INTERVIEW

Law and Our Rights

"A Fresh Comprehensive Look is a Must to Make the Legal System

More People-friendly."

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,

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 on 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 vears. 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 inter-disciplinary 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.

It is high time to gear up the standard and quality of legal education system at least if you want administration of justice to be improved.

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 illequipped law colleges raising the problem of maintaining at least some minimum levels of knowledge and skills to the new

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. entrant to the bar. Given the challenge of economic development and of human rights. all SAARC countries have the common problems of an out-

adequate thinking on future challenges to rule of law and just resolution of disputes. In this connection, I would like to suggest an idea of multicampus, multi-disciplinary and multi-national Law University

moded curriculum, indifferent

methods of teaching and exam-

ination, lack of organised con-

tinuing legal education and in-

for the SAARC region. It must have a governing body of lawyers, judges and law academics drawn up equally from all countries of the region. It should set up at least one campus in each country to impart basic professional education of a high standard comparable to the best in the world under a common curriculum evolved after detailed delibera tions on the objectives of legal education for the future. It would be possible for the faculty to work in different campuses by rotation with a view to develop cooperation and achieve excellence in every department of legal education and research.

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 fea-

tures? 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 excellence 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. Each government and nongovernmental organisation in the region should be able to get the best professional advice on alternate policy choices in the emerging areas of legal regulation from these centres of excellence so that they can have informed decisions without having to invest on outside help. Collectively they will have the best professional support in international negotiations and in

the defence of common inter-I sincerely hope the present government of Bangladesh which has already taken several effective and innovative steps in the legal sector e.g., setting up a permanent Law Commission, a Judicial Administration Training Institute

contemplating to establish a Human Rights Commission, a. project for the proposed Grameen Court instead of existing village court etc, will also take initiative in reforming the present state of legal education. And this is a priority because unless and until the condition of legal education has been improved to a considerable extent, all other attempts for reforming the legal system can not reach its desired destination.

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. This responsibility squarely rests with the Bar Councils and Bar Associations. It is regrettable to note that the professional initiatives in this regard are too inadequate at present.

Perhaps one or more insti-

Mediation Centre. Finally, it is necessary to think of training udicial administrators for bringing the management revolution into judicial establishment. All these demand pooling of resources, training for trainers, development of study materials, continuous research, monitoring of systems, policy analyses and comparative studies in a scale that is not within the reach of any single country in the region. Hence, the importance of professional cooperation on a common agenda of professional development is imperative in the present circumstances.

resolution methods and setting

up of a SAARC Arbitration and

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, 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

Human Rights Commissions of other countries into Kashmir to investigate and find the truth themselves. Therefore, the commission even in Kashmir has made a difference on question of human rights observance.

The National Human Rights Commission, ves, can not pass orders. It has no judicial powers to give reliefs to individual claimants for relief. Because if

you give those judicial powers to the National Human Rights Commission, it will be setting up a parallel judicial mechanism which will create confusions and complexities in our legal system. Therefore there is scope for improving the sanctioning authority of Human Rights Commission. But at the same time, a Human Rights Commission with its limited sanctioning power creates human rights awareness. It has substantially achieved that. It is introducing courses in the higher secondary schools, in the universities and colleges on human rights as a compulsory course for every child who goes to education.

The National Human Rights Commission is also advising the government on new legislations where human rights questions are likely to come in conflict. It can ask government to withdraw legislations.

The role played by the commission in the campaign against the Terrorist and Disruptive Activities (prevention)

est 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

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 credibil ity 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 be-

lieve that it is not yet abused to

profession are yet to be socially sensitized. They should be sensitized to the pulse of the society. If the individuals in the system can become people friendly, legal system is no barrier. My submission regarding Bangladesh is that the new initiatives of the present government should make it more people friendly. Specially, the proposed establishment of Grameen Court with wider jurisdiction in lieu of village court with limited sphere of action would bring the justice delivery system closer to the common people. If you can contemplate the grameen courts in your country effectively, no doubt, it would make justice easily accessible without much cost and delay.

Similarly the business class will seek the legal system for advancing their own interest and I understand again Bangladesh is trying like India to bring in - alternate dispute resolution for business disputes. A centre for alternate dispute resolution can be set up in this regard. While businessmen can get justice by those institutions, what prevents ordinary common people by invoking those to resolve their disputes. Therefore a fresh comprehensive look is a must to make the legal system or justice delivery-system more people

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 pro-

posed 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 accessi ble 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 age, 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 is that the Grameen Court is supposed to be a conciliatory mechanism than an adversary litigation of an ordinary court. Both the systems use conciliatory mechanism 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

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 interms 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 soci-

Lok Adalat is conciliated by

Dr NR Madhava Menon

Dr Menon proposes a

SAARC Law University for

legal studies with

campuses in different

countries.

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 somebodies 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. And the most important

thing is the concept of Grameen Court or Lok Adalat is not a western one. It is our own institution which during the colonial regime got into disuse. We are reviving it which reflects our culture and heritage.

