



LAW education

IN SEARCH OF REFORMS

Legal education in Bangladesh

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THE law and legal system are being called upon to advance arguments and develop tools to compel the state to abide by the social justice mandate of the constitution and to promote the human rights of the under-privileged section of the society. But in Bangladesh existing legal system presents a picture of a country with a statute book rich in progressive laws but lacking a system to translate them into real benefits to millions of people who most need the support of the legal system.

As a law teacher, in this article, I tried to identify the problems and possible ways out to reform our legal education, by which future law graduates could use law as an instrument for social reforms and social justice and be able to develop innovative and new strategies to challenge the injustice, unjust and unfair system and thereby serve the society and humanity as a whole.

Some of the Existing Drawbacks of Legal Education in Bangladesh

(a) Admission criteria: Under the present system there is no option to examine the applicant's analytical skill, writing ability, attitude, aptitude and vision to study law. In the end, law degree are conferred upon students who are not qualified to get law degrees and are not committed to use the law as a tool for social justice and reforms.

(b) Appointment procedure and Facilities of Law Teachers

Unlike Europe and America, the facility of a lawyer or law teacher in Bangladesh is not full of roses. The country also lacks mechanisms to ensure accountability and motivation for teacher to strive for teaching excellence. In addition, appointment of law teachers is not flawless, sound and unblemished. It is unfortunate that without emphasising on teaching quality and research ability most of the universities appoint law teachers based on only academic result, with the aid of active political support and lobbying.

(c) Absence of Practical orientation: It is apparent that legal education in Bangladesh is without practical orientation or with little orientation, which is not able to produce graduates capable to practice law effectively.

(d) Traditional Curriculum: The curriculum, which is followed in the Public Universities and law colleges, are too much traditional without any change for decades. Nevertheless, the curriculum of Chittagong and BRAC university are time worthy and accommodates some innovative and practical skills like conveyancing, drafting, moot court and mock trial, environmental law, Alternative Dispute Resolution etc.

(e) Teaching Method: Teaching of Law in its traditional method has been found to be inadequate to prepare a law graduate to practice law and to understand the role of a lawyer in the society in a developing country like ours. In Bangladesh with a few exceptions in most of the classrooms, teachers deliver lectures and students listen. There is no or little opportunity of exchange, deliberation, discussion and interaction between the teachers and the students.

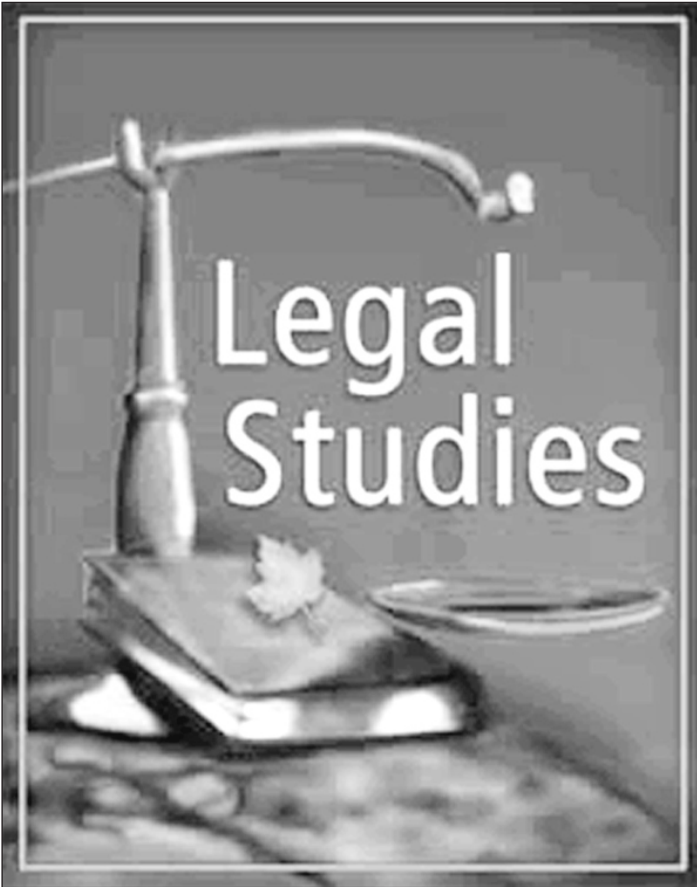
(f) Assessment and Examination Technique: To do well in the existing system of evaluation, memorising of eight to ten set questions based on earlier examination questions is enough. This kind of evaluation does not comply with in depth learning even students need not to read the whole syllabus and therefore discourage innovation, critical mind and interdisciplinary approach in learning law.

