



LAW education



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A brief appraisal of the legal education in Bangladesh

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LEGAL education of any country is inextricably related to the legal system of that country, because it caters to the personnel, who run the wheels of the administration of justice. The future lawyers, judges, academicians and law officers are being given the basic lesson of law and are being trained up through the institute of legal education. In this era of globalization a fairly sound legal system is *sine qua non* for achieving sustainable development. Legal education, as part of broader legal system, then becomes significant as it shoulders the sole responsibility to educate and prepare future law incumbents.

Objectives of legal education

If you ask any law student about the purpose of legal education, simply s/he will answer that the purpose of legal education is to make the students conversant with the substantive and procedural laws. Now the question is should we be confined to so narrow a space, or should we look at the issue from a broader point of view?

Dr. Shahdeen Malik rightly points out that legal education in Bangladesh primarily aims "at familiarizing students with main provisions of law and explaining doctrinal foundations of legal regulations of society." Barrister Amir-ul Islam, Vice-President of Bangladesh Bar Council, observed that, "besides helping the students to master the lawyering skill, legal education must be able to help develop inter-disciplinary approach for building the personality to understand the society and the human situation in a changing social order." When giving views on the legal education of Bangladesh, Professor Jay Erstling made such a conspicuous observation, which covers almost all the aspects of legal education. Jay Erstling, Professor of St. Thomas University of Minnesota, USA, went writing [a.] Legal education must inform students about crucial social issues, including poverty alleviation, the role of women, the environment and human rights..... legal education must not teach students simply what the current law says, but rather it must provide students with vision and skills to make the law more responsive to the development needs of this country. Put simply, it must train students to be social engineers. [b.] Legal education must not only teach students about legal theory, but must prepare students to engage in the practice of law or law-related professions. Students, therefore, must learn not only how to be outstanding lawyers but also outstanding members of the judiciary, government service, NGOs or industry. To accomplish that goal, legal education must impart skills in research, drafting, oral communication, interviewing, interpreting, and advocacy...."

The objectives of legal education, therefore, should not be confined to the pedagogy of mastering the student lawyering skills and the techniques of how to be a good judge, as the law students need to dispose of social engineering role. Keeping this view in mind, legal education should be orchestrated not only to meet up the existing needs, but also the progressive demands of the society. The existing legal education in Bangladesh is an utter failure in fulfilling the changing needs of society, as the subjects included in the curriculum are inadequate to cover international trade and commerce, information technology, e-commerce, finance and banking, foreign investments, international and municipal



corporate matters, community rights, environment, sustainable development etc.

Nature of legal education

What should be the nature of the legal education? Should it be fully academic or fully vocational or combination of both the two? Legal system of Bangladesh pertains to the common law brotherhood, so its legal education is greatly influenced by the academic character of British legal education, though dichotomy between academic legal education and vocational legal education still persists in England.

There is continuous debate on the issue that to what extent the two should be combined to prepare the students for encountering their future professional challenges. In spite of British College and university legal education being predominantly academic in character, they have sufficient vocational program to train up the students to become members of Bar.

North American concept of clinical legal education has become prominent in recent time. Clinical legal education not only teaches substantive law, the essence of this education is 'learning through doing'. This pragmatic approach of legal education is very spectacular because it prepares the students to shoulder social engineering role with their firm conviction to ensure greater social justice. Elements of clinical legal education can be summarized as lawyering, legal aid, ADR, public interest litigation, public legal education, law reforms and professional ethics. Law faculties of Dhaka University, Chittagong University, and Rajshahi University have already introduced clinical legal education for fourth year students of those institutions. These are some endeavors to infiltrate vocational program into the predominantly academic legal education structure of three public universities.

Legal education in law colleges

Present condition of legal education imparted by the Law Colleges is grossly disappointing, as the drop out people, who do not have the quality to avail any satisfactory occupation, gather and get themselves admitted into the Law Colleges. There are extensive allegations that they do not require to

attend the classes and they pass the examination by copying erroneous note books. After getting the approval to become a member of the Bar, finally they appear in the role of pettifoggers.

All the Law Colleges are now affiliated with the National University, which without having any teaching staff of its own exercises academic control over these colleges, prescribe curriculum, conduct examinations and awards degrees. Graduation from any general college is admission requirement to Law Colleges, no admission test is held, and there is no limit to the number of students admitted. Two years course has been divided into two examination years, preliminary and final examinations, passing of which qualifies the students for the award of LL.B. degree. Law College students have to sit for the examinations of 13 theoretical papers. There is no viva voce, no tutorial, no practical course, no mock trial and moot court. Stuffed by part time teachers, most of the Law Colleges hold their classes at evening. Law colleges have mushroomed all over the country, and most of them do not have their own building and sufficient library facilities.

