark and copyright laws. These laws require updating and amendment in line with the development and globalisation of trade and commerce. Unfortunately, the part of the judiciary having jurisdiction over these matters has not either been expanded to take account of the volume of cases, nor has it been permitted to develop an expert body of judges dealing solely with commercial matters. These two shortcomings need to be addressed urgently in order to attract investors into Bangladesh. Quick and just resolution of disputes is central to the working of modern day commerce, and for investment decision-making.

Recently, however, laws relating to companies and banking and non-banking financial institutions have been amended or enacted as part of the effort to modernise the commercial-legal regime in Bangladesh. We have a new Securities and Exchange Commission with extensive regulatory and supervisory powers over the securities market, which by all accounts is beginning to boom. A new draft bankruptcy law has been prepared under the auspices of the Financial Sector Reform Project of the World Bank. This has not yet been enacted into law. The government had formed a committee for reviewing the draft amendments to the patent and trademark laws, but, the committee is yet to finalise its work. This is an

area which will be hopefully looked into soon.

### A Quick Overview

Bangladesh has a civil law system based on a mixture of legislation and judicial precedents. We have a written constitution which guarantees the right to lawful profession, occupation, trade, business and property to citizens as fundamental rights. Parliament cannot make any law which contravenes a fundamental right and a law which is inconsistent with any fundamental right is void to the extent of the inconsistency.

The predominant language for business is English.

### Contracts

The Contract Act, 1872 codifies that part of the English common law dealing with contracts which was applicable to the then British India. The Act is not exhaustive, but it is imperative with regard to the areas it covers.

The basic principle regarding contracts is that the law will seek to uphold contracts freely entered into for due consideration for a lawful purpose. The Specific Relief Act provides for the specific enforcement of contractual terms provided monetary compensation is not adequate compensation. The contract does not run into numerous details, or it is not a contract for the enforcement of personal service. Specific performance of contracts is an equitable remedy and the courts have a judicial discretion whether to grant it or not. Relief may be granted at the discretion of the courts by way of temporary or permanent injunctions. A choice of foreign law to govern a contract will be re-

spected subject to the principles of private international law. Our Courts would, however, be very reluctant to entertain ousting their own jurisdiction.

Enforcement of foreign judgments is sometimes possible without a re-trial on the merits. Section 13 of the Code of Civil Procedure, 1908 provides that a foreign judgment may be conclusive on matters directly adjudicated between the parties, except in the following cases: where it has not been pronounced by a court of competent jurisdiction, where it has not been given on the merits of the case, where it is founded on an incorrect view of international law or a refusal to recognise Bangladesh law if the latter is applicable, where natural justice has been violated, where the judgment has been obtained by fraud, where the claim sustained is based on the breach of any law in force in Bangladesh. These are a statement of recognised principles of private international law. Section 44 A of the Code further provides that a decree of any of the superior courts of the United Kingdom or reciprocating territories may be executed as if it had been passed by the District Court.

Most international conventions in the field of commercial law, including the Uniform Customs and Practices for Documentary Credits, the various conventions on the carriage of goods by sea, etc are applicable in Bangladesh in so far as they are incorporated by reference in the relevant documents such as bills of lading and letters of credit.

The writer is a Senior Advocate, Supreme Court of Bangladesh. In a fortnight: the Companies Act 1994

**A**T a time when the whole world is preparing for the Fourth World Summit on Women in Beijing, Bangladesh finds itself in the stronghold of yet another issue that calls to attention the pathetic situation prevailing with regard to women's rights. Even when writing the history of our nation and the valiant struggle of our freedom fighters, recognition of women and their contribution to the independence of Bangladesh and in all democratic movements is kept to a bare minimum.

Unfortunately, equality between men and women in all spheres of economic, social and political life is in the main limited to certain articles of the Constitution. One such example of inequality which should be a cause of paramount embarrassment is that of the Sunset Rule of the Dhaka University, applicable only to female students.

### The Sunset Rule: What It Says

The rules set out to regulate the activities and administration of the Dhaka University, are to a great extent a reflection of the other laws of the country which are very discriminatory in nature. These rules curtail the lawful rights of students who are entitled to equal treatment under the Constitution.

