

LAW vision

Our legal education: Need for reforms

SAMIR BHOWMIK

Legal education has immense impact on the rule of law. The present state of legal education in our country does not respond to the needs of a modern society. In our country there are two separate streams of legal education. One is private law colleges under the National University offering two-year postgraduate course and the other is four-year undergraduate course provided by the faculties of public and private universities. Recently private universities are also offering two-year postgraduate course. There exists a wide gap of quality of education between the colleges and the public/private universities.

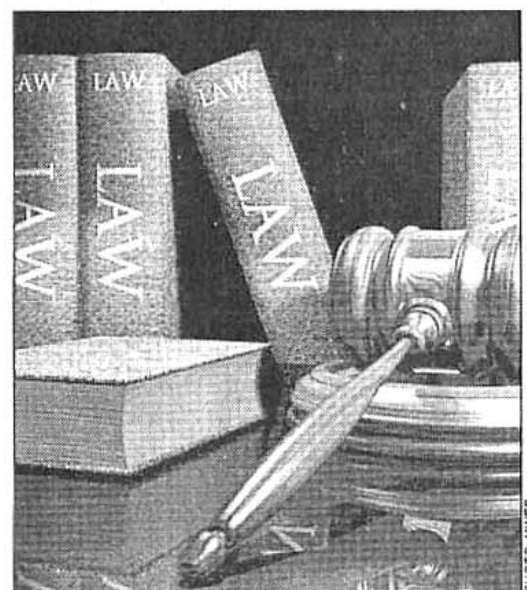


PHOTO: UNWB

National University's role in making lawyers is limited to a certificate awarding body rather than a law institution. There are cases where a law graduate never attended any formal class. So the quality of graduates from National University varies enormously amongst themselves. The curriculum and teaching methodology of the law colleges are inadequate for producing law graduates that our nation needs to cope with our problems. The problems of law colleges which result in poor quality of education are: lack of funds, absence of government control and financial assistance, lack of academic facilities, infrastructural inadequacy, absence of full time teachers, poor management, irregularity in admission and examination of students, poor control and monitoring by the affiliating National University.

There are four public and almost ten private univer-

sities in our country offering undergraduate/postgraduate law courses. The quality of education in public/private universities may be better, but they also need major reforms. Law is a practical social science. Both academic and vocational nature of legal education is important. Both these should exist in quality legal education. In our country, the methods of teaching are mostly lecture-based. There is no existence of practical methods of teaching, i.e. problem method, Socratic method, case study, moot-court and mock-trial. Only a few of public and private universities have started some of these methods but not all.

There is no medical college in our country without a hospital and so in the legal profession a student should never become a lawyer without having real court-room experience. Since law graduates are expected to work in important sector of national life including judiciary and there is a special responsibility of the law graduates before the society, inter-disciplinary approach in legal education needs to be emphasised. Incorporating new branches of legal science relating to ICT, e-commerce and globalisation, fundamentals of economics, political science, sociology and history need to be incorporated in the curriculum.

There exists very limited opportunity of studying law under government arrangement and patronisation. Presently the number of public universities is 26. But only four of these are offering degrees in law. The government allocates a huge amount of money for the subjects like accounting, biology, political science and so on. But a very important subject like law is very much neglected. So the allocation should be raised for legal education and the opportunity of studying law in the public universities should be increased. The establishment of the rule of law is a far cry without allocating money for legal education.

The general concepts of law should be taught at secondary and higher secondary level. Clinical approach should be introduced in our legal education. Clinical legal education is basically practical legal training through moot-court, mock trial, participation of the students in public legal education i.e. mass legal awareness programmes, chamber practice with the lawyers, counselling etc. Clinical legal education is learning through doing, or by the experience of acting like a lawyer. It provides service to the people and hence it is more practical and noble.

The Constitution of Bangladesh speaks about social justice which is the key pillar of the Constitution. We must not fail to ensure our citizens' right to access to law and justice. The need for reforms of legal education is a must to achieve this goal. Judges, lawyers, law teachers, law students, professional groups, members of civil society and various legal institutions throughout the country should come forward to act for this.

