



LAW education



LAW MANAGEMENT SKILLS

An approach to legal capacity building

DR BELAL HUSAIN JOY

LAW and Management are two separate disciplines in social science. Management is vital to all professionals, with no exception to lawyers. All professionals like doctors, engineers and lawyers are required to have sufficient management knowledge, especially on the essential management skills irrespective of their specialisation, need to know about themselves, their values, behaviour, assumptions, aspirations and beliefs; they need to know how well they utilise their most valuable and an irrecoverable asset - time; they need to be able to identify their stress level and its positive measures to keep themselves aware of their health condition; they need to know the techniques of influencing clients and the people in general through effective listening, reading and speaking; they are the leaders of their individual professions and need to know the leadership qualities, decision making processes, team-effectiveness, performance management, delegation and coaching; chamber management, above all, they must know the client-care skills. These are all Management Skills, essential to all professionals to use them in their day-to-day professional planning, organising, implementation and controlling to provide better service to their clients, to achieve fruitful results and to attain higher quality productivity. Application of these management skills by the lawyers in their professional actions and activities will help developing uniquely combined Law-Management skills, to further their legal capacity building.

No one can deny that management of law and the legal profession is a highly humanistic exercise. Law and the lawyers are the discipline side of human enterprise; and Law and order is the core concern of this discipline in individual, national and international levels. Hence, help in maintaining law & order and managing bars and benches, Law-Management Skills are undoubtedly vital to legal professionals which should be an integral part of the courses designed for Legal Capacity Building.

The 'law-management skills' was found to be actively in existence from the very inception of the legal practice as a profession, and they are inseparable from each other. The concept can be equally helpful to all the members of the judiciary, law-makers and government law officers, in addition to lawyers - the practising advocates. I felt the necessity of such concept to be published when I first faced the problem of learning Bangladesh law and tried to acquire knowledge on practising skills, styles and systems in Bangladesh perspective.

First of all, let me extract the exact scenario of the judicial practice in Bangladesh from the keynote speech delivered by Mr Justice Mustafa Kamal, former Chief Justice of Bangladesh, on 'Introducing ADR in Bangladesh' on 24th July 2003. He stated, "... the issues of a case are seldom framed following the Code of Civil Procedure, the case takes several years to reach a settlement date and on the date of positive hearing half a dozen or more ready cases are fixed for hearing, resulting in the hearing of none. In the meantime years roll by, presiding judge of a single case is transferred a number of times, witnesses of a single case may be heard by more than one presiding judge, arguments are listened to may be by another presiding judge and judgement may be delivered by a presiding judge who had had no connection with the case ever before. Our legal system has thus been rendered uncaring, non-accountable and formalistic. It delivers formal justice and it is oblivious of the sufferings and woes of litigants, of their waste of money, time and energy and of their engagement in unproductive activities, sometimes for decades. When they win a case the result is much worse than winning it..."

This statement clearly shows us the exact picture of the legal system and the process of judicial actions and activities in practice today in our country. Hundreds of judges and thousands of lawyers from all over the country, are used to of the above legal and judicial malfunctioning, they all know this is not the right system, but almost all of them surrendered themselves and say that nothing can be done about it. It is also important to note that we have limitation act to make sure that the legal proceedings start within a specific period of time but we do not have any time limit to complete the proceedings within. In this respect, Mr Justice Mustafa Kamal said again, "we are drifting into a stage of aimlessness, inertia, inaction and helplessness. Many conscientious judges and lawyers have done what they could under the circumstances, but their sincerity has been drowned into the general morass of malfunctioning

of the court system."

The legal and judicial professionals in Bangladesh are greatly suffering from inadequate education and training, backed up with appropriate research, books & publications and training facilities with manuals to promote professionalism and help the legal professionals in building their careers and in discharging their professional duties effectively.

To the best of my knowledge, there is no book or publication in the market at the moment, specialising on Law Management skills, guiding the Advocates with ways and means of managing the legal profession efficiently and effectively. This article attempt to familiarise the concept 'Law Management Skills' to the lawyers in Bangladesh.

Who are the law managers? Law Managers are the group of experts; working independently or collectively; directly involved in managing law, linking client's case right through from initial legal advice to the courts via law enforcing agencies (if appropriate) and arguing the case on their behalf for fair justice and finally guide the clients implementing court's



decision, and help maintaining law and order in the society as a whole.

To clarify further, let's see how the law managers use the management principles in their legal profession in dealing with client's legal problems; they plan the legal steps, allocate appropriate resources (specialty people), communicate with the concerning authorities and individuals, undertake problem solving exercise, lead managing changes and challenges, manage team and hold meetings to effectively activate the plan into action for fruitful solution to the legal problems, and of course, finally take all possible corrective measures for the best possible satisfaction of their clients.

