

INTERVIEW

"A Fresh Comprehensive Look is a Must to Make the Legal System More People-friendly."

The Daily Star (TDS): Have you come to Bangladesh this time with any specific agenda for action?

Madhava Menon (MM): Yes, this time I have come to Bangladesh at the invitation of the Law Minister and the UNICEF to discuss and share mutual experience about few things in which the Bangladesh Government seems to be interested in the area of Law and Administration of Justice. Matters related to Judicial Training, Human Rights Project, Grameen Court Project, etc. will get priority in such discussion.

TDS: You are the Director of the National Law School of India University. Could you tell me what makes this institute a centre for excellence within a very short period of time?

MM: It's a long story. I will not go into details due to time constraint. But today, National Law School of India is recognised by the legal fraternity, as you mentioned in your question — a centre for excellence. And all happened during the last ten years. It is an initiative of the Bar Council of India. It is supported wholeheartedly by the legal profession, the judiciary and the academic legal community. In fact such tripartite sponsorship and meaningful cooperation of academics, lawyers, and judges helped getting the present state and status of the institution. It has a curriculum which is different from usual, normal law colleges. Because our mandate is to look at law in the context of society and its development. So our orientation is not solely on adjudication, litigation but we would like to look at the genesis of disputes and how it can be contained and managed without having to go to adjudication. So much so, we are looking at law more as a policy-scheme rather than as a dispute settlement mechanism and in that context our curriculum includes a whole lot of Economics, History, Political Science, Sociology and several other interdisciplinary programmes where our focus is the people.

TDS: How do you evaluate the present state of legal education in Bangladesh?

MM: What little I know from my last couple of visits and the views expressed to me by my several colleagues here, I believe that the legal education in Bangladesh, as in many places in India, is in a very bad shape. There has not been any serious attempt either from the profession or from the government to improve the quality of legal education. Unlimited admissions, poor-quality teachers, scarce resources, fraudulent examination system and all put together colossal wastage of education. It is so in my country and, to a large extent, it is so in Bangladesh also.

TDS: So you are proposing to set up a SAARC Law University for legal studies with campuses in different countries. What would be its distinctive features?

MM: One campus in each country will strive to specialize in an agreed area of professional development. Thus, if Bangladesh campus is to specialize in Maritime Law and Law of the Seas, Nepal campus may consider developing expertise on Maritime Resources Law. If the Indian campus is to specialize on Intellectual Property Law, Pakistan campus may like to set up a centre for inclusion in Air and Space Law including Telecommunication Law. Similarly, an Environmental Law, International Trade Law, Social Welfare Laws and Human Rights Laws specialized centres can come up in different country campuses attracting the best available talents from the entire region for teaching, research and consultancy services.

Reorienting Legal Education

TDS: What can be done for reorienting legal education of the SAARC region for professional responsibilities in a globalistic economy?

MM: In SAARC region, the problems of legal education system are many and complex. It goes to pre-legal education stage as well. It impinges on the language policy and the medium of instruction. It questions established nations on the objects of legal education and the perception of the role of lawyers play outside litigation. In case of Bhutan and Maldives the problem is perhaps the absence of law schools and organised system of legal education. For Bangladesh and India, it is a question of too many ill-equipped law colleges raising the problem of maintaining at least some minimum levels of knowledge and skills to the new

It is admitted on all sides that the existing pattern of legal education is totally inadequate to address the emerging problems in the economy and in the society. Soon after independence, most countries of the region wanted to enlarge access to legal education which was till then confined to a privileged few during the British rule. Law teaching institutions were soon set up in the public and private sectors even without proper planning and requisite infrastructural facilities. The well-intentioned power of supervision and control vested in the practicing profession could not prevent the deterioration in standards of legal education. It slowly affected the standards of legal services and the quality of administration of justice forcing the government, the profession and the public to look afresh the education and training imparted in the law schools and outside. **Dr N R Madhava Menon**, a renowned educationist of the region, and the Director of the National Law School of India University, has successfully encountered the prevailing acute crisis in legal education of South Asia, at least at the National Law School of India University. During a visit to Dhaka last week, in an exclusive interview, Dr Menon who is also the President of the Commonwealth Legal Education Association, spoke with The Daily Star's **Abul Hasnat Monjurul Kabir** on different aspects of legal education and reform agenda for a pro-people legal system.



