

"All citizens are equal before law and are entitled to equal protection of law" Article 27 of the Constitution of the People's Republic of Bangladesh

At Long Last: The Department of Liberation War Studies

By Ahmed Ziauddin

THE University of Dhaka has at last decided to open a new department, Department of Liberation War and Bangladesh Studies. This was reported, few weeks back, by a prestigious English national daily that quoted the vice-chancellor of the university. Except this announcement, not much has been revealed or reported so far.

It thus took twenty-seven years for a Bangladesh university to create a separate discipline to study the birth of Bangladesh.

Independence of Bangladesh was not an act of legislation of its colonial master, like most of the countries of the region. India and Pakistan was given freedom by the British parliament, so also the independence of Sri Lanka. The people of Bangladesh instead struggled, and fought with arms to liberate the land from occupation.

Bangladesh also was victim of genocide, which no other country in the world underwent, to achieve freedom. The price of freedom and independence was very high for Bangladesh. Most of the genocide scholars reckon that about three million people perished in Bangladesh genocide. With the millions, the occupying Pakistani forces used another lethal weapon of war: rape. About a quarter of a million women of Bangladesh was raped over these months, which the experts believe, most systematic and mass use of rape for political purpose ever.

The Independence

Independence of Bangladesh was declared on 26th March 1971. The accompanying broadcast read: "Today Bangladesh is a Sovereign and Independent State. On Thursday night West Pakistani armed forces suddenly attacked the police barracks at Rajbari and the EPR Headquarters at Peelkhana in Dacca. Many innocent and unarmed people have been killed in Dacca city and other places of Bangladesh. Violent clashes between the East Pakistan Rifles and Police on the one hand and the armed forces of Pindi on the other, are going on. The Bengalees are fighting the enemy with great courage for an independent Bangladesh. Resist treacherous enemy in every corner of Bangladesh. May Allah aid us in our fight for freedom. Jai Bangla."

With this began nine month long war to expel the occupying Pakistani forces, culminating on 16th December 1971 the emergence of free Bangladesh.

The Declaration of 26th March 1971 was followed by a Proclamation of Independence on 10th April 1971 from Mujibnagar. The elected representatives of the people of Bangladesh endorsed the Declaration of Independence and provided justifications for such action.

The Proclamation referred the election held in Bangladesh from 7th December 1970 to 17th January 1971 to elect representatives to frame a Constitution, where the people of Bangladesh chose 167 out of 169 representatives belonging to Awami League. But the Proclamation maintained, instead of fulfilling the obligation to allow the representatives to assemble to frame the Constitution, Pakistani authorities declared an unjust and treacherous war.

The Proclamation contained that "in the conduct of a ruthless and savage war the Pakistani authorities committed numerous acts of genocide and unprecedented torture, amongst others, on the civilian and unarmed people of Bangladesh." It went on that "the Pakistan Government by levying unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a

Bangladesh to be a sovereign People's Republic.

Aftermath of Independence

At the end of nine months, three million became victim of genocide. Millions were turned to refugees and displaced internally. The occupying Pakistani forces surrendered. With the surrender, began questions of justice of the perpetrators of genocide.

Within little over three weeks of liberation, as the government-in-exile returned to Dacca, Provisional Constitution of Bangladesh Order, 1972 was promulgated on 11th January 1972. The Provisional Constitution Order referred to the Proclamation of Independence of 10th April 1971, which made provisional arrangements for the governance of Bangladesh, and declared that "the unjust war and treacherous war as referred to in the said Proclamation has now ended."

The Proclamation of Independence of 10th April 1972

eration struggle, shall be the fundamental principles of the Constitution."

The Constitution referred "martyrs" and sacrifices of their "lives", but excluded reference to genocide or victims of genocide. Thus, the genesis of Bangladesh, the genocide perpetrated by the Pakistani army in 1971, did not get its place in the Constitution. The Constitution failed to acknowledge the genocide and its three million victims.

Journey backward

Even before the massacre and violent overthrow of the government in August 1975, the issue of war crimes, crimes against humanity and genocide, were sidelined. The strategy that was followed over these years could best be described as half-hearted, ill thought out and botched.