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Star LAW analysis

Conceptualising 'right to life' from a broader perspective

MOHAMMAD YUSUF ALI

THE modern democratic constitutions are characterised by the inclusion of a fundamental rights chapter in their embryos. Implication of such inclusion is that if any of the rights enunciated in the fundamental rights chapter of a particular constitution is infringed than the person likely to be affected by such infringement can have recourse to the court for its realisation. Indeed, such type of protection to some basic human rights like the "right to life" is just praiseworthy. Ours is a constitution, baptised by the ocean of blood. So, expectedly it contains a chapter on fundamental rights which embodies 18 fundamental rights. And the very 'right to life' finds an important place among them. In this write-up we would like to have some glimpses on the nature and extent of this right.

'Right to Life' is the first and foremost fundamental right of a human being. It is the right upon which the enjoyment of other rights such as right to fair trial, right to education etc. are dependent. It makes other rights meaningful and enjoyable. Every human being has an inherent 'right to life' which begins since conception [according to Inter-American Convention on Human Rights, 1973] and lasts till death. During this tenure the right can't be taken or hampered except judicially. Convinced by the magnitude of the 'right to life' the constitutions all over the world and the human rights related instruments have placed this right in their wombs. Some provisions regarding this are enumerated hereunder.

'Article 32 of Bangladesh Constitution provides that -- "No Person shall be deprived of life or personal liberty save in accordance with law"

'Article 3 of Universal Declaration of Human Rights Provides -- "Everyone has the right to life, liberty and security of person"

'Article 6 of International Covenant on Civil and Political Rights provides -- "Every human being has inherent right to life. This right shall be protected by law. No one shall

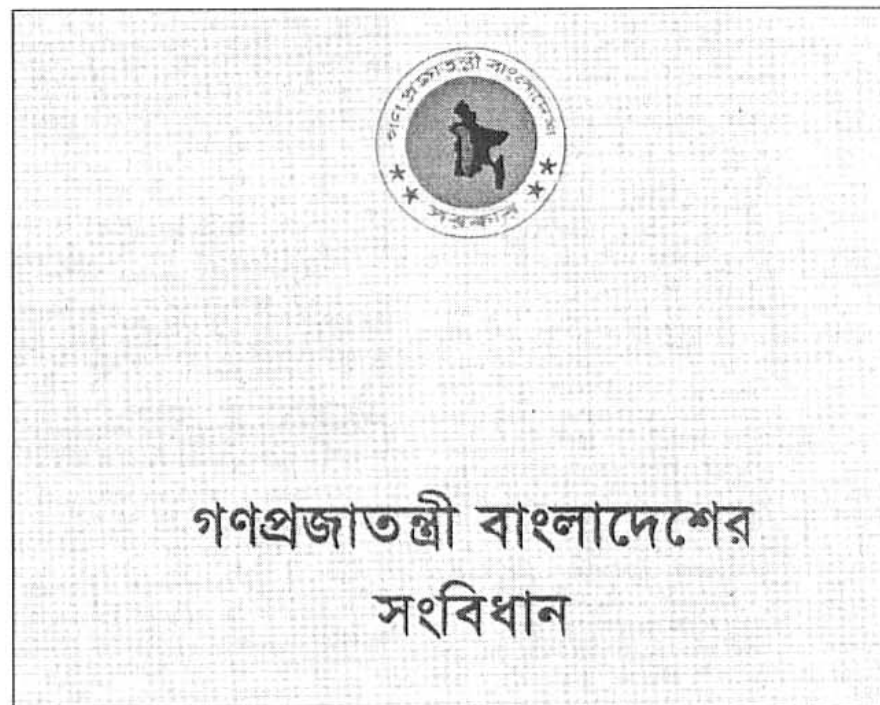
be arbitrarily deprived of his life."

From Bangladesh perspective these three are the core elements dealing with right to life. While article 32 of Bangladesh constitution clothes national protection of other two instruments namely UDHR and ICCPR accords international and Universal recognition to this right.

However, 'right to life' signifies right not to be killed arbitrarily i.e. without any lawful authority. Perceived by this notion 'right to life' prohibits all kinds of extra judicial killings and at the same time commands that the 'taking away' of a life should be strictly confirmed by the law applicable. So, it also relates this right to other rights such as right to fair trial, right to have legal protection etc. Hence, it is not a single right but a collection of some rights and only then it become enforceable otherwise not. In broader sense, it does not mean only right to live or not to be killed rather, it implies right to lead a decent life.