Through out the above process, the lawyers and advocates take help of and work closely with the law-makers, law enforcing agencies, government law officers and mainly the judiciary to apply the rule of Laws for fair justice. Needless to mention that the Law-makers, members of the judiciary, government law officers and law enforcing agencies, they all are also managers in their own capacities, in accordance with the basic definition of management. In addition to the above, considering the facts that the advocates are the first and the last direct contacts of their clients, involved with the entire justice delivery system, and they are the voice to answer questions of the media and the public in general (within the professional code of conduct) on the progress and decision of the case; ideally Advocates are the Law Managers with wider responsibilities and accountabilities.

Management is the process of getting things done by other people. The lawyer who handles the case in its every step, he remains the top manager, but he gets most of the jobs done by the other people using his own expertise, like initial research and fact finding exercise by a junior lawyer, law clerk to communicate with the clients and courts concern, financial transactions are done by finance section, getting all administrative jobs done by secretarial and administrative staff, and finally he himself is presenting the case to the court of judges and justices (as appropriate) to achieve the final goal. These are all functions of management. That is why the management is an integral part of the legal profession.

We as lawyers perform all those functions sometimes without realising that we are not only legal professionals but also at the same time managers. Our legal skills, techniques, experience and attributes backed up with management skills are the essence and that lead to effective performance in our professional role as Advocates. The combination of knowledge, skills, know-how, experience and attributes are the measuring rode for our professional competence.

In the management process, to manage every single case independently and effectively, it follows a circle of events, ie. Receiving instruction, case planning, organising resources, directing team work and controlling the progress of the case and implementing the court's decision and finally, deal with the review matters if be needed.

In every single stage the concerning Advocate and/or his firm/Chambers must ensure setting of appropriate service level, professional standards of service and highest possible client care. Ensuring those stages, will help the individual lawyers and their chambers to monitor their own performances, and take corrective measures by way of developing training schemes to improve their professional competence. In deed, only through this systematic approach the Law-Management Skills can be effectively incorporated and applied throughout the whole legal system and the legal personnel.

In Bangladesh, almost every single practising Advocate works independently. There is only a few in numbers those who formed law chambers and are working under self styled Chamber Management System. With the influx of a considerable number of young Barristers to Bangladesh, alongside with a good number of progressive locally trained Advocates, the Chambers Management System is being installed to create a new and positive image to the Legal Profession. Some of the existing chambers, including ones formed by senior members of the law community, are found to have aired their legal services to the world through website (whether they are within the professional code of conduct or not!). This is, in fact, another step forward for building professionalism among the lawyers and publicising their products, facilities and services available to their prospective clients from home and abroad. All these mean, that a concept of law chambers is also being developed in Bangladesh. Precisely, this is why management principles and actions are integral part of the legal profession, and hence it is imperative that Law-Management concept is adopted in the legal profession adequately and skills are developed as rapidly as possible, to achieve professional excellence.

The rights and privileges the lawyers enjoy, and to meet their obligations they encounter with, the legal professionals must equip themselves well enough in terms of education and training. Because of increasing competition in the profession, the legal education in Bangladesh has undergone significant changes over the past ten years or so to prepare the students for the practice of law. A lawyer with a reasonably good law degree supported by a few weeks of legal skills training, entering into legal profession, is expected to have grasp of general legal knowledge, with potentiality to earn sound knowledge of practice and procedures including ability to argue the case and find the appropriate law, through pupillage and subsequent experience. Vital part of a lawyer's job is to transform the facts into law, if one fails to click this part of the job during his analytical exercise at the initial stage of interviewing the clients, he may not turn out to be a lawyer. To be a good lawyer, it is not only transformation of facts into law, but also needs to be accurate in citing quotations, cases, statutes etc. with appropriate sources. All these legal skills, right through from legal research, client conference, negotiation, drafting, opinion writing, case preparation solving legal problems, are the core areas to be covered in the syllabus of the 'Legal Capacity Building'.

Being the researcher of higher level management experience and as a law-management faculty, I firmly believe that, 'only law knowledge is not good enough to be a good lawyer, in addition, a profound knowledge of management skills with commitment and integrity is vital in managing law and legal profession, to contribute effectively towards its professional excellence.

The columnist is the director of Law-Management, London International Business School.

LAW campaign



INTERNATIONAL CRIMINAL COURT

States must ensure support for Court

Adequate financial and political backing is crucial as first cases begin (The Hague, September 3, 2004). States that have ratified the treaty establishing the International Criminal Court must provide the necessary financial and political support for the court as it begins its first field investigations into war crimes and crimes against humanity, as said by Human Rights Watch. The ICC's annual Assembly of States Parties is set to meet in The Hague from September 6 to 10.