Legal education in public universities

The standard of legal education imparted in the public universities is much more higher than that of Law Colleges, nevertheless public universities lag behind not only international standard but also South Asian standard. In spite of many limitations Dhaka University has been playing the pioneering role in imparting legal education in Bangladesh, and trying to maintain some standard, which is reflected in the expanding demands of law degree, as this year around 150 candidates sat in the admission test against 1 seat of the Law Faculty of Dhaka University. Law Faculty of Chittagong University, after its establishment in 1992, earned some reputation, obviously credit goes to Professor Shah Alam and his dedicated young colleagues. In addition to Dhaka and Chittagong, Law faculties of Rajshahi University and Kushtia University are also awarding law degrees.

I want to identify some of the gray areas of public university legal education for which it is lagging behind international standard, those are: (i) age-old curriculum; (ii) traditional teaching methodology; (iii) lack of accountability of teachers; (iv) confusion regarding medium of instruction; (v) absence of evaluation of teachers by the students. There is no disagreement that the age-old curriculum of public universities cannot fulfill the changing demands of society and international community. The university law faculties should immediately review their curriculum and introduce new subjects to meet up national and international needs. Dhaka University Law Faculty has already taken initiative to review their existing curriculum.

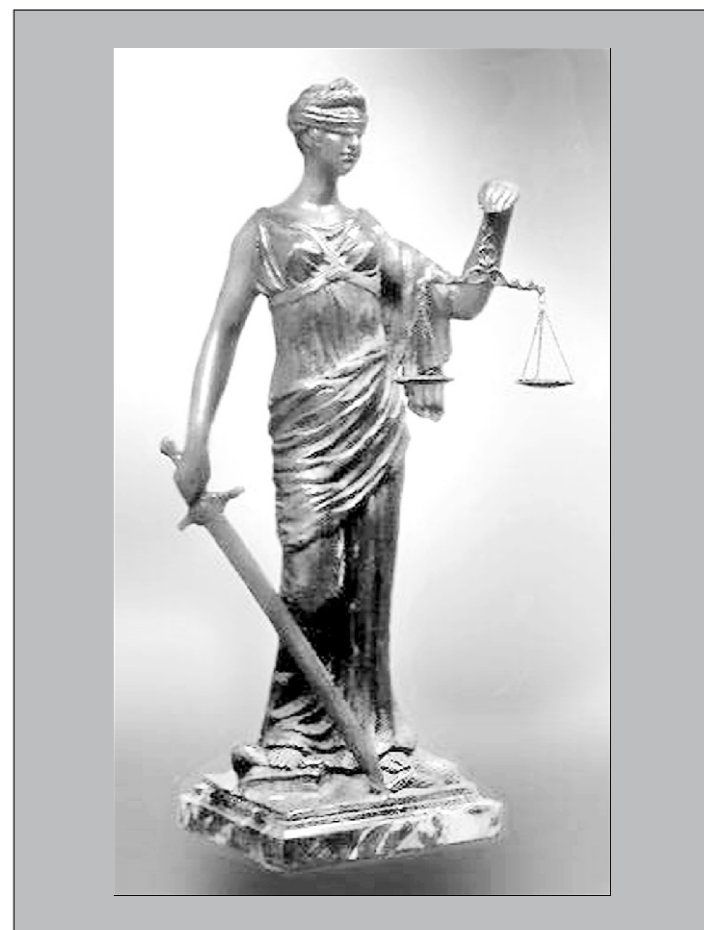
Time has come to review the traditional teaching methodology for verifying how far it is effective to impart quality legal education. The state and university should provide sufficient fund to train up the teachers to enhance their academic excellence, it may be by sending the faculty to any international training program or it may be arranged within the country. Assuming the teachers to be self accountable, the University Order did not provide rigorous provisions for the accountability of teachers, but time has become ripe to review the old provisions and devise some mechanism to ensure true accountability of teachers.

Confusion persists, even after 32 years of the independence of Bangladesh, about the medium of instruction, and all the universities keep both Bangla and English open for both the teachers and students to follow. Without undermining the role and status of Bangla, I want to propose, which is my firm conviction, that English should be mandatory for legal education. The lectures should be given in English, the students should be accustomed to a system where they will speak, write, and even think in English, otherwise we cannot elevate our standard to international level. The teachers of public universities should think of introducing evaluation of teachers by the students, or at least there should be a system where the resentments of students will be ventilated in a written form and that should be taken into consideration to minimize the present anomalies of legal education.