(g) Research facility and field studies: From the first day of first year LL.B Class to the last day of 4th year, a student might pass without being involved in any sort of research work or field studies. S/he even can do so called brilliant result without reading a law journal and having no connection with the recent legal developments.

(h) Human Rights sensibility: The norms, values, inspirations and enlightenment essential to fight against the violation of human rights are hardly reflected in teaching and learning process of law in Bangladesh.

(i) No link between the study of domestic and international law: Creating links between the study of domestic and international law is necessary for legal education because in our new global reality even domestic lawyers will need to address issues of international law. But this reality and challenges of globalisation are yet to be reflected in the legal education of Bangladesh.

(j) Challenges of Information and communication Technology (ICT): To accommodate the challenges posed by the ICT and utilisation of ICT for legal education like video conferencing, online live class web based legal



research is yet to be placed in the legal education in Bangladesh.

Reforming the Legal Education in Bangladesh

Sound system of Legal education able to challenge injustice and draconian provisions in law is a sine qua non for establishing social justice and social reform and thereby ensuring social change and promotion of human rights. The following changes should be introduced in the legal education in Bangladesh to make it fit in terms of present trends and needs-

(a) Curriculum development: As mentioned earlier curriculum followed in law faculties and colleges mostly cover traditional subjects of law, which have to be changed and updated immediately

i) Lack of social relevancy and humanistic approach in the curriculum alienates and suppress various values, ethics, gender perspectives and views of minority etc.

ii) Law faculties may also include the perspectives of other academic disciplines by way of offering joint degree programs with other faculties like joint LL.B (Hons.)/M.B.A or LL.B (Hons.)/M.A. etc. This can also be achieved through faculty exchanges with professors from other academic disciplines and allowing law students to take a limited number of credits in other academic department.

iii) Another important feature of change in curriculum would be creating links between the study of domestic and international law to accommodate the concern of new global reality. And in this respect international human rights law and obligations should be associated with all subject areas of law as a system of values, not just a system of abstract rights.

b) Change in Teaching method and Student-Teacher Selection Process: There are several teaching methods i.e., lecture method, Socratic method, case method co-operative teaching, group discussion, moot court, assignments, clinical education and independent research. No single method may satisfy the need. It may be necessary to consider a combination of various

methods.

As mentioned earlier, selection of students for law study and appointment of teachers for law teaching is not flawless and most of the times skills necessary for law study or teaching as the case may be is a secondary concern while earlier academic records political affiliation and lobbying rules the system. As a result, today university law teacher, at least a significant portion of the community, is not innovative, lacks practical skills and initiative, is not research oriented, is not respectful to ethical values and standards of legal education, vision is short sighted, knowledge and teaching aptitude is also questionable.

Hence, without a change in the students' selection and teachers' appointment, procedure, mere change in teaching method would not be successful.

(c) Practical skills training: There is an unduly long gap between the legal education in the institution and in practice. Hence, most important part of learning and significant skill is left to chances in future, which may or may not materialise. That is why, mandatory practical skills training under the umbrella of clinical method should be introduced in legal education, which would cover following broad objectives

i) to cultivate the 'legal mind' of each student by increasing a student's ability to analyse issues from legal perspective or simply the ability to 'think like a lawyer' specifically, this involves developing the capacity to analyse complex facts, recognise fine distinction and identify the legal principles applicable to a situation to get the essence of legal problems.

ii) to acquaint the students with the lawyering process and to develop skills of advocacy.

iii) To expose students to the social reality and in still sense of societal responsibility in professional work.

iv) To make one aware of the limits of legal system and appreciate alternative lawyering skills and

v) To develop a sense of professional ethics etc.

However, for getting maximum benefit from the practical skills training, there should be a close and constant interaction between the Bar and the faculty.

(d) Change in Evaluation/Examination Technique: Traditional assessment technique should be changed by introduction of problem/case oriented question, open book brain storming question, analytical and innovative factual question with legal problems along with constant evaluation by way of regular class tests, tutorial, assignment and short dissertation paper on critical issues of law.