Such trend upholds the recent attitude of judiciary all over the world in explaining or dealing with 'right to life'. Judiciary, by dint of judicial activism, a potent weapon in its hand, devised such concept. In such cases, in explaining a provision of the constitution the judges not only look to the statute but also to the true intent i.e. the judges follow purpose theory of interpretation -- a departure from the classical literal interpretation of statute. Surprisingly, this method of interpretation is gaining momentum in countries like UK, India, Bangladesh, Sri Lanka etc. Linking various economic, social and cultural rights such as right to education, right to adequate housing, etc. 'right to life' is a glaring example of such explanation. For example in Bangladesh in the famous case of Dr. Mohiuddin Farooque vs. State [49 DLR (AD) (1997)] the court held that right to life not only means right to stay alive but to lead a meaningful life with minimum food, housing, education... etc.

In India, a lot of cases show such instances. Probably, the most bold one was made in *Olga Tellus Bombay Municipal Corporation* [AIR 1986 SC 180 (1985) 3 SCC 454]. In this case the supreme court held,



গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধান

"The sweep of the right to life conferred by article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition of the death sentence, except according to procedure established by law. That is but one aspect of right to life. An equally important facet of the right is the right to livelihood because, no person can live without the means of living, that is the means of livelihood....." So, the judgement linked right to livelihood with right to life.

In Sri Lanka also, the court, while dealing with right to housing, linked this right with right to life. Broader concept of 'right to life' comes from the explanation of judges of higher court. So, in the implementation of this concept it is activism of judges that should pioneer. Judges can direct the government to implement the 'minimum core' of rights such as right to food, housing etc. which are inextricably linked with 'right to life'.

The judgment may be clear-cut to hold government to take steps to perform a specific duty. For instance, in 2001, in reply to a writ petition, the Supreme Court of India ordered, the state govt. should implement the mid-day meal scheme by providing every child in every government or governmental assisted primary schools with a prepared mid-day meal with minimum content of 300 calories and 8-18 grams of protein each day of school for a minimum of 200 days.

We are, in Bangladesh, also waiting for such pro-people judgment from our learned judges so that the distressed, the dilapidated and the down-trodden may exercise their right to life not merely in the sense of staying alive but also in the sense of being provided with the minimum sustenance to stay alive.

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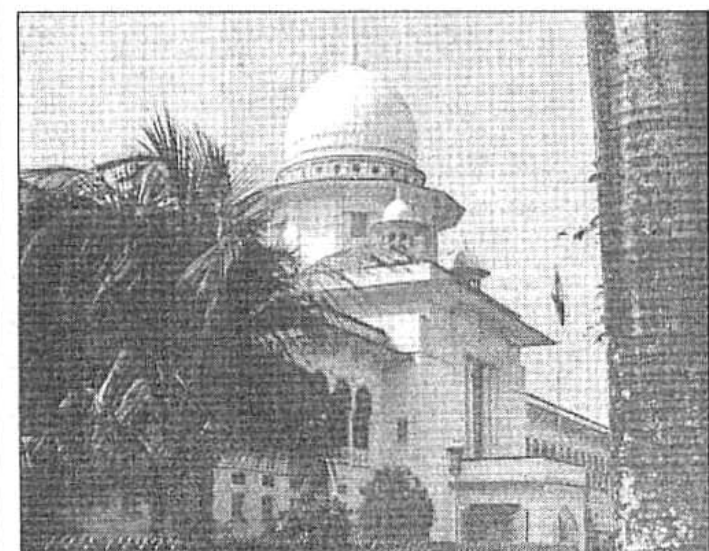
LAW news

HC RULE ON GOVERNMENT Why war heroes not entitled to division in jail

The High Court (HC) issued a rule on the government to explain within four weeks why freedom fighters of liberation war of 1971 would not be entitled to a special division in the prison and jails of the country. The rule came following a writ petition filed by a veteran freedom fighter and retired government teacher Aminul Haque Bhuiyan, son of late Abdul Hakim Bhuiyan from Feni district. Counsel for the petitioner advocate Fawzia Karim Firoze argued in the court that the state has given different honors and recognitions to the freedom fighters in different sectors. However freedom fighters have still not been included in the "Division Category" of the present jail code of the country. Aminul filed the petition on November 11 last. After a hearing on the petition, a HC division bench comprising Justice Syed Mahmud Hossain and Justice Farid Ahmed issued the rule. Respondents of the rule are Principal Secretary to the Chief Adviser, Cabinet Secretary, Home Secretary, Secretary of Liberation War Ministry and Chairman of the Central Command Council of Mukti Joddha Shangkha.