Concluding remark

We are looking forward to establishing an effective legal system and egalitarian social order, overhaul of legal education and its reconstruction may usher in new hopes and prospects.

Hafizur Rahman Karzon is a Lecturer, Department of Law, Dhaka University.



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: After a hard struggle, the mysterious girl managed to make the engagement in families level. Hopefully we are going to marry next month. The problem now arising that she wants to bring some household goods as gift. Her family also has the same strong desire. On the other hand, I hold the spirit of non-consumptive nature and considering the gifts as dowry in my critical views. I don't have a luxurious house to fit them in as well. The question is "Is there any legal mechanism, so that I might prevent her and her family to providing the gifts (or Dowry) with?"

Zakir Hossain
East Sujankathi, Goila, Agailjhara, Barisal

Your Advocate: You must be passing through most exciting moments of your life. I wish your dream come true on schedule in a ceremonies way. In your case the words 'legal mechanism to prevent upcoming gifts' sound a note of discord and derogate from the natural course of human conduct. Let the bride set her foot in her matrimonial home with the accessories of life having the touch of love and affection of her near and dear ones. Why should you look at each and every thing that comes along from ethical standpoint. One should not be as sensitive to gifts from the bride's family as to hurt the feeling of affectionate minds and prevent natural flow of love and affection. Law and morality are not as unkind as to interfere with natural flow of human love and emotions.

Law seeks to prevent power that has emerged as a curse in our society and tend to break up marriage-deal on account of failure to satisfy the demand of the bridegroom or his guardians by the father or other guardians of the bride. Hands of law is extended to any demand of dowry in post-marriage days as well. This has to do with demand of money and/or goods 'in consideration for marriage' which, in more cases than not, comes in as precondition for marriage.

Your case seems to be far from that. Of course, I do not mean by all these that you should not look into the constraint, if any, of your would-be relatives in giving any gift. Constraints direct or indirect of the bride's family in making gifts do not square the sense I am trying to make. If it is free from any kind of constraint and truly spontaneous law has no mechanism to prevent the transactions. If you still feel uncomfortable with the sense of prospective gifts you can at best try to prevent the same by persuasions not by ethical references.

Wish you happy conjugal life in advance.

LAW week



CRIME & Punishment



Section 86 of DMP Ordinance challenged

A High Court Division special bench comprising Justice MA Matin and Justice Syed Refat Ahmed has issued a rule nisi on the government to show cause within three weeks why Section 86 of the Dhaka Metropolitan Police (DMP) Ordinance would not be declared to be without lawful authority and of no legal effect, being ultra vires of the Constitution. The court passed the order after hearing a writ petition challenging the wholesale and arbitrary arrests of citizens from April 18 onwards, resulting in abuse of power and authority by the law enforcement agencies under Section 86 of the DMP Ordinance and Section 54 of the Code of Criminal Procedure (CrPC). The petition was filed by Sultana Kamal for Ain O Salish Kendra, Farida Yasmin for the Bangladesh Legal Aid and Services Trust, Habiba Akhter for Karmajibi Nari and Abdus Salam for the Jatiya Ainjibi Parishad. The petition was first moved before a High Court bench of Justice Shah Abu Nayeem Mominur Rahman and Justice Zobayer Rahman Chowdhury. The bench refused to entertain the petition because of a huge number of pending and new cases. The petitioners then moved the petition to another bench of Justice Md Joydul Abedin and Justice Sharifuddin Chaklader. The bench told the petitioners that the petition had already lost its cause of action, as the government had ordered police to stop the mass arrests. The petitioners then applied to Chief Justice Syed JR Modasser Hossain to take appropriate steps for hearing the case and he constituted the special bench, which heard the petition and passed the order. - *NewAge*, 28 April.

Contempt plea rejected

The High Court Division has summarily rejected plea of a city magistrate to draw contempt proceedings against a UNB reporter for writing that she (magistrate) stood up and saluted a minister as he entered the court in a defamation suit. Editors and publishers of The Daily Star and Bhorer Kagor were also charged for publication of the United News of Bangladesh (UNB) report. "The reporter had no intention to belittle the court, rather the intention to protect practice of the court... We do not find any elements of contempt of court," observed Justice MA Matin and Justice Shamim Hasnain in their order rejecting the reference. Magistrate Khandker Fatema Begum, following the report published on 29 September 2003 herself initiated a case and forwarded to the High Court for drawing contempt proceedings against Faruk Quazi, senior reporter of UNB, saying the report is a punishable offence under the Contempt of Court Act 1926. Quazi had reported that lawyers, court officials and litigants at a metropolitan court were surprised when magistrate Khandker Fatema Begum stood up and saluted Minister for Housing and Public Works Mirza Abbas as he appeared there as plaintiff of a defamation case on 28 September 2003. - *Daily Star*, 3 May.