The Proctorial Rules have been in force since 1922, the year after Dhaka University was established. These Rules regulate the discipline in the University. After the War of Liberation, the Dhaka University Order 1973 (President, Order No. 11 of 1973), was enacted, by which Dhaka University has been regulated since. Sections 38 and 39 of this Order empower the Syndicate and the Senate to regulate and maintain discipline in Dhaka University under Dhaka University Ordinance and Regulation. But it is to be noted that though the Ordinance and Regulation has been enacted under the provisions of the 1973 Order,

## Tucked in by Sunset

by Faustina Pereira

are various other discriminatory provisions in the 1922 Proctorial Rules and 1973 Ordinance which are obstacles to the enjoyment of protection of rights of women students. But, it is startling to note, that these rules are absent in Part I of Chapter IX which set out regulatory measures of male students. If one intends to study the areas of discrimination between male and female students in the University, one shall not be wanting in information. But the main question is, what is the end result of such discrimination?

The first point is that such rules, for example the Sunset Rule which requires every female student to be in her residential hall by sunset, are absolutely contradictory to and violative of the Constitution. Article 28 (l) of the Constitution states that: "The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth," and article 28(2) says, "Women shall have equal rights with men in all spheres of the state and of public life."

According to Article 28 (3), "No citizen shall, on the grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability or restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution."

The University Ordinance and Proctorial Rules also flagrantly violate well known international instruments on human rights to which Bangladesh is a signatory. By signing and ratifying the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), Bangladesh is honour bound to abide by its provisions.

### The Question Of Security

One of the most important reasons put forward by the University authority in favour of the Sunset Rule is that it ensures protection of female residential students. Sections 4 (m) and 12 (I) of the Dhaka University Order state that the main function of the Authorities is to maintain protection and discipline of students and to ensure conducive university atmosphere.

Literally speaking, security is nothing but a sense of freedom from danger or wrong or attack. One of the reasons laws are passed is for security. But it is only inevitable that the scenario prevailing in 1922 regarding protection of female students cannot be applicable in 1995... after a span of nearly 100 years! The "disciplinary", "protective" and "preventive" measures of 1922 are nothing but instruments of obstacle and restraint of free movement in 1995.

It is difficult to see the logic behind strict regulations regarding visitors and visiting hours, even for parents of residential students. As far as the law of the land is concerned, a woman of 18 years has gained majority, and under the Guardianship and Wards Act, there is no such concept of "legal guardian" for a woman of 18 and above. Thus the provision of requiring approval of guardian and checking and double checking guardian's signature on such approval letters and sometimes going so far as to require personal statement of guardians is totally redundant as well as illogical and wanting in legal foundation.

If one is looking for logic in these rules which aim at protecting female students, one automatically asks a number of questions. Mainly since the independence of Bangladesh, in the past 24 years, has the University Authority in effect shown any example of ensuring the protection and security of

so ardently aspires to? In the past 24 years, 56 Dhaka University students have been killed! Except for forming investigation committees, and then too, not always publishing the report on their findings, has the University Authority ever taken legal action against such killings? Hard to believe but true, the opposition has taken place sometimes. If this is the real situation, and has been so for as long as one can remember, what is the justification of having medieval laws that constantly hamper the lives of female students?

### Rectifying the Situation

The ultimate conclusion is obvious. The University Authority must take steps to consider and implement the rational demands made by female students to repeal redundant and derogatory laws and enact new ones that are in line with the present social context. The way to do it is by: - Repealing the laws on requiring permission and signature of local guardian.

- Repealing the rules relating to obtaining a "late permission". Signing in a register on arrival and citing reason for delay should be sufficient by late comers.

- The practise of taking daily attendance of all students every sunset should be repealed.

- Even if hall gates are closed at a certain time, female students should be allowed to enter the hall freely until the time the Central Library is open. Until the prevailing situation is rectified, female students will continue to be treated like prison inmates in their own residential halls. This sort of degrading treatment goes against the grain of all acceptable, civilised norms. Instead of being an institution that enhances human development, let not the Dhaka University be guilty of allowing inequality between the sexes.

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presented before the superior court are so typical and tradition oriented that limited linguistic expertise is required.

2. I do not think that the rest of the country has opted for greater usage of Bangla. The harsh reality is that a frequent speaker in English is a much preferred person in too many senses, or in other words, a person who fails to articulate his/her expression in English would hardly be appreciated even in professional sense. Although there may not be any advantages in keeping English, which does not prohibit the use of Bangla, there may not be any disadvantage.

3. a) Law is a technical subject and the proceedings are so technical that even the literal meaning of the phrase 'My Lord' may confuse many unless explained by his lawyer or his experience. So, everything in Bangla is only a part solution of a huge culture.

b) Who would bother to know about a judgment and then read and understand it? The whole judgment in Bangla may not even be of interest to the judgment-holder who is perhaps more interested in the last sentence of the judgment. Then why bother for a judgment in Bangla unless one is trying to educate the students or junior lawyers.

c) Bangla or English is an insignificant difference to the masses. We must take steps to educate people about law and then comes the question of court's proceedings and judgment.