T is admitted on all sides

Llegal education is totally

inadequate to address the

emerging problems in the

economy and in the society.

Soon after independence, the

Government of Bangladesh

wanted to enlarge access to legal

education which was till then

confined to a privileged few.

Law-teaching institutions were

soon set up in the public and

private sectors even without

proper planning and requisite

infrastructural facilities. Law

graduates having traditional

legal education through lecture

method of teaching in big class

rooms feel unprepared to

interview and counsel clients,

draft and file papers, prepare a

case, conduct trials, examine

witness and argue a case before

the judge. They infact do not

acquire the skill to apply the

knowledge of substantive laws

learn in classes to the actual

situations of clients. They even

can not understand the role of a

ucation of Bangladesh is sub-

standard, faulty and tradi-

tional. We have not been able to

improve the standard of legal

raising the professional stan-

dard encompassing the chang-

ing pattern of law, legal con-

cepts and remedies. Right from

the inception of the programme

of legal education it was sup-

posed that law teaching institu-

tions were only concerned with

the academic aspect of law and

the practical skills were to be

acquired in due course from ex-

perience. 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

object of law schools, renowned

author on Legal education Pro-

fessor William Twining states,

"Clearly on function of law

school is to teach legal doctrine;

some of the techniques, compe-

tencies and tricks of the trade

included in fashionable lists of

skills do sit uncomfortably

within the academy, a balance

between know-how and know-

what (substance) needs to be

maintained in most stages of

legal education and training."

Infact a successful teacher

should always try to strike a

balance between doctrinal edu-

cation in law and vocational

tutional commitment and the

societal needs significance and

object of legal education must

embrace a broad and compre-

hensive concept. Legal educa-

tion therefore should be ren-

dered with a view to create an

environment and ability for re-

shaping the structure of the so-

ciety for the purpose of achiev-

ing those national goals. The

objectives of legal education

therefore ought to include the

effort to develop an understand-

ing of law and insight into leg-

islative and judicial processes.

It ought to enable the students

to develop judgment, the capac-

ity to differentiate and distin-

guish, to analysis and apply

and at the sometime to develop

an insight into the entire legal

process. Besides helping the

students to master the lawyer-

ing skill, legal education must

be able to help develop inter-

disciplinary approach for

building the personality and in-

tellectual capability to under

the society and the human sit-

In the background of consti-

preparation for practice."

Commenting on the desired

needed skills.

education which is essential for

The present state of legal ed-

lawyer in the society.

that the existing pattern of

Introducing Clinical

Legal Education

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

course [LL.B (pass)] offered by

Law colleges is two years only.

The teaching method is tradi-

tional class-room lecture

method. And the course lacks

seriously in practical aspect. The LL.B (Hons) course cur-

rently offered by four public

universities embraces same

disqualifications except being

structurally advantaged. Be-

sides, the course duration is

four years. Changes and devel-

opments have taken place in

the education system of other

professional disciplines but le-

gal education remained where it

was. Practically there is no

change in the course curricu-

lum, teaching methodology and

examination systems. Even the

question papers beat the same

pattern. It is said that a grand-

son of today safely rely on the

notes prepared by the grandfa-

ther years ago and may easily

the recent introduction in the

Law Faculties at Dhaka, Ra-

jshahi and Chittagong and Pi-

lot 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 Mad-

hava Menon opines: "Clinical

Legal Education..... is di-

rected towards developing the

perceptions, the attitudes, the

skills and the responsibilities

In this depressing situation,

pass LL.B examination.

The duration of the law

National University.

The legal education system

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.

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 aback 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

tion 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 Attorneyat-Law Ms Margaret Groarke who is still continuing her job as a Consultant and instructor. not very successfully because of 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

dents. Reality, however, is ex-

actly the opposite and the experience of the few successful in-

structors provides glittering ray

of hope for clinical method

fice of 'The Ford Foundation'

took the 'Clinical Legal Educa-

In 1994, the Bangladesh of-

even in our class rooms."

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 organiza-* Promote and strengthen le-

gal ethics in future lawyers; * Incorporate clinical legal education programmes into the

law school curriculum as a required, accredited course of 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 has

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 inwith 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

* 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.

ganizations (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 Grarke. Having students perform pr-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-

in small groups - the student law chambers, discuss or resolve a problem presented by the instructor. Each small group is facilitate by the either one of the regular clinic staff of teachers or the instructors, who maybe either an outside resource person or a law teacher. The entire class then reconvenes to evaluate what was done in each group. In theory, as a result of their structural change, at least part of every class requires student participation even if first part degenerates into lecture.

The subjects and issues taught at law clinic include: Verbal and non verbal communication. Client interviewing skills, Marshaling of facts, Choice of Forum, Legal Research, Opinion Drafting, Drafting (w/s) Drafting (FIR. or Complaint), Alternative Dispute Resolution, Opening statement, Examination-inchief, Cross examination etc. practical subjects. Several the-matic seminars are also held on subjects like 'Expectations of a Young Lawyer', 'Role of lawyer vis-a-vis the society,' sensitizing Women Rights, Women Rights and Women lawyers, 'Skills of communication

ethics of a Lawyer' etc. There is also provision for 'Moot Court session. In such sessions, students of different law chambers act as different parties or sides of a litigation and roles in such mock-trials are roated among them. Regardless of their assigned part, all students prepare written materials such as plaints and defense responses.