Cabinet okays 14th amendment

The cabinet has approved a bill for the 14th amendment to the constitution proposing nine changes including 45 reserved seats for women in parliament. The changes also include display of the portraits of the president and the prime minister at government offices and enhancement of the retirement age of Supreme Court judges, chairman and members of the Public Service Commission and the comptroller and auditor general. If the bill is passed by parliament, the retirement age of the Supreme Court judges will rise to 67 from 65, PSC chairman's and members' to 65 from 62 and auditor general's to 65 from 60. The constitutional amendment bill is expected to be passed in the second week of May when the Jatiya Sangsad meets again. The bill also proposes to automatically dissolve all elected local bodies on completion of the five-year tenure to clear way for regular elections every five years and quickly swear in lawmakers-elect. - *Daily Star*, 27 April.

ADR council soon

The country's first-ever alternative dispute resolution (ADR) council for commercial cases will start functioning soon. The Federation of Bangladesh Chambers of Commerce and Industry (FBCCI) is going to set up the council

to resolve commercial disputes. In view of huge backlog of cases and delay in the adversarial and formal justice system, the apex trade body recently decided to set up the Bangladesh Council of Arbitration (BCA). The Rules of Arbitration of the BCA have been formulated under the Arbitration Act, 2001 and these are of international standard. However, under the Arbitration Act the BCA is not bound to follow the provisions of the code of civil procedure or evidence act. Under the act, any award of the council shall be final and become a binding for all parties. The BCA will maintain a panel of arbitrators consisting of many dignitaries and personalities having expertise in different fields and ample knowledge on arbitration. Parties will have the freedom of choosing arbitrator from the panel of arbitrators, unless otherwise agreed by the parties. To ensure world class arbitration service, the BCA will have agreements with different private and government organisations and institutions, at home and abroad, with technical and practical knowledge on ADR. The council would also organise workshops, seminars, symposiums and training programmes to encourage the business community to adopt ADR to settle their disputes. The BCA would also provide advisory services to the interested business organisations. - *Daily Star*, 26 May.

Policy for ship-breaking sector sought

Speakers at a consultation meeting stressed on formulation of a comprehensive policy guideline for the ship-breaking industry to protect rights and interest of the workers as well as for the sake of the industry's proper growth. They also opined that the industry had tremendous economic prospect after readymade garments as it has vast export hinterland and could earn huge foreign exchange by exporting construction materials and steels to some neighbouring countries particularly the north-eastern states of India if the sector is developed in a disciplined manner. While experts and human rights activists at the meeting were advocating for the protection of human rights of the workers and changes in the mindset of shipyard owners in terms of payment of wages to them and compensation to the victims, owners strongly requested the government to recognise the sector as industry so that the booming industry flourished in a more disciplined way. - *NewAge*, 25 April.

Anti-corruption officer suspended

Md Ahsan Ali, an anti-corruption officer in Joypurhat district, has been suspended on charge of misconduct and corruption. The Prime Minister's Office issued a suspension order against the officer on April 26.

The preliminary investigation by the Bureau of Anti-Corruption (BAC) suggested that Ahsan Ali was involved in corruption while he worked as a district anti-corruption officer in Manikganj. The bureau conducted the investigation after some national dailies published reports of allegations against him. A departmental case has also been filed against him. - *Daily Star*, 29 April.

HC fines RU authorities

The High Court Division of Bangladesh Supreme Court has fined Rajshahi University authorities Tk 5000 as it has delayed in responding to an application of a student complaining of giving less number in one of the papers of LLB honours final examination in 1999. The division bench comprising Justice ABM Khairul Haque and Justice Miftah Uddin said ignoring of an application by RU is illegal and condemnable.

The court directed the university authorities to re-examine the answer paper within one month after it receives the copy of the hearing. The verdict came following the filing of a writ petition with the High Court in 2002. The complainant Abdul Mannan Bhuiyan got second class first position in the examination with only 32 marks in Administrative Law. So, he applied to the vice-chancellor on October 24, 2000 to have his answer paper re-examined. But having no response from the university authorities, he filed the writ petition. - *Prothom Alo*, 27 April

Of Abduction and kidnapping

LAW DESK

VERY recently unusual downswing of the law and order situation in the society has prompted rampant criminal activities. The country-wide different criminal activities, especially abduction of businessmen and kidnapping of children one after the other has worried the business community and the mass people as well.