"Now that the ICC is beginning to reach out to witnesses and victims, we expect these states to step up to the plate and provide the appropriate funds for the court to do its job," said Richard Dicker, director of Human Rights Watch's International Justice program. "It's not about giving the court a blank check, but making sure that the ICC has the necessary financial and political backing for this critical phase of its work."

The ICC has already begun investigations into crimes against humanity and war crimes committed in the Democratic Republic of Congo and Uganda. Both situations were referred to the ICC prosecutor by the governments of the countries themselves, demonstrating a clear need for the court. These investigations mark a significant new phase in the ICC's work that will highlight the importance of the court in bringing justice to victims and fighting impunity. The investigations will also present the court for the first time with the difficult challenge of gathering evidence on the most serious crimes, which involve thousands of victims and complex legal issues.

"The court will face tough issues, such as providing protection for victims and witnesses, and getting states to cooperate with its investigations," said Dicker. "To meet these challenges, the court will need financial resources and the political will of supportive states."

The Assembly of States Parties represents all



of the member states of the ICC. It has the responsibility to provide management oversight to the court and ensure it functions effectively. Human Rights Watch said that in addition to providing necessary funds, the body should work to promote universal acceptance of the ICC treaty, assist countries in implementing legislation to facilitate cooperation with the court, and aid the court in any instances of non-cooperation by states.

The International Criminal Court can prosecute

genocide, war crimes, and crimes against humanity when national judicial systems are unable or unwilling to do so. The ICC, based in The Hague, has broad international support. Currently, 94 countries have ratified the Rome Statute establishing the court, and nearly 140 have signed this treaty.

Source: Human Rights Watch.

RIGHT investigation



Guantanamo hearing postponed



The preliminary hearing at Guantanamo Bay of a man accused of being an al-Qaeda paymaster has been postponed. Ibrahim Ahmed Mahmoud al-Qosi, 44, a Sudanese man captured in Afghanistan, is alleged to be a bomb maker and associate of Osama Bin Laden.

The presiding officer of a US military commission hearing his case agreed to give his lawyer more time to prepare. Mr Qosi is one of four men held at the US naval base on Cuba who have appeared this week before the tribunal. He is charged with conspiracy to commit war crimes, including attacking civilians, murder, destruction of property and terrorism.

Dramatic adjournment

The US claims he signed cheques for Bin Laden and was with him during the 11 September 2001 attacks. The charges carry a life sentence. On Friday Army Colonel Peter Brownback agreed to postpone his preliminary hearing until 4 October. He was not required to enter a plea.

Mr Qosi is the fourth man to face the court this week, following Australian David Hicks and Yemenis Salim Ahmed Hamdan

and Ali Hamza al-Bahlul. But tribunal was adjourned in dramatic circumstances after Mr Bahlul dismissed his lawyer, and demanded the right to defend himself.

His request is being considered by a general in Washington.

He also appeared to admit to being a member of al-Qaeda, though commission members were warned this should not be taken as evidence.

Earlier in the week Mr Hicks pleaded not guilty to war crimes charges in front of the commission and challenged the impartiality of the panel hearing the tribunal. His trial was set for 10 January.

Mr Hamdan, accused of being Bin Laden's chauffeur, challenged the proceedings on a number of counts, and declined to enter a plea until motions are filed in November.

The US is allowing all of the 600 or so inmates at Guantanamo Bay to challenge their detention, but so far only these four have been charged.

Legal challenges to the process are mounting - from human rights groups, civilian lawyers, and now from defendants themselves.

Source: BBC NEWS, 2004/08/27

LAW week



Police to have special cyber crime unit

The police plan to set up a special unit to curb cyber crimes by hunting down criminals threatening people or perpetrating other crimes through the internet. "We do not have any such unit right now, but we are working with IT experts in the police department to track down such criminals," said Abdul Quayyum, chief of the Special Branch of police, also an additional inspector general of police. "We want to set up the unit before such crimes go beyond control and we have already initiated a process," the detective police chief told Sunday without mentioning how long it might take to complete the process. -New Age, September 6.

Law to ensure food quality

The government is likely to bring amendments to the Pure Food Ordinance 1959 to ensure the quality of food sold in the country. An already finalised draft of the amendments will be placed in the cabinet this month for approval, sources at the health ministry said adding, "The government, after the amendments, will set up food courts as many as required to ensure pure food for all." The amended law would constitute a National Food Safety Council comprising representatives from the ministries of health and family welfare, LGRD and co-operatives, agriculture, commerce, food, industries, environment and forest and home affairs. The council will be headed by health ministry representative. "The draft also proposes appointment of class I magistrates or sessions judges with special power to try the offenders."