To address the behavioural pattern of the young participants tea parties are arranged. Each chamber is designated to arrange a tea party for the rest of the chambers and all instructors of Law Clinic. In this way

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 ed-

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 hightime 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.

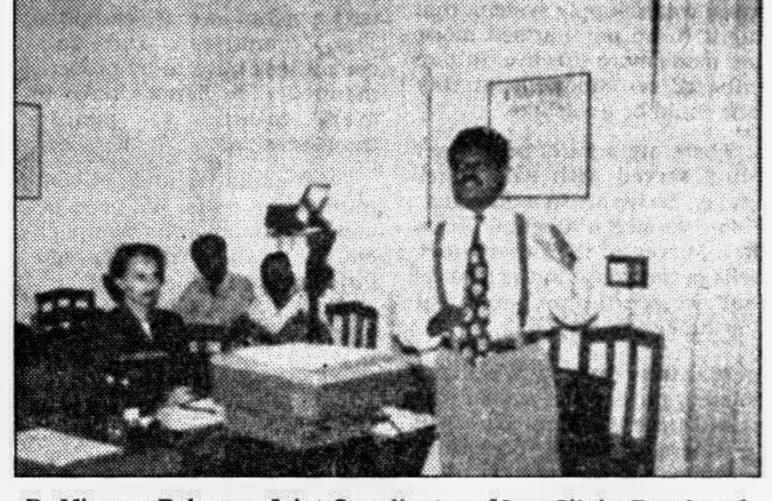
Legal education in our universities are not perceived as an educational or cultural subject nor it has been treated as a science or arts but merely imparting to students a knowledge of certain principles and provisions of law to enable them to enter into profession. In restructuring the course for legal 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 rule 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 hightime 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 decided 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 infront of him. - Photo: Saidur Rahman

which the lawuer 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 reforms 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

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-

clude:

* The development of a cadre of law professors committed to learning clinical methods; (2) developing curriculum and course materials; (3) establishing externship programmes

A session of Law Clinic is in progress

Law Clinic : The Dhaka University Experience

In 1995, Dhaka University Law Faculty established a law clinic programme that now includes a classroom curriculum through which law students are introduced to both analytical and advocacy skills. It also includes internships in which students observe and assist in the work of human rights and legal aid non-government or-

so, the fourth November

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

Photo: Zahedul Islam Khan

fessional 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 educa-

they are taught social and pro-

Lawyering for the 21st Century

To make legal education truly meaningful in the context

of social realities efforts must

uation in a changing order. For An Effective Human Rights Commission

HE working of national human rights L commissions has now generated enough experience for us to begin to identify the best practices which merit emulator. This would be particularly useful in the context of the draft of a bill for setting up a national human rights commission in Bangladesh being made available for public discussion, and on which the Law Minister himself has invited comments. It is important when commenting on the bill to keep in view the positive features which have contributed to effectiveness and the negative ones which have detracted from

* Mode of Establishment The mode of establishment is relevant. Institutions gain in prestige and effectiveness if they are established by the Constitution itself or at least by legislation, and not by an exec-

it in the functioning of human

rights commissions in other

jurisdictions. The features that

may be singled out include:

utive order. * Mandate : The mandate of a commission is important. The mandate must be proportionate to the challenges that are to be faced. Social and economic rights (second generation rights) must get equal importance with first generation civil and political rights and indeed a third generation of rights, the right to development and to a healthy environment, as also gender justice should be given due attention. The South African Constitution furnishes a state-of-the-art precedent. One of its architects, a Judge of the new Constitutional Court, Justice Albie Sachs has eloquently spelt out the rationale for an integrated approach to

implementation, thus: "The fundamental constitutional problem, however, is not set one generation of rights against another, but to harmonise all three. The web of

by Dr Kamal Hossain

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 in-

ferior houses, inferior educa-

tion, and inferior jobs."

rights is unbroken in fabric.

 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

* Scope of Powers: The scope

of powers of the national institution is equally important. It 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 initiated investigations and prosecutions. Having only a power to make recommendations and not binding decisions 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 meet-

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 as peaceful and orderly a 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 TOW it appears, and sadly

▲ last year, the day on which the Constitution of Bangladesh had 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 the day has great significance as the Constitution Day too, has been rendered forlorn by joyful immotions and celebrations of the Victory Day. Whatever is the cause of nonobservance of the Constitution Day, let us sincerely believe and agree that it has not been the result of our disregard or dearth 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

tries of the world.

great festivities in many coun-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-

by M Shah Alam

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 programmes aimed at increasing constitutional awareness amongst the people and reaffirming the promise to uphold the constitutional ideals, goals and principles.

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 strangulated by Without going into the ques-

tions of substantive merits or demerits of the Fifth and Seventh Amendments, a more fundamental question can be raised as to whether or not it was procedurally legal to amend the Constitution by martial law orders and then to take shelter of amendments adopted by elected Parliament, even if the question of rigged polls is ignored or overlooked.

tampering amendments, the Constitution had experienced agonising ordeals, but never died. It has already demonstrated sufficient potentiality to regain its force to guide the

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 experimentations with many provisions of the Constitution, hese 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

(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-economics 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 sit-

uations 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 The writer, a Professor, is the Dean, Faculty of Law, University of Chittagong.