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

MM : For last three years 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 jus-

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. such an extent as to warrant

tutes for legal practice on this lines evolved by the South African Bar Council will be appropriate for the purpose. The South African Institutes for Legal Practice are joint ventures of the Bar Council and selected Law Schools in that country. Senior legal practitioners devote considerable time and attention to train young law graduates through intensive six-month programmes of advocacy, legal research conveyancing, professional ethics and even trans-national legal

Similarly, there can be judicial academies (like JATI of Bangladesh) organised for specialised training of judicial officers at different levels on common problems of judicial administration. The Legal Practice Institutes can conveniently accommodate some aspects of judicial training as they are of common interest to practitioners as well as judicial officers. Again there is a scope for a regional institute for training in alternate dispute

practice.

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

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mission has itself taken several

Act (TADA) is also worth mentioning. The commission threatened to go to the Supreme Court if the government decided to renew the TADA for another term. As a consequence, the government of India was compelled to allow the TADA to have a natural death. So, therefore in the matter of policy formulation, in the matter of taking up issues which are unpleasant with the ruling party with appropriate authorities, in creating awareness and mobilising social actions, the National Human Rights Commission has done a tremendous job and is continuing to do this.

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 Inter-

tation 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

any restriction or control on it

(PIL). You should allow judges to

determine its course of devel-

opment. It does not require a

legislative regulation or limi-

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

shared experience, you will be 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 Angarpota 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 Angarpota Hospital is a mockery of health services. A solid redbrick structure stands there. Poor men, women and children teem 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 de-

A certain sense of security though has finally 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 tow-

ers 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

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(JATI), a Human Rights Project 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.

HEN 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 his 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,

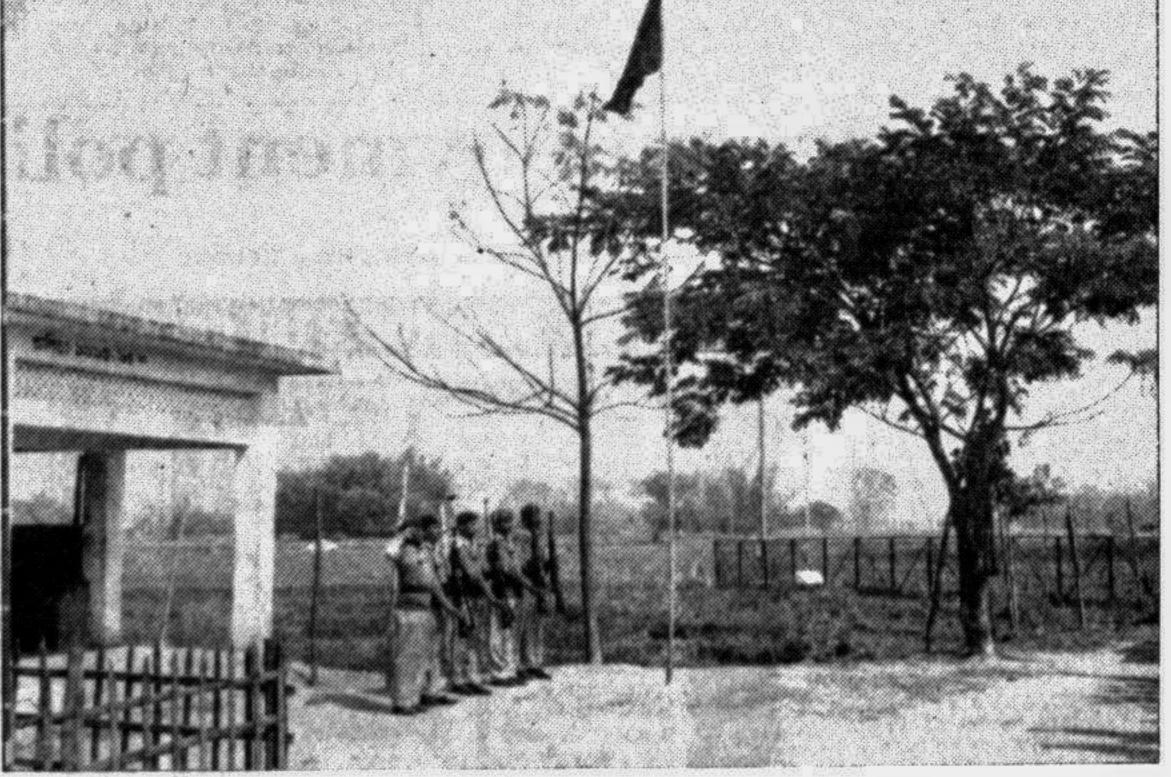
the gates of the corridor connecting Dahagram with the rest of Bangladesh, would be opened every other hour for one-hour intervals till sunset, facilitating passage of people to and from the enclave. It was mentioned that four Indian flags would fly at four corners of the corridor. The BSF personnel 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 mutely 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 fan-

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 prepartition 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 Tofizul Haq Sarkar, Union Parishad Chairman of Dahagram. "There had been no BDR presence either in our enclave, only



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 an-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 crossborder marriages took place with ease. In fact, such marriages proved less of a problem than marriages

"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

with 'mainland' Bangladesh.

flutters high in the skies of Dahagram, a symbol of sovereignty, of independence.