The two laws that were promulgated to deal with perpetrators to genocide: The Bangladesh Collaborators (Special Tribunals) Order 1972 (PO No 8 of 1972) and The Inter-

should, nevertheless, be congratulated and the vice-chancellor in particular, for deciding to open a department to study Bangladesh liberation war.

The next question after saying 'well done' is what should the department study.

The phrase "liberation war" does not appear in the Constitution. In its original version in 1972 Constitution, it referred to a historic struggle for national liberation, which was later amended by Ziaur Rahman through Proclamation (Amendment) Order, 1977 to, "a historic war for national independence."

This amendment generated heated controversy, which many considered as re-writing of history. The amendment, it was argued, undermined the long struggle that people of Bangladesh fought culminating in the liberation war in 1971, and disproportionately focused on the war of 1971.

Although some might like to see a limited definition of 'lib-

erally the constitutional history and the Constitutional law. Other large component should be study of genocide and international humanitarian law. History of genocide and courses on comparative genocide should be the basis of this new discipline. A comparative genocide study will offer the students perspective of Bangladesh genocide. The trial of war criminals, past and present, should be included too.

As the students will be pioneer in this area, as the year goes by, the students themselves will have to construct their subject. For example, the students should actively involved in recording oral history of liberation. Unlike many other disciplines, students of Liberation War could substantially add to our knowledge. They should hear directly from the victims.

In addition to history and law, the course should include substantive understanding of politics and political development and related matters. Some references of political economy would come handy.

The other important ingredient of the course should be selected issue of sociology, especially tools necessary to understand social paradigms involved.

In the course, the students should have ample opportunity to take up specific research project, especially for the post-graduate students. Research should be an important part of this course, since, quite regrettably, very little research worth mention has been carried out so far.

Conclusion

A well thought out course content, a bunch of qualified and dedicated teachers and efficient management could make this new department an important one, which was lacking for so long. The department will then make substantive contribution in our knowledge of our independence, fill the gaps, for the generations to come.

The proud graduates of this department would have total view of our liberation. They could then be able to share their knowledge. It will, however, be said if Liberation War Studies graduates do not find proper space and recognition. The government and authorities should consider seriously introducing Liberation War Studies in other universities as well as to make the course available in colleges and schools. As a matter of fact, each high school student should have knowledge of struggles of independence of Bangladesh.

Good luck to the Department of Liberation War and Bangladesh Studies.

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It thus took twenty-seven years for a Bangladesh university to create a separate discipline to study the birth of Bangladesh. Independence of Bangladesh was not an act of legislation of its colonial master, like most of the countries of the region. India and Pakistan was given freedom by the British parliament, so also the independence of Sri Lanka. The people of Bangladesh instead struggled, and fought with arms to liberate the land from occupation.

Constitution, and give to themselves a Government."

The elected representatives then constituted themselves as a "Constituent Assembly" and declared and constituted Bangladesh to be Sovereign People's Republic and thereby confirmed the declaration of independence already made.

The Proclamation established a government, which vested all Executive and Legislative power in the President. The President was also empowered to appoint the Prime Minister and other ministers. Most importantly, the President was empowered to "do all things that may be necessary to give to the people of Bangladesh an orderly and just government."

Considering the ongoing war to eject the occupying Pakistani forces from Bangladesh, the Proclamation of Independence was an effective weapon. In fact, this instrument laid down legal justifications and foundation of Bangladesh.

The Proclamation spoke about "right of self-determination" of the people of Bangladesh. The Proclamation referred twice about committing "genocide" by the Pakistani authorities and because of genocide and an "unjust war" imposed on the people, the elected representatives declared

cited numerous justifications, which included arbitrary and illegal postponement of summoning the assembly, imposition of unjust and treacherous war, right of self-determination, unprecedented tortures and genocide.

After independence, in its very first legal instrument, the new government dropped one of the most important basis of the Declaration and Proclamation of Independence: the genocide.

When the country adopted its first permanent constitution, within a year, the Constitution again did not mention the commission of genocide, which was an important basis of independence.

In its Preamble, the new Constitution, which was adopted on 4th November and came into force on 16th December 1971, said about the period: "We, the people of Bangladesh, having proclaimed our independence on the 26th day of March 1971 and, through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh.

Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate ourselves to, and our brave martyrs to sacrifice their lives in, the national lib-

eration war, the university should ensure that the department starts from a broad premise.

Some thoughts

As the Department of Liberation War and Bangladesh Studies begins work on formulation of subjects and courses, a number of suggestions has been put forward here.

The department should be under the Social Science Faculty but should not necessarily limit within its ambit. The department should offer a four-year graduate course and a one-year Masters course.

Considering its importance and the number of issues to be covered, the courses of this department should freely draw subjects from different disciplines.

One of the important components of its course should be the history of Bangladesh, where the students should have the opportunity to familiarise with the past, international law and law should also be taught.

International law, apart from international organisations and institutions should be included. Issues like right of self-determination, recognition, succession of state, legitimacy etc should be touched.

The students should have basic ideas of municipal laws,

Legal Education in England

By Umbarin Rahman

THE need for competent lawyers is an issue in any society which depends upon them to enforce the legal machinery. Bangladesh has adopted the English common law system from its colonial rulers. To apply that system effectively the initial stage in the process, from personal experience of the legal education system in England, is to train law students not just in the academic application of the law but also in the practical application of law.

In England the law is one of the most popular courses in Universities ranking along side medicine. A student may be attracted to studying law because they want to be a part of a respected profession or because the legal profession is a lucrative business or they may want to be well-versed in knowing their rights or simply because the reputation of the way it is taught is such that it is worth investing in. The most important fact about the law course is that a student may, at the end of it, pursue a career in other fields, such as in banking, and social services, and the government departments, if they do not want to become either a solicitor or a barrister because the course equips them with the necessary skills to do so. In fact many law students have no choice other than to go into other fields because the legal profession has become too competitive and cannot accommodate so many students.

The English legal system is one of the longest surviving and most respected systems in the world and much of this may be attributed to way in which lawyers have been trained. Much of the respect can also be attributed to the long history and traditions of the Bar, the most well-known feature of the Bar, for example, has to be the tradition of the four Inns; namely Lincoln's Inn, Gray's Inn, Inner Temple and Middle Temple. Every intending barrister has to become a member of one of these Inns and take eighteen dinners there along with the other member barristers and judges. It is a mere formality and social network between all barristers. The actual training for the Bar examinations takes place at institutions and colleges outside it. The English common law system has been adopted by and implanted in many countries, including Bangladesh. There are countless number of foreign law students seeking to educate themselves in the British Uni-

versities. What makes the English legal education system so valuable?

The Universities take their responsibility seriously for they ensure that the student, before accepting them, has the appropriate credentials. The subjects you took in your A-levels is irrelevant. You could have taken all of the three sciences. What matters is whether you are that kind of person it takes to be a lawyer. Other than having excellent academic results and a good command of the English language the student is required to be hard working, conscientious, determined, and to possess a keen interest in the subject and to have reasonable inter-personal skills. Such factors are tested through the application form where students are asked about their results, why they want to study law, their work experiences and

presentation on how a particular problem may be solved or on a theoretical aspect of the law. Group oral presentations are particularly useful ways of giving a student the experience of inter-acting and co-operating with others to resolve a particular problem as in the real world there might be times when a lawyer has to work with their fellow lawyers to solve a particular case. Sometimes the student may also have the option to take practical subject such as Lawyers skills where they have the opportunity to learn and apply negotiating and client interviewing techniques. A combination of these teaching techniques makes the course enjoyable and no doubt worthwhile in the sense that it gradually builds up the student's understanding of the law itself, their confidence and ability to comprehend it for themselves.

club provided a prime opportunity to practice research and advocacy skills. Students would form two teams with one side representing the prosecution and the other representing the defence. They would be given a legal problem, each side would research their case, prepare their arguments and present their case to a judge (who maybe a lecturer). The clubs and societies highlight to the student that the law is a living science; it is a subject which can only be appreciated through great thought and practical application. In the process the clubs and societies contribute to the development of the personality of the student. It builds on their skills to inter-act effectively and communicate with other people.

To be employed as a lawyer the chambers and legal firms require a student to show a keen

working world of a lawyer and a chance to further develop their understanding of the practical application of the law. A student may also be able to secure themselves with a future job as through it all they are making their contacts with those in the legal profession.

