

# FOCUS

## Law and Our Rights

Introducing Clinical Legal Education in Bangladesh

# The Law Clinic Approach

by A H Monjurul Kabir

**The present state of legal education of Bangladesh is substandard, faulty and traditional. We have not been able to improve the standard of legal education which is essential for raising the professional standard encompassing the changing pattern of law, legal concepts and remedies. Right from the inception of the programme of legal education it was supposed that law teaching institutions were only concerned with the academic aspect of law and the practical skills were to be acquired in due course from experience. This idea resulted in making our legal education academic oriented leaving the practice orientation course to be done later. The present LL.B degree which is a passport for admission to the profession thus does not prepare and equip the students with the minimum needed skills.**

### Introducing Clinical Legal Education

The legal education system in Bangladesh has two streams. One is law course through the law faculties under different universities and another is law course in law colleges under National University.

The duration of the law course (LL.B (pass)) offered by Law colleges is two years only. The teaching method is traditional class-room lecture method. And the course lacks seriously in practical aspect. The LL.B (Hons) course currently offered by four public universities embraces same disqualifications except being structurally advantaged. Besides, the course duration is four years. Changes and developments have taken place in the education system of other professional disciplines but legal education remained where it was. Practically there is no change in the course curriculum, teaching methodology and examination systems. Even the question papers bear the same pattern. It is said that a grandson of today safely rely on the notes prepared by the grandfathers years ago and may easily pass LL.B examination.

In this depressing situation, the recent introduction in the Law Faculties at Dhaka, Rajshahi and Chittagong and Pilot Clinical Programme at the City Law college in Dhaka may be considered as a thoughtful and an effective response to the needs of legal education. Renowned educationist of the region and the former Director of the National Law School of India University **Dr N R Madhava Menon** opines: "Clinical Legal Education..... is directed towards developing the perceptions, the attitudes, the skills and the responsibilities

like a lawyer." Asked whether such expanded concept of clinical legal education as explained by Dr Madhava Menon is identically applicable to Bangladesh context, Dr Mizanur Rahman, Associate Professor of Law and Joint Coordinator of Law Clinic, Faculty of Law, University of Dhaka said, "One should not be taken back to learn that the name 'clinical education' as used to denote the clinical programmes launched in different Law Schools in Bangladesh is a misnomer. Clinical education is a much wider concept than it has been understood and appreciated in our law schools. Regrettably, though understandably, clinical education in our institutions has been, till now, basically restricted to mere training in skills of advocacy. Even this is being done not very successfully because of

several well known constraints in implementing the clinical method of instruction. One such constraint, inter alia, is our ignorance of what constitutes the teaching process of lawyering skills."

Dr Mizan who happens to be the principal instructor and conductor of the Law Clinic of Dhaka University said adding, "It is not difficult to understand that teachers/instructors accustomed to traditional lecture method of instruction may find it inconvenient to apply the clinical method. The problem, in my opinion, resides not so much in the incompetence of the instructors concerned as in their fear to activate the trainees/students, which they consider might shake and wither their control over stu-

dents. Reality, however, is exactly the opposite and the experience of the few successful instructors provides glittering ray of hope for clinical method even in our class rooms."

In 1994, the Bangladesh office of 'The Ford Foundation' took the 'Clinical Legal Education Project' to assist the law faculties of Dhaka, Chittagong and Rajshahi Universities. Mr David B Chiel, Project officer of the Ford Foundation initiated the whole process and sincerely worked here as the Project Director till the formal closure of the Dhaka office of the Ford Foundation Mr Cathy Lincoln, a US Attorney-at-Law joined with him as a consultant to the project. In 1996 she was replaced by another US Attorney-at-Law Ms Margaret Groarke who is still continuing her job as a Consultant and instructor. Requested to state elaborately the goals of the grant of the Ford Foundation, Ms Margaret Groarke writes: "The goals of the grant are to assist the law faculties of Dhaka, Chittagong and Rajshahi Universities to:

- \* Improve the cognitive skills of their students, including independent and creative thinking, problem solving and decision making;
- \* Enhance the practical legal skills of their students, including interviewing clients, legal research, opinion and brief writing, oral advocacy, negotiation and dispute resolution;
- \* Instill in their students the spirit of public service and provide opportunities for them to serve the marginalized and the poor through externships with non-governmental organizations;
- \* Promote and strengthen legal ethics in future lawyers;
- \* Incorporate clinical legal education programmes into the law school curriculum as a required, accredited course of study.

