

"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

Challenges for the Legal Profession in Bangladesh

by Harun ur Rashid

THE perception of the legal profession among the public is not wholesome. They perceive the lawyers as "sharks". Legal profession is at a watershed facing challenges, partly because it has deflected from its original goal of public service. What do we mean by profession? How does it differ from a service industry?

Profession needs three elements: (a) public service (b) professional competence and (c) independence. Money making is not the major aim of any profession; it is the public service which remains its chief goal. The in-built character of public service is the hallmark of any profession, including the legal one. Provision of legal service to the people is a profession and should be distinguished from other service - industry or commercial business.

We need to get to the root of what a lawyer means. A lawyer is an officer of the Court and to find the truth is the business of a lawyer. To do justice is his/her motto. Justice is defined as a virtue which gives every one his/her due. Some say that justice is the combination of almost all virtues.

The question is: does a poor person receive justice or the best of defence? The answer is in the negative because he/she has no money to pay to the best lawyer for legal advice or action.

There is a common view that legal profession is driven by money-making motive. Commercial or corporate cases dominate the field because they can afford to pay money. We must get back the ideals of the profession - public service - back to motivate the lawyers to conduct their day today dealing with clients. That means that every lawyer has to do pro bono (free) work for the poor clients for the sake of justice and fair play. The lawyers have to prove themselves as the buffer between the state and the individual. The vital contribution that a lawyer can make is to provide access to justice for individuals - rich or poor.

The lawyers need to develop confidence in the legal profession

coupled with a sense of pride in the training and its role in the society. So many qualities of a lawyer: objective analysis, ability to see both sides of an argument, advocacy, digesting complex information, marshalling of facts, listening and finding solutions are the skills of a professional lawyer.

The teaching of law in the academic institutions needs overhauling if the successful candidates wish to join the legal profession. The professional skills need to be taught in the institutions. In Bangladesh the academic and professional degree of LL.B is fused into one. There is no difference in the teaching methods of professionals from the academic ones. One can earn LL.M or Ph.D degrees in law and can become a jurist but these higher academic degrees do not necessarily make a good professional lawyer as a person with M.Com or Ph.D in Commerce degrees does not make a Chartered Accountant.

The professional lawyer needs appropriate skills and advocacy which may not be required for legal academic persons. The professional lawyer in the Court before a judge or a jury needs presence of mind, good articulation of facts and points of law and persuasive nature of common sense arguments. The lawyer needs to have a good sense of humour to break the monotony of the environment of the Court.

In this connection it is admirable that the Bar Council of Bangladesh has been conducting professional training at the Legal Education Training Institute (LETI) to equip the entrants to the legal profession with the required skills. This Institute needs robust resources to do the job well.

Increasing specialisation and severe competition coupled with the cost of practising have become a headache for the profession. Many have found a cost-effective niche for their services especially for business services. Other lawyers face constant competition in traditional areas, such as property and criminal matters. Lawyers on average have

to survive in a cut-throat competition because the traditional areas are overcrowded by the lawyers. The lawyers need to spread around in other non-

vs poor but slow vs quick. In certain countries the preparation of case-book or submissions are sent to the Court Registry by e-mails and the arguments are



traditional fields.

The market for the lawyer in modern day world has changed dramatically. There is rapid change in the way a lawyer delivers his/her services. The impact of technology has been profound and the only constant is change. The race is not between the rich

being conducted in a video-link. The witnesses are being cross-examined in the video and thus a quick disposal of cases occurs.

Global economy is different from international economy. While internationality is embedded in territorial space, globally transcends that geography.

Telephone connection and electronic banking cannot be situated at a fixed place. Today money deposited in a Bank is mostly stored in "placeless Cyberspace", rather than in a vault. Visa credit cards have little to do with territorial distances. The border of New York Stock Exchange lies at the communication satellite that orbits the earth which instantaneously transmits messages from investors the world over to Wall Street.