Dr NR Madhava Menon
Dr Menon proposes a SAARC Law University for legal studies with campuses in different countries.

entrant to the bar. Given the challenge of economic development and of human rights, all SAARC countries have the common problems of an out-moded curriculum, indifferent methods of teaching and examination, lack of organised continuing legal education and inadequate thinking on future challenges to rule of law and just resolution of disputes.

In this connection, I would like to suggest an idea. I would like to suggest an idea of a multi-campus, multi-disciplinary and multi-national Law University for the SAARC region.

Quality of Legal Services

TDS: How can we improve the quality of legal services?

MM: There is immediate need for organised efforts on the part of the Bar Councils and Bar Associations to conduct continuing legal education courses for the members of the profession including the judiciary. With unprecedented explosion in knowledge, information technology and management sciences, there is an urgent need for legal professionals to invent new tools and adopt appropriate strategies for improving the quality of legal services rendered. The only way this can be organised is by enhancing professional competence through continuing legal education programmes.

Performance of the National Human Rights Commission of India

TDS: In 1994, India passed the Protection of Human Rights Act for better protection of human rights providing for the setting up of the National Human Rights Commission. Are you satisfied with the performance of the commission so far specially in the wake of criticism that it could do nothing in the real despite stricken areas like Kashmir?

MM: Yes, I am happy with it. I am satisfied with it. And I believe that compared to the period when there was no Human Rights Commission, everyone in India can feel a difference

with respect to human rights. The National Human Rights Commission came in place.

In Kashmir the Commission attained some remarkable success. Certain emergency regulations which were enforced, were withdrawn because of the intervention of the National Human Rights Commission. Even the Army was forced to constitute Inquiry Commission and report about the actions taken against individual military officers because the National Human Rights Commission intervened and threatened to take the action in the open court if they do not do it themselves. Today we have complete documentation of excesses committed by the para-military forces in Kashmir because of the Commission's initiative.

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Restriction on Public Interest Litigation (PIL)

TDS: Recently Mr Suresh Pachouri, a Congress MP from Madhya Pradesh has introduced the Public Interest Litigation (Regulation) Bill in the Rajya Sabha. He fears groundless PIL is abusing the legal system. The aim of the said bill is to regulate galloping Public Interest Litigation and make it mandatory for the courts to entertain such petitions only when the locus standi of the petitioner has been established. The bill also seeks to provide deterrent punishment in case of the petitioner fails to prove the charges levelled in the PIL. Do you think that time has come to impose such restriction on the PIL as this legal tool is allegedly being misused in India? What is your observation?

MM: Well, I don't agree with the view of those people who say that because it is being abused, it should be controlled or it should be turned away with. Ordinary litigation which is not public interest litigation, is also abused.

We have in our legal system methods of controlling abuse which whether it is public interest litigation or ordinary litigation, in all cases can be applied.

In my country public interest litigation did provide access to justice a large chunk of Indian masses who would otherwise not get access to justice. It creates a great deal of credibility for the judiciary in the Indian public and it has bent the legal system to organise mechanisms where by you can create a state for the common man in the judicial process. I am therefore a defender of this concept and mechanism of justice. I believe that it is not yet abused to

Grameen Court

TDS: How do you assess the government plan of setting up Grameen Court across the country? What is the distinction between the concept of the proposed Grameen Court and the Lok Adalat?

MM: It is a very interesting question. As I already mentioned that your government is trying to make justice accessible to the poor and the plan of setting up Grameen Courts across the country testifies such commendable initiative. Definitely it acts as a pre-trial settlement forum. The Lok Adalat institution of India also acts in the same direction. In fact before you came a little while ago, I was discussing with the higher officials of the Grameen Court project of Bangladesh about how far the Lok Adalat experience of India could provide some lessons to the Grameen Court concept. One thing is common that the Grameen Court is supposed to be a conciliatory mechanism than an adversary litigation of an ordinary court. Both the systems use conciliatory mechanisms for letting the parties to come to an agreed settlement. In fact this mechanism is very conducive to the maintenance of unity, peace and harmony among the rural people of this sub-continent. Because in many cases both the parties live in the same village and they have to continue to live as good neighbours there and if you antagonise them, deprive them of that shared experience, you will be

destroying the village harmony and village structure and that is the reality in most cases in absence of proper pre-trial conciliatory settlement system in your country. So you are on very right path when you are thinking interns of the Grameen Court with emphasis on conciliatory settlement without, I would argue, lawyers, intervention. It's an open question whether you need lawyers in a Grameen Court or not. If at all they are there, they are to be as officers of courts than as lawyers to either party. This will help reinforce village solidarity and brotherhood which is what our culture demands.