Upon successfully completing their University education the student has the option, providing they can finance it, to either enter the legal profession or to pursue alternative careers. Their choice may be influenced by the career's adviser at their University whose task is to help the student understand where their strengths and weaknesses lie, to assist them in preparing their curriculum vitae in way that would be appealing to the employer, and to assist the student in finding the right kind of job for them and to assist them in securing the job by for ex-

In a situation where the law and order of a nation is in crisis the need to ensure that the future generation of lawyers will be able to competently alleviate the problem becomes even more prevalent.

their extra-curricular activities. The crucial piece of document in any application are academic references from the teachers who have had the first-hand view of the student's abilities. To this effect the system sends out strong message that the law is not for just anyone; it is only for those who can show they have the potential to become a lawyer.

The next hurdle in the process for an intending law student is to get through both the academic and practical elements of the course. The courses are usually for three years. A student may choose to combine Law with another subject such as French, Business or Social Anthropology. Beyond the standard lectures in each subject the student is required to discuss the legal topic with their colleagues during small group tutorials/discussion groups. Every student is given a reading list and a question pack for each tutorial, the questions are designed in way that makes the students think about the legal topic and practice applying it to problems. The academic element of the course arises when the student is asked to research the law and analyse it in the context of a particular legal issue in the preparation for essays on set questions. Sometimes the lecturer may require each student to prepare an oral

to formulate arguments and to communicate their opinions competently. Making the course more practical as possible seems to be important at the end of the day a student leaves University equipped with the skills since the knowledge of the law itself gradually fades away after the exams.

Another part of the legal education at University are the societies. The clubs are optional but are an integral and complementary part of University life. To name just a few as examples the Debating Club, the Law Society, the Mooting Societies, the Student Unions and the University magazine group are just some of the groups that allow for the development of legal knowledge and understanding. I recall being the Publicity Officer of the Debating Club at my University. I was required to attend the weekly meetings held by the group to decide what legal issue will be discussed at the and what the arrangements will be for next internal University debate. My job was to organise sponsors for the event. At the actual debate every student was invited to hear the motions for and against a particular legal issue and to vote on what they thought was the appropriate conclusion. Eventually a team was selected to compete with the other Universities at a national level. The Mooting

interest in the legal profession and some kind of work experience. While at University the student may choose to work at a secretarial or administrative level at a legal firm. There are organisations such as the Free Representation Unit which allow law students to voluntarily take on the preparation of and representation of Tribunal (lowest courts) cases. There are vast number of legal organisations which require law students to assist them with their research. During the vacations the student may do a one week mini-pupillage at a chambers or at a solicitor's firm where they are able to observe the work of barristers/solicitors. They are required to follow a particular barrister/solicitor who gives them an insight into the kind of work a lawyer's are involved in and into the court system. Many students may simply work in retail shop to support themselves through University and this experience, itself, may be looked upon as a good way in which the student has been able to develop their inter-personal skills. Once a student has completed Bar School they may apply through their Inn to do Marshalling where they may spend a week observing the work of a Judge. All of these experiences gives the student an excellent insight into the real

ample preparing them for the kind of interview they will face with an employer. A student may want to become either a solicitor whose job is to advise the client on their legal position, or a barrister who takes over the case from a solicitor, writes an opinion for it and represents the client in court. Having said that the differences between a solicitor and a barrister is gradually diminishing as solicitors are gaining rights of audience in a number of areas of the law. If they wish to enter the profession it would mean taking a further year of exams; that is the Bar Vocational Course for intending barristers and the Legal Practitioners Course for intending solicitors. If they successfully complete these courses the next stage is to find either a pupilage at a barrister's chambers or to find articles in a solicitor's firm. This practical training should be considered as crucial to the career of a law student for they actually become accustomed, under the supervision of a senior, to the work of a lawyer. For example, during their one year pupillage the student barrister spends the first six months drafting opinions and then for next six months they are allocated their own cases. They are expected to independently resolve and to represent these cases in court. It

Law Watch

Clinical Legal Election in Bangladesh

By Margaret Groarke

Involvement with high profile, substantive public interest litigation demonstrates to the students the power lawyers possess and the possibilities for using that power for social good. Moreover, given the large impoverished and disadvantaged population in Bangladesh, the students become endowed with an awareness of their obligation, as lawyers, to be advocates for the interests of the public regardless of their career choice.