We live in a transnational world. It means that we live in a world without borders or territorial constraints. This supra-territorial space has encouraged the emergence of a new form of capitalist production and a threat to intellectual property. Music can be downloaded through Internet without the consent of the copyright holders. DNA has become a tool in detecting a criminal in a murder case.

The lawyers have to be in constant touch with the change of the behavioural pattern of the clients in the society. The society will always function on the basis of laws and lawyers are to interpret and apply those laws. Lawyers have to make success of business transactions and the invisible earnings of commercial enterprises through the correct application of laws - both national and international.

A new pattern of dispute and cases is emerging with the onset of high-tech global economy. Foreign investment in Bangladesh will require the assistance of lawyers who are equipped with international investment laws and rules and regulations of International Centre of Settlement of Industrial Disputes and the World Intellectual Property Organisation. Bangladesh is a signatory to the Multilateral Investment Guarantee Agency and Overseas Private Investment Corporation besides the other two aforesaid entities. Professional negligence, class-actions, environmental-related litigation may dominate the subjects before a lawyer. For example, whether negligence can be attributed to the UNICEF for drilling shallow

tube-wells in Bangladesh in 60s for the arsenic problem affecting thousands of people in the country.

Our current legal procedure in the court is adversarial in nature. Whether this procedure contributes to the delay of the disposal of cases in the courts needs to be examined by the concerned authorities. It is reported in the media that the Chief Justice of Bangladesh after having visited a number of district courts in the country met with the President and identified certain reasons for the delay of the disposal of cases in the courts. One of the causes as reported appeared to be the abuse of procedure by the lawyers. This practice needs to be stopped for the integrity and reputation of the lawyers.

Another important role is to be performed by the government lawyers including the Attorney General of Bangladesh. They have to examine a particular case with utmost professional competence and assess whether a prima facie case exists or not before it is lodged in a court. All those cases that will not stand to the scrutiny of the court should not be initiated. The independence, professionalism and emphasis on the integrity of the legal profession should be the unique selling points in a market where quality is increasingly important.

The lawyers need to know that alternative dispute settlement - mediation, conciliation and arbitration could be used to settle a particular case. The present trend of taking each and every case to a court needs to be discouraged. The lawyer must be honest to the client, to the court and to himself.

A lawyer needs to become a modern, efficient and inclusive professional person. The Bangladesh Bar Council and the Bar Associations have onerous responsibility to ensure the needs of the profession and support the lawyers to succeed. The Government has to provide the resources to these bodies in the country.

The writer, a Barrister, is a former Bangladesh Ambassador to the UN, Geneva.

From Legal Desk ...

Bangladesh tops world in violence against women?



Bangladesh tops the world charts when it comes to violence committed against its women by men, a recent United Nations Population Fund (UNFPA) report said.

Bangladesh women were the most battered in the world, according to the UNFPA report, with 47 per cent of women assaulted by men. The violence in Bangladesh took many forms - from wife beating, maiming by acid, rape, to physical and verbal harassment, the report added. And according to newspaper reports, husbands, boyfriends and men who approach women but are rejected, all resort to assault.

"The situation of women is really deplorable," the UNFPA report said, adding, "gender-based violence was endemic". Bangladesh was followed closely in the world rankings by India, where 40 per cent of women were assaulted by men. Western countries were not exempt - 29 per cent of women in Canada were assaulted, followed by 22 per cent in the United States and 20 per cent in South Africa.

The State of the World Population Report - 2000, warned "the price of inequality is too high to pay" and that inequality and discrimination against women violated human rights and damaged the prospects of the country's development. In Bangladesh, where both the prime minister and opposition leader are women, nearly 50 per cent of murder cases against women are linked to marital violence, and by an inability to meet dowry demands and to handle polygamous men.

Financial Cost: Discrimination against women and girls not only harms individuals, it cripples economic growth, the report observed. "Women's second-class status carries a financial and social cost, and not just for women. Men, and society in general, also pay a price." It highlighted the gender gap in education as a key influence on gross national product (GNP), stating that in countries where the ratio of women to men enrolled in primary or secondary school is less than three to four, GNP per capita is roughly 25 per cent lower than elsewhere. "It has been estimated that a one per cent increase in female secondary schooling results in a 0.3 per cent increase in economic growth."