Abduction becomes a criminal act when it is done with the intents specified in sections 364, 365 and 366 of the Penal Code. Whoever by force compels, or by any deceitful means induces any person to go from any place

Firstly, forcible compulsion or inducement by deceitful means.

Secondly, the object of such compulsion or inducement must be the going of a person from one place.

On the other side Kidnapping literally means child stealing. Under the Penal Code kidnapping means carrying away any human being regardless of age and sex. Kidnapping is of two kinds: Kidnapping from Bangladesh and kidnapping from lawful guardianship. Kidnapping from Bangladesh means that the offence will be completed only when the limits of Bangladesh are crossed. Section 361 of Penal Code elaborates kidnapping from lawful guardianship. If any minor under fourteen years of age of a male and under sixteen years of age of a female or any person of unsound mind is taken away without the consent of a lawful guardian will be considered as kidnapping. The word "taking" does not mean a continuing or continuous act. The taking which constitutes the offence as soon as the minor is removed from the keeping of the lawful guardian. In case of taking away, the consent of the minor or the consent of the guardian of that minor if given under misrepresentation is immaterial and ineffective before the court.

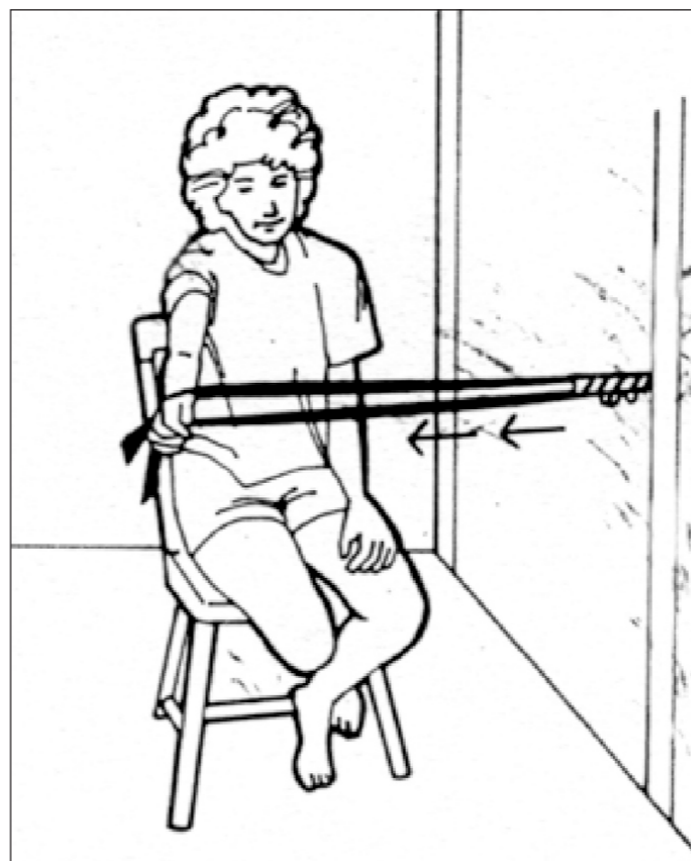
Punishments

Section 363 to 374 of the Penal Code has defined the nature and requirements of the crime above mentioned and fixed punishments regarding the seriousness of the offence. Whoever kidnaps any person from Bangladesh or from lawful guardianship shall be punished with imprisonment for a term, which may extend to seven years and shall also be liable to fine.

When kidnapping or abduction is done in order to murder, the accused shall be punished with lifetime imprisonment or rigorous imprisonment of ten years and at the same time also be liable to fine. Kidnapping or abducting a person under the age of ten, in an attempt to be murdered or subjected to grievous hurt or slavery then the punishment shall be death or lifetime imprisonment or rigorous imprisonment for a term of fourteen years and not less than seven years.

Whenever the crime deals with the kidnapping or abduction of a woman with the intention of forcibly marrying her or seducing her to illicit intercourse, the accused shall be punished with fine and also be imprisoned for a term which may extend to ten years.

Moreover if anybody kidnaps or abducts a child below the age of ten years with the intention of taking dishonestly any moveable property, shall be punished for a term of maximum seven years of imprisonment and also be liable to fine.



is said to abduct that person. The force or fraud must have been practised upon the person and he or she must be removed from one place to another by forcefully and unwillingly.

The crime of abduction requires two ingredients:

Corresponding with the Law Desk

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