The act, to be named Bangladesh Pure Food Act 2004, will have the provision of a minimum fine of Tk 5,000 for selling adulterate food sticking fake labels.

Two years of rigorous imprisonment along with a fine of Tk 1 lakh will be the maximum punishment for the offenders which as per the 1959 ordinance is Tk 200 and more, the sources said. -New Age, September 7.

Jail Killing Case

A Dhaka court put off the verdict on the historic Jail Killing Case to September 21 to the resentment of the prosecution and some defence lawyers, as the judge was ill. The judgement, scheduled to come about 29 years after the brutal assassination of four national leaders who gave political leadership during the Liberation War, was adjourned one hour and 15 minutes after schedule for pronouncement, as Judge Mohammad Motiur Rahman could not turn up in court because of illness.

Law enforcers kept journalists and lawyers waiting at the entry to the court near Dhaka Central Jail since morning and said they would be allowed in before the court begins at 10:30am. But the police drove away the journalists and closed the entrance minutes before schedule.

Although it was not an in-camera trial, journalists and lawyers (not involved in the case) were barred not only from the courtroom but the court premises that remained policed by Bangladesh Rifles, Rapid Action Battalion (Rab), intelligence agencies and the police in the name of tightening

READER'S queries



Your Advocate

Q: I am a lawyer intending to join the Bar soon. I regularly go through your column with keen interest. I enjoy your answers and in fact feel enlightened. In the recent past I noticed in the newspapers that lawyers are divided on the point of appointment of some judges as judges of the Appellate Division superseding their seniors. Later there were serious movement for removal of a high court judge on corruption charge and ultimately the judge was removed. Presently lawyers have again gone into movement against appointment of some new judges in the High Court Division demanding cancellation of their appointments calling these appointment tainted with political considerations and not made on their eligibility. Serious questions about their educational standard has also arisen. Sir my questions are: a) how the judges of the High Court Division are appointed b) can it be said that the persons who are practising in the High Court for a long time are incapable of writing something in English or Bengali correctly? c) Does the Government have any benefit in giving appoint to such persons, if any? d) If the Supreme Court suffers can anybody be benefitted? e) How the chief justice is responsible in such appointments if there is no provision for consultation with him?

Aardar Habibur Rahman Bogra.

Your Advocate: You have raised one of the very sensitive ongoing issues. The appointment of 19

judges at the same time that too, immediately before the long vacation is going to be the most controversial appointments in the history of appointment of judges of the Supreme Court. The Supreme Court Bar has immediately reacted and protested the appointment on various grounds that you seem to have already noticed. And the Bar is still on movement demanding cancellation of the appointments. In this background let me take up your questions and answer them on after another.

First, appointments of the Judges of both the Divisions of the Supreme court including the Chief justice are made by the President by virtue of his power conferred upon him under Article 95 of the Constitution. Save in cases of appointment of the Chief Justice all other appointments are made by the President in consultation with the Chief Justice. Though the earlier consultation clause is no more in existence in the Constitution it goes by convention which does have the force of law.

Your second question goes deep into our misfortune. The declining standard of our legal education, unmanageable influx of juniors at the Bar from different socio-economic background, lack of senior lawyers to maintain and train up the juniors, erosion of old values and an overall situation akin to free-style prevailing at the Bar have contributed to the falling standard in which it is hardly possible to say who can write a sentence or cannot write a sentence correctly. I, as a member of the Bar do believe that if there was a statistics of such standard the number of such

lawyers on show might have been alarming. The degeneration in legal education and at the Bar has seriously contributed to declining standard of the Bench as well.

In reply to your third question I must say that neither the Government nor anybody else in this country can be benefited by appointing inefficient persons as judges. More so Govt. is the single largest litigant. If the quality judgements could not be produced virtually the institution for that matter the whole nation will suffer. But in our present day reality one can no more rule out the possibility of giving appointments more in considerations of political affiliations than of efficiency. Lawyers have come to protest asserting their personal knowledge and experiences in respect of many who are given appointments.

Your fourth questions possibly stands addressed in the reply to the third so I think no separate treatment is necessary.

Lastly, the question of responsibility of the Chief Justice in matters of such appointment. On this point the lawyers view is that after all no appointment can be made without consultation with him. Moreover, they demanded not to administer oath to the newly appointed judges but he didn't respond positively to the Bar's demand. The crisis, therefore, emerged.

Your advocate M. Moazzam Husain is a lawyer of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk,

The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone

8124944, 8124955, fax 8125155; email

<dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net