The relationship between female secondary education and economic growth is so strong because economic returns on women's education exceed those of men. "One reason is that women who use their skills to increase their income, invest more in child health and education," the report said. This relationship has been verified in the economies of several East and Southeast Asian countries, which grew at unprecedented rates from the 1960s through the 1980s.

This was allied to investments in health and education, especially for women. As a result, birth rates dropped and these countries were able to invest more in stimulating economic growth. "Various analyses ascribe 30 per cent of the growth in the 'Asian tigers' to changing age structures that resulted from lower death and birth rates," the report said. This equals 1,525 dollars per capita in economic advance over a 30-year period.

The opposite trend can be observed in South Asia and sub-Saharan Africa, where economic growth trails and the educational gender divide is greatest. In these regions, girls make up less than 40 per cent of secondary students.

Gender-based violence also has a sizeable impact on the economy, though its cost is difficult to assess. Costs include health care for victims, missed work, emergency shelters and police protection. "In the United States, employees pay an estimated four billion dollars a year for absenteeism, increased health care expenses, higher turnover and lower productivity," the report says. Gender inequality also pushes up health care costs. Limited access to care among the poor has a greater impact on women than men, with poor women more likely to die because of pregnancy. Half a million women die every year during and after childbirth. Its economic costs include lost contributions to the family, increased mortality among the surviving children, and increased burdens of home maintenance and child care to their survivors. Source: AFP

New Regional Organisation for Human Rights

A new group South Asians for Human Rights Organisation has been formed to promote and protect rights of the people of the region, according to an announcement at the Lahore Press Club, reported in the News International of September 28. The press conference was addressed by Indian columnist Kuldip Nayyar, Justice (retired) Naemuddin of Bangladesh, Indian artist Nandita Das, Vijay Kumar Singh and Meena Acharya from Nepal, Balakrishnan from Sri Lanka and Dr Mubashir Hasan, Asthma Jahangir and IA Rehman from Pakistan. According to IA Rehman, this marked the conclusion of talks held here for the past two days and earlier at Neemrana, India, in July. The Central Secretariat will be temporarily based in Lahore. Kuldip Nayyar said the new organization will work as a watchdog on the human right violations South Asia, besides, it would synchronize the activities of the respective national human rights organizations of the SAARC countries. He added the delegates would meet in New Delhi in the first week of November this year to formally establish a bureau. Asma Jahangir stated that the eventual aim of the organization was to transform it into a movement, which would spearhead a campaign to fight against persistent poverty, deprivation, illiteracy, inequality, caste and social hierarchy, discrimination against women and exploitation of children.

Women's Right to Initiate Divorce

The highly influential All-India Muslim Personal Law Board, a quasi-religious body, has for the first time suggested that Women should have the right to initiate divorce proceedings on five grounds: if her husband's whereabouts are not known for two years; if he fails to provide maintenance for one year; if he is of unsound mind; if the couple has been separated for more than a year; or if the husband suffers from a virulent venereal disease or treats her cruelly. It also stressed that men could no longer divorce their spouses by simply uttering the word talaq, or divorce, three times in succession, specifying that the procedure would have to be spread over three months. The AIMPLB said the husband could not have conjugal relations during this time. Under existing law, Muslim women can only initiate legal proceedings for separation, not divorce. Zoya Hasan, a leading Muslim women's activist and feminist, said the proposed changes were a small but significant step forward. Professor Akhbarul Wasey, a scholar of Islamic studies at New Delhi's Jamia Millia Islamia University, was also optimistic the changes would get the clergy's seal of approval. "The proposals are in consonance with the Koran, the Hadith or the sayings, observations and actions of Prophet Mohammed. I am confident of an ijma, or consensus, on the issue," Wasey told AFP. "All these things are rational and can help all Muslims."