So I think that the Lok Adalat experience in India and the Grameen Court initiative that you are taking about will have many things in common. Since we share the same broad cultural background we will be able to learn from each other in giving this institution a fair attempt in restructuring our society.

Lok Adalat is conciliated by a conciliator who is often a retired Munsif or a subordinate judge but it is not really necessary. Any person who has a fair idea in law and legal proceedings can manage a Lok Adalat. Because in a Lok Adalat, the decision is that of the parties, not of the conciliator. His job is to let the parties enter into a dialogue and thus try to reach a fair settlement. We should remember that justice after all is what people consider as just not some technical notion which are written in somebody's books therefore, if the parties to a dispute can come to what they consider as just settlement however unfair it is according to law books, it could be allowed to reach a settlement. The conciliator will only ensure that it is not due to undue influence of one side over the other so that fair procedure could be adopted.

Commonwealth Legal Education Association

TDS: What is the functions of the Commonwealth Legal Education Association?

MM: For last three years I have been the President of the Commonwealth Legal Education Association. Our mandate is to see as to how best legal education in the Commonwealth countries (about 59 countries) can be improved and made meaningful so that we can have a better legal system, better legal profession and last but not the least a better tomorrow by ensuring people's access to justice.

Dahagram: A New Life

The people of the Dahagram enclave had long suffered from in identity crisis. Now, with the flag of Bangladesh finally flying high, they can confidently point to themselves as citizens of Bangladesh. **Irtiza Nasim Ali** and **Ayesha Kabir** of Probe News Agency recently visited Dahagram and spoke to the people there to unfold the events which have led to the present stand.

WHEN Naik Subedar Saidur Rahman, Bir Pratik, awoke to the call of Azan at the crack of dawn on the 17th of January this year, he was filled with an indescribable feeling of strength, determination and patriotism. It was as if the indomitable spirit of the Liberation War had descended upon him again. He was once again responding to the call of the nation. Having offered his prayers, he marched boldly across the Tin Bigha corridor to the Bangladesh enclave Dahagram where, in front of an emotion-filled crowd, he hoisted the flag of Bangladesh. And there it flies today, the red and green symbol of our national sovereignty.

It all began late last year. The Director General of BDR paid a visit to Dahagram in October. The Indian BSF forces gave him full honour as he passed through the corridor, but when he crossed over to the other side, there was no sign of the BDR.

The wheels started turning.

Concerned officers began to go through the nitty gritty of the 1992 agreement between Bangladesh and India concerning the Dahagram enclave.

According to the agreement, the gates of the corridor connecting Dahagram with the rest of Bangladesh, would be opened every other hour for one-hour intervals till sunset, facilitating passage of people to and from the enclave. It was mentioned that four Indian flags would fly at four corners of the corridor. The BSF personnel would be posted at a check-post upon the corridor. No mention was made of Bangladesh's flag to fly at Dahagram, nor of BDR presence in the enclave. Why the Bangladesh government at the time had mutedly agreed to all the clauses without exerting any of its rights remains an unanswered question. And when the corridor opened in 1992, it was a listless affair, devoid of any excitement or fanfare.

The joy of the flag raising incident this year was tinged with a shade of bitterness. We

have been an independent nation since 1971," says an officer. "Why has it been only now, 25 long years later, in 1997, that we have our flag in Dahagram?"

Dahagram is an 18-sq mile enclave of Bangladesh within Indian territory. There are 51 enclaves of Bangladesh in Indian territory and 111 Indian enclaves within Bangladesh. These boundaries were presumably made during preparation times at the whims of the Maharajas and later given official demarcation by the British during the partition of India and Pakistan in 1947.

The people of Dahagram seem to have finally overcome a long prevailing identity crisis. "This is Bangladesh," say the local children confidently. "We're citizens of Bangladesh." This was not always so. "Before this flag was raised in Dahagram, we hardly felt we really belonged to Bangladesh," says Mohammed Toifuz Haq Sarkar, Union Parishad Chairman of Dahagram. "There had been no BDR presence either in our enclave, only

with respect to human right as National Human Rights Commission came in place.

