

FOCUS

Law and Our Rights

INTERVIEW

"Bangladesh can be Proud of its Judiciary"

— Dr David Bennett

Dr David Bennett a QC for all states and internal territories in Australia is the immediate past President of Australian Bar Association. Currently he is the President of the New South Wales Bar Association. An expert in the field of appellate advocacy, Dr Bennett holds the position of the Council Member of the Australian section of the International Commission of Jurists. He has been the President of the Medico Legal Society of NSW and Vice President of the International Academy of Estate and Trust Law. During a visit to Dhaka this week, in an exclusive interview, Dr Bennett who led the team of twelve distinguished senior Barristers in Bangladesh spoke with The Daily Star's A H Monjurul Kabir on different aspects of legal system and trial advocacy workshop.

Daily Star (DS): What is your agenda for action this time?

David Bennett (DB): I along with my eleven other colleagues have come to Dhaka this time to conduct the 'Intensive Trial Advocacy Workshop (BPCLE/97)' jointly organised by Bangladesh Bar Council and Australian Bar Association held from 15-19 December 1997.

DS: Is it your first visit in Bangladesh?

DB: This is my second visit to your country. But this is the third year in which the Australian Bar Association has sent a team to Bangladesh to help with CLEP's (Continuing Legal Education Programme) advocacy training programme. It is done as part of the 'twinned' relationship between the Australian Bar Association and the Bangladesh Bar Council and we are delighted to be here again.

DS: General perception about advocacy is that it is a personal skill. In that case what do you want to achieve through such advocacy workshop?

DB: Advocacy is the art of persuasion. One of the most crucial feature of the independence of judiciary upon which I wish to concentrate today is the role of the advocate. Courts can not perform their functions without fearless, independent and competent advocates. We can not and do not need to teach fearlessness; we cannot and do not need to teach independence but we can teach competence. Traditional thinking told us that advocates were born not made and that one only achieved excellence by natural ability or long experience. We have learned in Australia that this is not true. One can teach it just as one can teach mathematics or a language but the essential principles are so simple that one can teach much of what one needs to know in a very short time. What we and CLEP have achieved together (this week) is the importing of the essential skills of advocacy in a five-day intensive course.

By learning and practising advocacy as a subject at least as important as Contract or Tort one can immeasurably improve one's ability to conduct cases in court and exercise the independence and fearlessness which enables courts efficiently and wisely to exercise their role.

DS: What are the strategies to be followed in such intensive advocacy workshop?

DB: In Australia over the last ten years we have discovered something new about advocacy. When a few people began teaching advocacy, they were laughed at. How could anyone teach what was either innate or acquired by long experience? What emerged was the precise opposite. The use of video technology enabled us to demonstrate with dazzling obviousness how successful advocacy training could be. The Australian Advocacy Institute has videotapes of young barristers at the beginning of a two-day

intensive course fumbling their way through a practice session in a grossly incompetent manner. A companion videotape, taken at the end of the same two-day course, shows the same young advocate confidently and effectively persuading a court of a point of law or fact.

Advocacy training is now used not only in the education of young barristers but also in continuing legal education courses generally available to the profession.

Much of what we teach may seem obvious. Like so many things, however, it is only obvious when one has been told. A good advocate orders his or her presentation, keeps the argument interesting and expresses thoughts clearly and precisely. While these propositions are obvious, most of us do not notice their absence in our own presentations. What our courses do is provide the student with a case to argue and make a videotape of the students' argument. It is then comparatively easy, not only for us but also for the student himself or herself to see at once why the presentation is less than perfect. There is nothing so humiliating or so effective as seeing and hearing oneself on videotape.

One of the nice features of courses such as this is that both the students and the teachers learn from them. When I see my own faults in others, I am quick to condemn but I hope that I have the humility to recognise the fault in myself and to endeavour to cure it. All of us have had this experience and will no doubt have it during the coming week.

The Australian Bar Association and the Bangladesh Bar Council have agreed to a joint relationship described by the International Bar Association as 'twinned'. That word connotes a close and equal relationship. This is the first joint enterprise since the commencement of the relationship and we hope that it will continue for a long time. In fact a durable and effective partnership has already been established between the two organisations over the years.

DS: What are the things in common between the two countries that has established such effective partnership?

DB: Bangladesh and Australia have much in common. First, we are in the same region, that of South East Asia. Secondly, we share extremes of climate from which we both suffer from time to time — in your case flooding, in our case drought. Would that we could put your floods and our droughts together and reach a happy medium. Thirdly, and most importantly for present purposes, we share a common law tradition and a Westminster system of government.

It is this last feature which brings us together today. The system of government which we share depends upon an independent judiciary and fearless and competent advocates. These two

institutions between them are the greatest guarantors of freedom and democracy.