To achieve the project goals, clinic students at each of the Universities were to receive (1) class-room instruction designed to engage and challenge them and (2) practical legal experience with one of the indigenous NGOs."

When asked whether she was satisfied with the accomplishments of the Law Clinics attained so far, Ms Margaret replied in the affirmative. According to her, accomplishments over the past years include:

- (1) learning clinical methods;
- (2) developing curriculum and course materials;
- (3) establishing externship programmes

with legal NGOs serving the marginalized and the poor. "A first draft of the Teaching Materials and accompanying student Manual designed to (1) improve the cognitive and practical legal skills of the students and (2) promote and strengthen legal ethics in future lawyers."

The establishment of an externship programme for Dhaka University students. Ms Margaret maintained that an experience with a legal NGO would encourage students to pursue careers in public interest law by developing their awareness of, and enthusiasm for, public interest legal work. For those students not contemplating a public interest legal career, an externship would hopefully leave with them a sense of responsibility for performing legal work pro bono public as part of their practice.

ganzations (NGOs). The law clinic is offered twice during the school year, and is attended by approximately thirty-six students each semester. Recent internships are implemented under the supervision of Dr Mizanur Rahman and Ms Margaret Groarke. Having students perform pro-bono work has been a primary objective of the law clinic from their inception in 1995, so implementation of the internship is a significant step in the development of the law clinic. While there remains room for improvement in the content of both the classroom and the internship components of the law clinic, the achievement within a relatively short time of a basic structure that meets important educational goals and can be carried out consistently, semester after semester, is a significant milestone in the de-

velopment of legal education in Bangladesh. To avoid too many lecturing in the classroom and to ensure the active participation of the participants in various practical exercises, each three hour class period of a day is divided into two parts. During first part, a topic is introduced to the entire class by an instructor, ideally through Socratic discussion and clinical exercises. During the second part, students

they are taught social and professional etiquette. The language of the Law Clinic is English. It is aimed at attaining proficiency in English as still now English is a must for quality legal education. **Lawyering for the 21st Century** To make legal education truly meaningful in the context of social realities efforts must

be made without further delay to accommodate the remaining objectives in the clinical curriculum. The establishment of 'out-reach programmes' where students will have the opportunity to interact with 'live clients' burdened with 'real problems' whose resolutions they are expected to come up with, is a sine-qua non for the real success of clinical legal education. The legal education for very many reasons is in mess. If this state of affairs are allowed to continue in the field of legal education there is no prospect for improvement in near future. So something must be done before it is too late. It is high time that we should set up a pattern of legal education by introducing the improved teaching methodology by combining academic and practice orientation course. Our curriculum should be modified and redesigned.

Legal education in our universities are not perceived as an educational or cultural subject for it has been treated as a science or arts but merely imparting to students a knowledge of certain principles and provisions of law to enable them to enter into profession. In restructuring the course for legal studies it is important to keep in mind that the study of law could itself be a means of intellectual development and an instrument of legal education. Academic legal education and training for the profession is not antithetical. On the contrary the continuation of two would make it stimulating and there would be no conflict between the academic and a practical training in law. A person would be a better lawyer and a judge, a better judge if he has studied the science of law sensitized with practical values.

Within two years we will enter a new millennium. The world is undergoing a number of changes. The changed situation underscores the need for new approach well equipped with practical but pragmatic training and competitive skill. Right sort of legal education is therefore of great importance as a large number of law graduates branch out in society not only as lawyers but also as politicians, legislators, judges, civil servants and have vital role in society. Legal education should therefore be able to cope with the modern challenges and to fulfill the commitments and aspiration of our people and for society aspiring to march forward as a modern nation through democracy and development.

The Law Clinic set up at the Law Faculty of the University of Dhaka is no doubt, a sincere endeavour for producing lawyers for the 21st century. It can be considered as an isolated island of excellence on a sea of deteriorating legal education. It is the high time to give this centre of excellence a permanent institutional shape for the sake of a quality legal system. This 'clinical legal education course' must be included as a compulsory paper in the LL.B (Hons) course. For standard and quality professional education, it has no other ALTERNATIVE.

It is in our power to create the future we want, and to decide how it should be achieved.