Announcement

For last five years 'Law and Our Rights' page has been expressing your views and concerns on legal and human rights issues of public importance. On past occasions this page underwent several changes in response to your suggestions.

The Daily Star intends to make this page more people friendly, informative and practical. We cordially invite you to be a part of our team to make this happen. Please send us your ideas, thoughts and recommendations to:

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Protecting Small Hands from the Worst Forms of Child Labour

by A. H. Monjurul Kabir

A study by Bangladesh Bureau of Statistics (BBS) reveals that there are 31 million children in Bangladesh aged between 5 and 14. Out of this 6.3 million children are economically active which is about 12 per cent of the total labour force of the country. An estimated eight million children are engaged in different kinds of child labour in Bangladesh. There is no specific information about the actual percentage of child labour employed in harmful, hazardous or worst forms of child labour. A National Workshop on Worst Forms of Child Labour jointly organised by the International Labour Organisation (ILO) and Bangladesh Bar Council disclosed this on 3rd October. The workshop, organised for lawyers, was a part of a series of ILO's global campaigns against worst forms of child labour. ILO is actively advocating for ratifying its most recent Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999.

Barrister Amir-ul Islam, Vice Chairman of Bangladesh Bar Council presided over the inaugural session. Abdul Matin Khasru MP, Minister for Law, Justice and Parliamentary Affairs was the chief guest. Claudia Coenjaerts, Director of the ILO Dhaka office and Tim de Meyer, ILO senior legal officer, Geneva also spoke on the occasion. Dr. Mizanur Rahman, Chairman, Department of Law, University of Dhaka presented his key paper 'Review of the National Legal

Framework for the Worst Forms of Child Labour'.

Legislative Measures

The issue of child labour has become a major source of international concern. Legislative measures for the protection of children and the gradual eradication of child labour have been adopted at both national and international level. Among many other international organisations International Labour Organisation (ILO) has been in the forefront in campaigning against the practice of child labour since its inception in 1919. Twelve international labour Conventions have been adopted by ILO member states which have a direct bearing on child labour, including fundamental Convention No. 138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour, which was unanimously adopted at the ILO Conference in June 1999.

A Successful Model of Cooperation

In 1994, the employment of children in the production of goods for the export markets in Bangladesh drew international concern. The employers subsequently approached the ILO-IPEC for support. It was in this context that one of the most innovative ILO-IPEC projects was developed and implemented with the support of the US Department of Labour, and complementary programming and funding by UNICEF and the Bangladesh

Garment Manufacturers' and Exporters' Association (BGMEA). The memorandum of understanding (MOU) to eliminate child

and BGMEA in July 1995

The Convention 182 The Convention Concerning the



labour from the garment industry was signed by the ILO, UNICEF

Prohibition and Immediate Action for the Elimination of the Worst

Forms of Child Labour, 1999 encourages member states to respectively prohibit child employment by establishing a minimum age at which children labour is allowed and to take "immediate and effective measures to sense the prohibition and elimination of the worst forms of child labour as a matter of urgency." (Article 1)

Article 3 of the Convention defines the phraseology "Worst Forms of Child Labour" in the following dimension:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, processing or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health safety or morals of children.

This Convention, along with the Convention 138 have not yet been signed by Bangladesh.

Big Business, Small Hands

Currently an estimated 12 million children world-wide are working to supply international big busi-

ness. As the global economy expands yet more children will be drawn into the long, complex supply chains of international business. Child labour is now seen as one of the biggest risks to a company's reputation, and its elimination is a priority in the agenda of ethical business and government. But the way child workers are treated is often far from ethical. "Quick fix" solutions involving sacking child workers often lead to children ending up in more dangerous employment. For a developing country like Bangladesh the problem is complex and difficult. Whether total prohibition of child labour is now a desired goal at all is hotly contested. But on the question of prohibiting worst forms of child labour, there exists a strong consensus among the different segments of the society.