(e) Community Involvement, Diversity and Pro-People Practice: High ideals of our liberation struggle as reflected in our Constitution will continue to remain mere promises, if we fail to ensure that every individual citizen has access to justice and access to the law just law, justly and equitably administered. That is why, students should be encouraged for field studies on communities and research on them and thereby understand the problems faced by the communities and propose legal solution to their problems.

Concluding Remarks

Legal Education in Bangladesh should be changed to make it cope with the modern challenges and to prepare law graduate to be able to fulfill the dreams, demands and aspirations of our people and society aspiring to march forward as a modern nation through democracy, development and good governance.

As mentioned earlier in this paper present system of Legal education in Bangladesh is not able to meet the needs of present time and national goals and therefore only change of Legal education in content quality and objectives in line with modern challenges, national goals and global order, would be able to produce law graduates having vision in working to establish a just and equitable society through a democratic polity, where rule of law and human rights are maintained as a cardinal principle in all walks of life.

As law teachers, judges and lawyers, we have the responsibilities to contribute in this process. We cannot predict right now the end result of our efforts but we do know that participating in this process from our own respective position is vital to contribute towards our legal system.

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LAW event

Judicial Training Workshop for District Judges

JUDICIAL capacity building has been occupying a priority consideration in Bangladesh Institute of law and International Affairs (BILIA) activities. Considering the urgent need for reforming the existing century old justice delivery system, the institution is concentrating on the necessity of imparting training to the judicial officers across the country.

With this view BILIA has undertaken its 8th Judicial Training Workshop for 25 District Judges from 22-29 August 2004 under the project on Providing Judicial Training to Complement the ongoing Legal and Judicial Training Efforts.

His Excellency Mr. Jose Lino B. Guerrero, Ambassador, Embassy of the Republic of the Philippines, Ambassador Waliur Rahman, Director, BILIA and Senator Iqbal Haider of Pakistan inaugurated the programme.

The issue of the first session of the workshop was "Status of Women's Rights". Advocate Towhida Khondoker, BNWLA, Advocate Alena Khan, Mohila Parishad, and Mr. Justice K.M Subhan were presented as resource person in the session.

Mr. Justice K.M Subhan opined that Judges should look into the interest of women that can guarantee the rights of women, which is flagrantly being violated. Both Advocate Towhida Khondoker and Advocate Alena Khan pointed out the loopholes in the existing legal system that give rise to suffering and agony for women. They gave the example of levy warrant for which a women has to wait month after month to establish their right.

Mr. Justice Md. Tafazzal Islam and Dr. Naim Ahmed expressed their view on "Concept, Development and Scope of Public Interest Litigation and the Role of Judiciary."

The fourth session of the workshop was conducted by Dr. Mizanur Rahman on the topic "Applicability of Norms of International law in Municipal Courts". The discussion focused on how to address international law in Bangladesh municipal courts. The resource persons discussed the origin of Rule of Law emanating from Magnacarta and stressed its importance in a democratic society. Mr. Justice K.M Subhan, Mr. Justice Ebadul Haque, Mr. Justice A.K.M Fazlur Rahman provided their important discussion on "The Process of Initiating Criminal Proceedings and Investigation, Framing of Charge and Trial".

The other important topics that were discussed in the workshop included: Personal laws as applicable in Bangladesh and need for reforms, Theory and practice of

Alternative Dispute Resolution (ADR). The laws relating to violence against women: their implementation and need for reform, Case management system and the role of Judges in light of the existing laws and need for reform and a model case management for Bangladesh, Rethinking the protection of consumer rights, Concept and development of Independence of judiciary in the light of the constitution and leading case laws etc.

Hon'ble Minister for Law, Justice and Parliamentary Affairs Barrister Moudud Ahmed was presented at the concluding session and distributed certificates among the participating District and Session Judges.



LAW news

Crime against humanity is not subject to statutory limitation

THE Supreme Court of Argentina, in a 5-3 vote, held that crimes against humanity, including genocide, torture, executions and forced disappearances, are not subject to statutes of limitation.