The writer is the Secretary General of Law Watch, an alternative platform for Legal and Human Rights Studies and Action.



Dr Mizanur Rahman, Joint Coordinator of Law Clinic, Faculty of Law, University of Dhaka, is conducting a session of Law Clinic. Ms. Margaret Groarke, Consultant to the Law Clinic is seen sitting in front of him. — Photo: Saidur Rahman

which the lawyer is expected to assume when he completes his education in the Law School..... It is certainly not limited to the mere training in certain skills of advocacy. It has wider goals in enabling the students to understand and assimilate responsibilities as a member of a public service in the administration of the law, in the reform of the law, in the equitable distribution of the legal services in society, in the protection of individual rights and public interests and in upholding the basic elements of professionalism. Clinical experience in law school, therefore is a unique opportunity for the student to learn under supervision, many aspects of the 'hidden curriculum' essential for preparation to think and act

several well known constraints in implementing the clinical method of instruction. One such constraint, inter alia, is our ignorance of what constitutes the teaching process of lawyering skills."

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dent. Reality, however, is exactly the opposite and the experience of the few successful instructors provides glittering ray of hope for clinical method even in our class rooms."

## For An Effective Human Rights Commission

by Dr Kamal Hossain

rights is unbroken in fabric, simultaneous in operation, and all-extensive in character.... the achievement of first generation rights is fundamental to the establishment of democracy and the overcoming of national oppression. But for the vote to have meaning, for the Rule of Law to have content, the vote must be the instrument for the achievement of second and third generation rights. It would be a sad victory if the people had the right every five or so years to emerge from their forced-removal hovels and second-rate Group Area homesteads to go to the polls, only thereafter to return to their inferior houses, inferior education, and inferior jobs."

**Independence:** Independence of a commission or the office of ombudsman is essential to its effectiveness. It must be manned by persons who enjoy public confidence and are known for their integrity and impartiality of judgment. The appointment should be through a fair and transparent selection process which keeps in view the principle of ensuring pluralist representation of "the social forces committed to human rights". This necessitates effective consultation by the government with the opposition, and with others such as the speaker of parliament and the head of the judiciary. It members should have security of tenure and enjoy safeguards against removal from office similar to those enjoyed by a judge of the highest court.

**Availability of Financial and Human Resources:** It is self-evident that a commission which is expected to monitor and redress violations of human rights and abuse of authority would be seriously impaired if it did not have adequate financial resources assured to it and had to depend upon those whose abuses are to be checked

by it. It should also have the capacity to employ staff having professional competence and other qualities necessary for carrying out the commission's tasks.

**Scope of Powers:** The scope of powers of the national institution is equally important. Its effectiveness would normally be impaired if it did not have power to compel production of evidence and the attendance of witnesses, or if it did not have the capacity in appropriate cases to initiate investigations and prosecutions. Having only a power to make recommendations would normally detract from its effectiveness though this is an aspect which would depend on the political culture of a society. It should have power to adopt innovative techniques to monitor implementation of economic and social rights, to commission studies and to evaluate reports with regard to progress in implementation. It should keep national laws and administrative processes under review to ensure their compliance with international human rights standards. Most important it should have the power to impart training and promote human rights education and awareness of human rights in all sections of society, in particular to the police and security forces.

Principles and standards laying down guidelines relating to the status and functioning of national human rights institutions have been formulated. The Paris principles on this subject were endorsed by the United Nations Commission on Human Rights in 1992, and by the UN General Assembly in 1993. In the same year, guidelines were issued by Amnesty International. Further improvements have been suggested by a number of regional meetings.

An important lesson is that a human rights implementation strategy is essentially one which must be able to strengthen the constituencies for change in a society and to overcome, in a peaceful and orderly manner as possible, the opposition and the barriers to change. This calls for consensus-building and imaginative coalition-building among all the protagonists of human rights within a society — among state and non-state actors, within government and parliament, within professional associations and women's organisations, and NGOs. These would provide essential sustenance for the institutions engaged in implementation.

The re-affirmation of the universality of human rights and of its commitment to their effective implementation would be timely as we prepare to celebrate this year the Fiftieth Anniversary of the Universal Declaration of Human Rights. They will continue to be a source of inspiration for all those who are engaged in the cause of human rights. I would like to conclude with the inspiring words of Aung San Suu Kyi: "It is not enough merely to call for freedom, democracy and human rights. There has to be a united determination to persevere in the struggle, to make sacrifices in the name of enduring truths, to resist the corrupting influences of desire, ill will, ignorance and fear."