Truly mere signing or ratification of Convention does not make a practical difference if unaccompanied by proper implementation. Yet ratification has its, at least, political and publicity value. The NGOs and the media can press the government to respect its undertaking and international obligation towards domestic policy and practice. The Government of Bangladesh, one of the earliest signatory countries to the Convention of the Rights of the Child (CRC) should take the lead in South Asia in ratifying and implementing the Convention 182 if it really wants to avoid being mere rhetorical.

Jails, Courts Remain Crowded as SC Ruling Gathers Dust

by Rakesh Bhatnagar

SOME time ago, the Supreme Court of India described the criminal prosecutions in the country as the "engines of oppression". Saying so it also ordered release on bail all undertrials involved in certain petty offences and facing trials for over a year or more.

Lakhs of undertrials would have benefited and the jails would have shed a lot of extra crowd if the apex court's directives were implemented. The registrars of the high courts were to hand over the copies of the order to all criminal courts under their control with a direction to comply with it. The purpose of passing the significant directives was to cut down the delay in trial as well as reduce the arrears of cases burdening the criminal justice system in the country.

But, the directives seem to have been completely ignored if one goes by the state of affairs in the jails and also in the courts. Over three crore cases are awaiting disposal. Two noted former Supreme Court Judges-- Justice V R Krishna Iyer and Justice H R Khanna-- have expressed concern over long delays in disposal of cases. Law has ceased to be a deterrent for the criminals due to delay.

Justice Iyer says there has been an extraordinary inundation of criminality for which the law of the land was not prepared. Courts in the country are "facing a logjam, being flooded with cases and due to their static number and inertia of attitude, courts are increasingly getting paralysed. ...situation is such that judicial system will collapse under its

own weight".

The apex court also asked the judiciary to "speed up the trial of criminal cases to prevent the prosecution from becoming persecution of the persons arrayed in a criminal trial". No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the state machinery.

There is no dearth of judgments highlighting the problem being faced by undertrials and ordering speedy disposal of cases. Need was also felt to remind the trial courts of their obligation to comply with section 309 of the Code of Criminal Procedure (CrPC). Even Article 21 of the Constitution also stipulates that right to life also includes right to speedy trial.

Recently, Supreme Court chief

justice A S Anand urged all the chief justices of high courts to issue instructions to subordinate courts to grant bail to the undertrials who could not arrange for bail though they were entitled to freedom.

A Bill to this effect is also awaiting Parliament's attention for past six years. The Bill seeks to amend CrPC thus ensuring the release of such undertrials without a statutory bail bond of a particular amount by the trial court itself.

"If the arrested person is accused of a bailable offence and he is indigent and cannot furnish surety, the court (trial) shall release him on his execution of a bond without sureties", says clause 40 of the CrPC (Amendment) Bill.

At least 73 per cent of 9000-

odd inmates in the Capital's Tihar jail are involved in petty offences. Needless to say, the jail conditions cannot match the unspecified standards. "Indian prisons are reduced to being penal dustbins", a former Supreme Court chief justice M N Venkatachalliah has said. Of the 270,000-prison population in India, almost 2 lakh are under trials who are anxiously awaiting justice. The system itself needs a massive dose of de-criminalisation.

Though the Supreme Court has repeatedly asked the state governments and the Centre to frame a uniform jail manual, no serious step has been taken to review the century old book of regulations. A national prison policy needs to be framed to improve the conditions in jails. It is necessary to improve the condi-

tions prevailing in 95 central prisons, 270 district jails, 240 prisons for women and 547 sub-jails accommodating 2.70 lakh inmates. All these prisons are facing overcrowding and the major factor responsible for this congestion is high number of undertrials who constitute 80 per cent of the total population.

Union home minister L K Advani recently said the jail inmates needed introspection so that they leave the high walls as law-abiding citizens. What is also needed is that the criminal justice system including legal professionals and police administration also sit back and introspect for a while to search for an answer "who is, in fact, responsible for the present state of dismal state of affairs".