Enrique Lautaro Arancibia Clavel ("Arancibia Clavel") was convicted by an Argentine federal court (Tribunal Oral Federal n16) of homicide by use of explosives and for participation in a criminal association, the group DINA Exterior ("DINA"), a secret police force under the Pinochet regime. DINA operated under Chile's Director of National Intelligence both within Chile and Argentina. Members of DINA engaged in kidnapping, murder, torture and forced disappearance of those considered to be political opponents. Arancibia Clavel was accused of being involved, inter alia, in the car-bombing which killed the Chilean General Carlos Prats and his wife, Sofia Cuthbert, in Buenos Aires in 1974. The Argentine Criminal Court of Appeals (la Cámara Nacional de Casación Penal) declared that the criminal association sentence for participating in DINA was barred by statutory limitations. The representative of the government of Chile appealed the decision of the Criminal Court of Appeals to the Supreme Court of Argentina.

The Supreme Court of Argentina ("the Court") found that the crimes of the accused have been considered crimes against humanity since the end of World War II, as reflected in the Universal Declaration of Human Rights, among other international human rights instruments.

The Court also observed that such crimes constitute crimes against humanity in accordance with Article 7 of the Rome Statute.

The Court found that Arancibia Clavel's participation in DINA came within the scope of Article 25 of the Rome Statute concerning individual criminal responsibility for crimes against humanity. Turning to the question of whether Arancibia Clavel's participation in DINA was time-barred, the Court concluded that the relevant law was the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

The Supreme Court noted that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity became part of the Argentine constitution in 2003 by means of Argentine law no. 25.778. The Court also observed that the notion that such crimes were not subject to statutory limitations was part of customary international law even before the ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity in 1968. Therefore the Court concluded that holding Arancibia Clavel criminally liable for such crimes would not result in a retroactive application of the law.

Finding that such crimes against humanity were not time-barred, the Court reversed and remanded the decision to the lower court.

Source: American Society of International Law (ASIL), New York.

FOR YOU information

Interpol

Interpol is the largest international police organisation in the world. It was set up in 1923 to facilitate cross-border criminal police co-operation and today has 181 member countries spread over five continents. It supports and assists all organisations, authorities and services whose mission is to prevent or combat international crime.

Interpol's General Secretariat in Lyon, France, provides a fast and reliable communication system that links police around the globe. Its priority activities concern public safety and terrorism, criminal organisations, drug-related crimes, financial and high-tech crime, trafficking in human beings, and fugitive investigation support. But Interpol's staff, many of them police officers seconded to Lyon from police forces around the world, also provide a range of crucial

services in other areas of criminal investigation and crime prevention.

One of Interpol's most important tasks is to place member countries on alert about people who are being sought by police forces worldwide but it is a member country's domestic police who request that they be placed on the Interpol wanted list and it is domestic police who, for the most part, must track and arrest them.

Interpol is the sum of its constituent parts, but the General Secretariat in Lyon is the essential co-ordinating mechanism that gives its members access to international databases of criminal information as well as a global view on specific crimes, patterns and trends.

Source: Inrerpol.

LAW week



Lawyers to boycott chief justice's court

Supreme Court lawyers boycott the chief justice's court indefinitely from August 30, as he ignored their demand for cancellation of the swearing-in of 19 new additional judges appointed on what they said were political grounds. The Supreme Court Bar Association decided that any member, including the attorney general, would be expelled from the Bar in failure to comply with the boycott decision. The Bar will file a writ petition with the High Court to challenge the appointment after the lawyers receive explanations. The government appointed 19 additional judges to the High Court on August 23, triggering resentment among lawyers who described the recruitment as the worst-case example of political motives. The fourth recruitment by the BNP-led coalition took the number of judges appointed to the High Court to 45 since 2002. The Bar at an emergency requisition meeting that day resolved the new judges should not be addressed as "My Lord" which should be replaced by a new term in consultation with the association. Bar President Rakanuddin Mahmud told that "respect comes from inside and it cannot be demanded". "The government pushed us to the extremes." Meanwhile, Jatiyatabadi Ainjibi Oikya Parishad yesterday strongly protested the boycott decision, terming the action an infringement on functioning of the judges and violation of fundamental rights of justice seekers.

On the other hand boycott of the chief justice's court was challenged on September 2 in the High Court by three senior lawyers saying, the decision of the Supreme Court Bar Association (SCBA) was ultra vires the fundamental rights in their writ said the SCBA by taking the harsh decision has infringed their fundamental right to legal practice. - *Law Desk*.

Monk murder case

The First Additional District and Sessions Judge Court here awarded death penalty August 29 to all the six living accusees of the murder of a Buddhist monk in Raozan on April 21, 2002. The monk, Gyanoyoti Mohathero, was brutally slain in his monastery at Hingala Warapuyan Buddha Bihar, a temple cum orphanage, in Raozan of the district triggering outrage at home and abroad. The court ordered to execute the convicts by hanging them until death upon approval of the High Court.