The writer is a senior advocate of Bangladesh Supreme Court. This is a revised version of the key-note address presented as Chairperson, Commonwealth Human Rights Advisory Commission in the Conference in London on 'Commonwealth Human Rights Commissions: Promoting Good Practice'.

## Twenty Five Years of Our Constitution

by M Shah Alam

Now it appears, and sadly so, the fourth November last year, the day on which the Constitution of Bangladesh has completed twenty five years of its adoption, passed almost unnoticed and unobserved. Perhaps we will also observe silence on the sixteenth December this year when the Constitution would complete twenty five years of its entering into force and its chequered existence. This is unbelievable, but true. One self-consoling argument may be that the Constitution was not adopted and made effective on the same day. One may try to console his soul, as I so try in vain, by telling himself that the day on which the Constitution was made effective, rather than the day on which the Constitution was adopted, should be observed with all pomp. And since our Constitution was made effective on the sixteenth December, the Victory Day, that day has great significance as the Constitution Day too, has been rendered forgotten by joyful immotations and celebrations of the Victory Day. Whatever is the cause of non-observance of the Constitution Day, let us sincerely believe and agree that it has not been the result of our disregard or death of love for the Constitution which has been written by the blood of martyrs. This simply may have been the result of our carelessness or insufficient knowledge of the significance of the Constitution Day or simply unknowing of the fact that constitution days are observed with great festivities in many countries of the world.

I propose on the occasion of twenty five years of the life of our Constitution that fourth November be declared as the Constitution Day of Bangladesh, with or without declaring it a national holiday, to be observed with due solemnity and marked by pro-

grammes aimed at increasing constitutional awareness amongst the people and reaffirming the promise to uphold the constitutional ideals, goals and principles. Constitution development of Bangladesh has not been very easy and even. The Constitution was born healthy, but grew up to become sick and wounded, still struggling to gather sufficient strength to stand and move upright. This truly reflected the equally unhealthy social, economic and political development of the country. The Constitution of Bangladesh has undergone over the last twenty five years massive alterations, manipulations and amendments. It has also suffered suspension and restricted application. Yet, proving its inner strength and sustainability, our Constitution has stood the test of time. Often strangled by

tampering amendments, the Constitution had experienced agonising ordeals, but never died. It has already demonstrated sufficient potentiality to regain its force to guide the nation. Let us make a short historical review of the Constitution and the constitutional development, with sincere tributes paid to the founding fathers of the Constitution who enacted one of the best versions of written constitutions, then in existence in the world. The Constitution Committee headed by Dr Kamal Hossain, took immense pains to learn from the constitutional experiences from around the world and crystallised them into a body of legal principles and provisions, worthy of a nation which earned independence by blood of the people. Naturally it turned out to be a legal document embodying the highest ideals of democracy, fundamental human rights and dignity, justice, people's welfare and rule of law. Despite all sorts of experimentalities with many provisions of the Constitution, these ideals and the provision that the people are the owners of the state power always remained to be the corner stones of our Constitution. Article 7 of the Constitution states: (1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of this

Constitution. (2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void. Original Constitution of Bangladesh was characterised by genuinely true norms and principles of democratic governance. But the socio-economic and political development of post-liberation Bangladesh rendered the Constitution almost unworkable. Harsh realities dictated constitutional amendment providing for preventive detention (Second Constitution Amendment) which apparently failed to fulfill the objectives for which it was meant. Special Powers Act, 1974, which was passed by the Parliament under the authority of the Second Amendment, was more misused than used for fighting rampant corruption and sabotage. In fact, prevailing conditions in the country demanded more of effective political and administrative management rather than constitutional sanction for adopting punitive measures.

Increasingly worsening situations in the post-liberation Bangladesh ultimately led to adoption of the Constitution Fourth Amendment which was almost absurd in nature, absurd in the sense that it was more of the nature of revision of the Constitution than of amendment. In fact, the then Awami League Government in its desperate attempt to save the nation from near collapse, wanted a new constitution, without revoking at the same time the original one. Result was insertion in the Constitution of the provisions which rendered it beyond recognition. To be continued

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