In Kashmir the Commission attained some remarkable success. Certain emergency regulations which were enforced, were withdrawn because of the intervention of the National Human Rights Commission. Even the Army was forced to constitute Inquiry Commission and report about the actions taken against individual military officers because the National Human Rights Commission intervened and threatened to take the action in the open court if they do not do it themselves. Today we have complete documentation of excesses committed by the para-military forces in Kashmir because of the Commission's initiative. The National Human Rights Commission has asked the government of India to allow Amnesty International or any other international voluntary agencies to go into Kashmir and investigate for themselves. The commission has itself taken several



a paltry few number of police. We had thought that only the Indian BSF had the right to control the corridor leading from Patgram in Bangladesh to our enclave. But now with BDR personnel within our territory, we feel more secure." Dahagram had long survived under a cloud of uncertainty, confusion. There was a conglomeration of questions regarding the status

of this enclave, the rights of the people, but there were no answers.

It was high time that the people of Dahagram found their identity. Till 1992, they had even used Indian currency. Many were going to Indian schools and cross-border marriages took place with ease. In fact, such marriages proved less of a problem than marriages

with 'mainland' Bangladesh. "My husband had to spend six months in Indian jail when he was caught crossing the border," says Ramiza Khatun of Dahagram. "He was going to bring me from my father's house in Kurigram. While creeping over the border deep in the night, he was apprehended and taken to jail. I had to wait six months before he could take me back to our

such an extent as to warrant any restriction or control on it (PIL). You should allow judges to determine its course of development. It does not require a legislative regulation or limitation as was proposed by the bill. Any legislative attempt to suppress or circumscribe PIL will frustrate the ordinary people's access to justice.

For a People-friendly Legal System

TDS: Twenty-six years had elapsed since we became independent but we are yet to evolve a people friendly legal system. The cost of litigation is enormous and process to get justice is lengthy and complex. How can we overcome this awkward situation?

MM: This is not the condition of your country alone. High expense, lengthy procedure etc are the global characteristics of legal system. It all depends on the people who invoke the legal conscience, who administer the legal system. The people in legal

home in Dahagram." Her story is a common one. The people felt that the Bangladesh government should have been more active in defending them." After all, the contribution of the people of Dahagram during the Liberation struggle is immense," says Mohammed Rezanur Rahman, the headmaster of the Angarapota Dahagram Government Primary School. "A total of 26,000 Mukti Bahinis took training here. This was a stronghold of the freedom fighters."

Even after the 1992 agreement, the felling of neglect persisted. The area is completely lacking in development. The people struggle for subsistence. The existing Dahagram Angarapota Hospital is a mockery of health services. A solid redbrick structure stands there. Poor men, women and children, team around, waiting in vain for medical attention. The doctors sometimes make an appearance," says Rezia Khatun who has come with her ailing infant for treatment. "We don't know when they'll come or whether they'll at all. We can't portest. They'll simply ask us to mind our own business."

The women, though, appreciate Shahana Yasmin, the local family planning visitor. "I am a trained family planning worker but I try to help them with their minor ailments," says Yasmin. "It's a difficult task. We have a hospital which is more like an empty shell. There is no water, no electricity, no medicines. That is why the doctors are unwilling to come."

But Yasmin, despite all these deterrents, fights to do her duty and more.

The police investigation centre is just more of a sham of security. Poorly armed, the handful of police stand around a makeshift thatched shelter, perhaps as unsure as the common folk whom they are to defend.

A certain sense of security though has firmly emerged among the people. When BDR troops, fully armed and equipped, marched through the corridor to the enclave, the people were filled with confidence. "We have long been at the mercy of thieves and dacoits," says Shaheb Ali, a local farmer. "But now with BDR personnel taking up position everyday, we feel much more secure."

The oppressive feeling, the feeling of suffocation in which the people of Dahagram have lived with so long, has not been dispelled completely. Old Kaderuddin peers up a the watchtowers, perched high around the other side of the border around the enclave. "They even watch what we're eating with our rice," he complains. "Why can't we have towers too?"

The prospects are no longer so bleak. It may have taken a long time, but due to courage and determination of brave patriots, the flag of Bangladesh flutters high in the skies of Dahagram, a symbol of sovereignty, of independence.

The writers are Chief Editor and Feature Editor, respectively, of Probe News Agency