The importance of an independent judiciary cannot be overstated. But, in a sense, it is obvious. Few people in your country or mine would denigrate its importance. The significance of fearless and independent advocates and a system of oral rather than written advocacy is less apparent but no less real. We hear people from civil law systems complaining that they never had their day in court. Their lawyers file documents, the judges occasionally ask questions of witnesses and the clients hope that the judges read the documents filed by the lawyers. They do not know or understand why they lost. We see in the United States a system where, at least at the appellate level, there is a decline in the significance of oral advocacy. This is tragic. Again clients and lawyers have to take on trust that what they file is read and, more importantly, that it is absorbed. Under our system judges are forced to confront all the arguments for the parties who are going to lose. Vigorous debate between the Bar table and the Bench enables every proposition to be tested to the full and ensures that a judge cannot determine a case against a party unless that judge fully understands the arguments her or she is rejecting. This is a feature of your system and ours of which we can both be proud.

DS: But what are the differences between the legal systems of the two countries...?

DB: One major distinction is that we have a federal system of six states which have a very high degree of autonomy. And that means that a great deal of the work of lawyers is to worry about whether a state has power to do something or only the federal government has. So that aspect of constitutional law is something you don't have to worry about.

You have a specific bill of rights (list of fundamental rights) in your constitution which we do not have. To some extent, our courts guarantee such people's rights.

We have the divided profession of barristers and solicitors but your legal profession is uniform, have a clear bias for such division because it enables people to take the advantage of specialisation and so on.

DS: The Government of Bangladesh has decided to set up a National Human Rights Commission with a view to securing institutional protection of human rights. Considering the performance of Australian Human Rights Commission how do you evaluate such endeavour to protect human rights through institutional mechanism?

DB: First of all, the concept of protection of human rights through institutional mechanism is a global phenomena. Australia is very much accustomed with such trend. It

should be mentioned in this regard that the protection of human rights of the people is much more difficult than either defining them or adopting declarations, bills and covenants concerning human rights. In absence of institutional mechanism either to protect or to implement them, those standards and rights could be rights in paper only. In fact one can not have right without institution nor can have institution without right. In this context, besides judiciary, Human Rights Commission is a prominent addition.

In my observation one of the problems that such human rights commissions often face is with regard to governmental violation of human rights. Such case certainly deserve different approach than the case where both the parties are belonged to public domain. Certainly both aspects are important and the Australian Human Rights Commission deals with the both. It often hears cases which are very like the cases before courts. It has no enforcement power. But it has effective directory role. In state level, there are some specific commissions e.g., Equal Opportunity Commission which have enforcement power and they are doing a commendable job. So the decision taken by your government is in the right direction but its paper implementation can alone justify the decision.

DS: What is your impression about the present state of legal system of Bangladesh?

DB: Frankly speaking your judiciary is one of the best justice delivery systems in the world. Bangladesh can be proud of its judiciary. The legal fraternity is committed to justice and the rule of law. What you need to do is to maintain the standard and try to develop it gradually to meet the demands of the next century.

You have ensure the active and efficient participation of the young generation in the profession. In this regard I particularly want to mention the role played by the legal education committee of Bangladesh Bar Council. They are doing a very effective job with fear for the new entrants in the profession. I am really proud to be associated with their noble venture.

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Back in Bangladesh, Krishna too is reluctant to return home. She does not want the same life of pain and oppression.

She wants to start a new life for herself. However, she would like to visit home once again just to see her father.

Jahanara Khatun is about 15 years old. Her father died when she was quite small, leaving her with her mother, three brothers and two sisters. One day a woman named Salma forcefully took her from Jaipurhat over the border to Shillong in India by bus. There she was locked up in the kitchen of a house for three days. Eventually she managed to escape and turned up at a police station. The police turned her over to the jail where she spent three months.

She was then sent to the Cooch Bihar Home. She lived at the Cooch Bihar Home for just over four years. She would study in class two at the home.

Jahanara fears she may have to work as a servant, just like her mother. She wants to study, to become self-reliant. She would like to meet her mother and then get enrolled at school. That is her only regret about leaving the Cooch Bihar Home. There at least she was getting an education.

The Women Lawyers Association spent two years in their efforts to get these three girls back from India. There are 30 more girls from Bangladesh at the Lila Home. Efforts continue to bring them back too. Advocate Salma Ali is confident that she can get these 30 girls who were trafficked to India, back to Bangladesh.

About the girls whom the Association rescues, Advocate Salma Ali says that they first give them physical and mental check ups. They release the girls from the centre once they are fit to go ahead on their own. They also arrange employment.

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Three girls rescued: A return to home and hope

her parents. She would now like to join a garment factory, but who is going to give her a job? She desperately wants to start life afresh.

Krishna Dutta is from Pirojpur. She is uncertain of her own age, perhaps 18 or 19. She too was tortured by her step-mother so much that she left home for Calcutta with her cousin's husband. But once in

Calcutta, he simply abandoned her on the streets. Thus she roamed the streets, homeless and helpless, until she was picked up by the police. After staying in police custody for eight days, she was finally handed over to the Lila Home.

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