FOR the past three years, I have had the privilege to work with the Law Faculties of Dhaka, Chittagong and Rajshahi Universities on Clinical Legal Education. This programme seeks to augment the traditional academic approach to legal education by directly involving students in simulated and real legal projects. Clinical Legal Education is not intended to be an alternative to academic study and scholarship, but rather an additional aspect to it.

- The goals of the Clinical Education Programme are to:
- Improve the cognitive skills of the law students, including independent and creative thinking, problem solving and decision making;
- Enhance the practical legal skills of the law students, including interviewing clients, legal research, opinion and brief writing, trial advocacy, and alternative dispute resolution;
- Instill in the law 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; and
- Incorporate clinical legal education programmes into the law school curriculum as a required, accredited course of study.

To achieve the programme goals, clinic students at each of the universities receive classroom instruction designed to actively engage them in the learning process. The classroom sessions are problem-based and create a "real-world" context for learning.

In addition to learning in the classroom, each of the students are placed with one of the many indigenous NGOs providing legal services in Bangladesh. These internships refine further the skills developed in the classroom by enabling students to test their abilities on substantive legal issues and concrete disputes. In addition, placement with Legal NGOs provide the students with opportunities to acquire even more skills by performing in a professional legal setting where students often approach problems with enthusiasm and vigour.

Many Legal NGOs are active in matters that highlight the important role that lawyers can play in society. Public interest litigation and legal awareness, for example, are just two of the areas where Legal NGOs are promoting the development of the rule of law and helping to bring about positive change.

Involvement with high profile, substantive public interest litigation demonstrates to the students the power lawyers possess and the possibilities for using that power for social good. Moreover, given the large impoverished and disadvantaged population in Bangladesh, the students become endowed with an awareness of their obligation, as lawyers, to be advocates for the interests of the public regardless of their career choice.

Finally, it is hoped that an experience with a Legal NGO will 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 career, we hope that the internship will leave them with a sense of responsibility for performing legal work *pro bono* as part of their legal practice.

While Clinical Legal Education still has a long way to go in Bangladesh, Dhaka, Chittagong and Rajshahi Universities are well on their way.

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State of Human Rights 1998

Political Repression

By Abdullah Hel Qayyum and Md Nur Khan

NO remarkable developments took place in the political arena during the year 1998 to enhance the civil rights of the people. The opposition leaders as well as the workers were oppressed and harassed all over the country through out the year by the ruling party workers and the Government agencies. Though the application of the SP in case of political repression decreased in 1998, the opposition activists were also implicated for political and alleged criminal offences.

A large number of malafide cases were lodged against the opposition activist including the leader of the opposition Begum Khaleeda Zia. Among other Bangladesh Nationalist Party (BNP) members, Member of Parliament Alamgir Kabir, Anwar Zahid, the Press Adviser of Begum Khaleeda Zia, JAGPA president Shaiful Alam Prohan were arrested and harassed.

The Jatiyatabadi Chhatra Dal (JCD: Student wing of the BNP) ex-president Shahiduddin Chowdhury Anni, JCD General Secretary Nasiruddin Ahmed Pintu and JCD present president Habiburrahman Soheli were arrested and detained several times under the Special Powers Act as well as for various alleged criminal offences.

The political activities carried out by the opposition party were resisted round the year. On 9th June, the long march led by opposition leader Begum Khaleeda Zia started towards the CHT but faced a blockade at Katchpur bridge manned by the ruling party supporters.

On 7th November, when Begum Zia was addressing a peaceful public meeting at Pallan Maidan, police threw tear gas and postponed the meeting. Simultaneously, a procession of the opposition was also resisted by the police and AL activists on the way to the meeting. When a procession of the JCD reached Dhaka University campus, approximately 70 JCD activists were arrested including its president Shahiduddin Chowdhury Anni, and they

were kept half-naked under the hot sun in front of the police control room. During a strike called by opposition allies led by BNP, police resisted activists participating in rallies or processions, threw tear gas,

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