The judgement, however, provided for the convicts to appeal to the higher court within seven days after receipt of attested copies of the verdict. - *Daily Star, August 30*.

HC rule on Nurul's retirement

The High Court issued a rule asking the government to reply in six weeks why the section 9 (2) of the Public Service (Retirement) Act, 1974 should not be declared illegal.

The court issued the order following a writ petition filed by prime minister's acting secretary AHM Nurul Islam, who was forced into retirement on June 3 reportedly on charges of violating service rule and acting against the government. - *Daily Star, August 30*.

10 outlaws to die for Kazi Aref killing

A court in Kusthia sentenced 10 underground operatives to death and another 12 to life imprisonment, convicting them of murdering five Jatiya Samajtantrik Dal (JSD) leaders, including Kazi Aref Ahmed six years ago.

The First Additional District and Sessions Judge's Court relieved three people of the charges after an 85-workday trial that recorded statements of 41 of the 57 prosecution witnesses.

An armed gang killed Aref, the central president of JSD and freedom fighter, along with his four local party colleagues while he was speaking out against political violence at a rally in Kalidaspur village in Daulatpur in the south-western district on February 16, 1999. - *Daily Star, August 31*.

Letter to PM

Country representative of the International Campaign to Ban Landmines (ICBL), Rafique Al Islam was arrested on August 21 at his home in Cox's Bazar by soldiers from the RAB. The authorities have neither charged him nor provided a basis for his arrest. In a letter to Prime Minister, executive director of the Arms Division of Human Rights Watch and senior representative of the ICBL's Coordinating Committee, Stephen Gooses expressed that it is an outrage that this respected member of the Nobel Peace Laureate ICBL has been arbitrarily arrested and detained. He further added that his arrest and detention is very surprising and disturbing, especially given the positive leadership role that the government of Bangladesh has played recently in banning antipersonnel mines.

Bangladesh ratified the Mine Ban Treaty on September 6, 2000 and currently serves as co-rapporteur of the treaty's Standing Committee on Stockpile Destruction. - *Prothom Alo, September 1*.

HC order on speaker's house in JS compound stayed

The Appellate Division of the Supreme Court on August 31 stayed for two months operation of a High Court judgement that had declared construction of official residences for the speaker and the deputy speaker within the Jatiya Sangsad compound "illegal and without lawful authority".

A three-member bench of the Appellate Division, presided over by Chief Justice Syed JR Mudassir Husain, passed the order on a government petition seeking leave to appeal against the High Court judgement.

None of the counsellors for the petitioners was present because of a Supreme Court Bar Association boycott of the chief justice's court. - *New Age, September 1*.

Yasmeen murder

Two of the three former policemen convicted of raping and killing 13-year-old Yasmeen more than nine years ago walked the gallows in Rangpur Central Jail. Former assistant sub-inspector Moinul Hoque and ex-constable Abdus Sattar were hanged on the same gallows at a time under tight security. - *Daily Star, September 2*.

Human Rights condition in August

As many as 46 persons were killed, 1013 injured and 4 kidnapped in violation of human rights relating to politics in the month of August, human rights organisation Odhikar in its monthly report said.

Those killed and the injured included the victims of the grenade attack on the Awami League rally at Bangabandhu Avenue on August 21, in which Awami League Women Affairs Secretary Begum Ivy Rahman and 19 others were killed and over 300 injured. According to the Odhikar report prepared on the basis of newspaper reports, 17 persons were killed by the law enforcing agencies while 5 others died under police and jail custody.

The report said on August 22, district correspondent of the daily Ajker Kagoj Kamal Hossain was killed. At the same time, 14 persons received injuries, three were harassed two subjected to attack and 30 journalists were given threat on their lives. Some 62 women were raped and 10 of the rape victims were killed and 19 persons including one male, seven children and 11 women became the victims of acid attack. As many as 29 women were the victims of dowry. Of them, 16 were killed, 11 repressed, one committed suicide and one became the victim of acid attack. The report also pointed out that nine were killed, 25 injured, 22 abducted and seven arrested in violation of human rights in the country's three hill district Bandarban, Rangamati and Khagrachhari. - *The Bangladesh Observer, September 2*.

Corresponding with the Law Desk

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