Aminul, a retired Assistant Headmaster of a government school in Dhaka said in his petition, "Persons in the categories of VIP, CIP, MP and other social gradations are treated with dignity and respect in the jail for any category of offences." But freedom fighters involved in similar categories of offences are not treated with similar privileges which is contradictory to the recognitions freedom fighters they are entitled to now, the petition added.

Aminul demanded in his petition "that freedom fighters of Bangladesh need to be treated with dignity and respect in every quarter and as such they need to be given a 'Division' in prisons and jails as well." Advocate Fawzia argued that the government could introduce a provision for freedom fighters to get division in jail through issuing a notification as well as including this provision in the jail code. Petitioner Aminul was forced to retire from his job by the former BNP led alliance government for protesting against illegal enlistment of voters. He came into limelight after making public the inclusion of 900 fake voters in the Agargaon voter list under Dhaka.



Referring to the glorious contribution and sacrifices of the freedom fighters during the liberation war in 1971, Aminul said in his petition that freedom fighters are also part of the society and community. For this reason they may also sometimes get involved in different incidents that can render them accused or convicts in different offences and cases. While freedom fighters are being detained in different jails, they are treated as common convicts. On the other hand for similar offences mps, cips, vips and privileged persons are entitled to division in jails and prisons. Aminul in his petition that this attitude and practice show the non-recognition of the contribution of freedom fighters who brought us "freedom from oppression and dictatorship".

Compiled by Law Desk.

LAW week

SC stays Hasina's bail in graft case

The Supreme Court (SC) yesterday stayed a High Court (HC) order granting bail to former premier Sheikh Hasina in a Tk 3 crore graft case filed by the Anti-Corruption Commission (ACC). Full bench of the apex court headed by Chief Justice Mohammad Rulul Amin also stayed the HC ruling that halted the case proceedings. It directed the parties involved to have the HC rule in this regard disposed of. The SC orders came in response to an appeal by the anti-graft body. Earlier on November 4, an HC bench granted bail to Hasina and stayed proceedings of the case. It also issued a rule on the government and the ACC, asking them to explain within eight weeks why bringing the case under the ambit of emergency rules should not be adjudged illegal.

ACC Deputy Director MM Sabbir Hasan filed the case with Tejgaon Police Station on September 2 alleging that detained Awami League (AL) President Hasina and six others had helped a foreign company and its local partners win a contract for setting up a 100-megawatt barge-mount power plant for Tk 3 crore in kickbacks. The other accused are former energy secretary Toufiq-e-Elahi Chowdhury, former Power Development Board (PDB) chairman Noor Uddin Mahmud Kamal, Managing Director of Summit Industries and Mercantile Corporation Private Ltd Aziz Khan, its Director Farid Khan, United Group Chairman Hasan Mahmud Raja, and its Director Abul Kalam Azad. - The Daily Star, November 27.

Message development to combat human trafficking

The Daywalka Foundation, an International human rights organization working in the field of anti-human trafficking organized a message development workshop to prevent human trafficking involving interfaith leaders. The speakers in the workshop spelled out the severity of women and child trafficking in Bangladesh and the role of interfaith leaders to combat trafficking from the country. The issue of communal harmony was addressed and a need for a platform to work together with the interfaith leaders at the grass root level was addressed. The most important recommendation that came out from the workshop was to develop a uniform communication material and message on anti human trafficking citing the verses from the four major religions, which will be used for awareness rising among the community people.

The workshop was attended by the prominent religious leaders from Muslim, Hindu, Buddhism and Christian. Among the others, deputy secretary to the Ministry of Home Affairs Mr. Md. Alamgir and senior information officer, Mr. Shahinor Miah Shahin were also present. -- Press Release.

SC rejects plea for staying HC ruling on ACC notice to Hasina

The Supreme Court chamber judge rejected Anti-Corruption Commission (ACC) and government appeal for stay on the High Court ruling declaring the ACC notice served on former prime minister Sheikh Hasina for submitting her wealth statement illegal. However, the chamber judge referred the application to the regular bench of the Appellate Division of the Supreme Court for hearing on December 2.

The ACC and the government moved the application for halting

the High Court judgment delivered on November 21. Chamber Judge M Hassan Ameen also passed a similar order on government petition seeking stay on operation of the November 22 High Court order granting bail to detained BNP leader Big General (ret'd) ASM Hannan Shah. The SC yesterday stayed the operation of the High Court order halting the proceedings of an extortion case filed by the Anti-Corruption Commission (ACC) against detained former health minister Sheikh Fazlul Karim Selim. The court passed the order upon an application filed by the ACC. - The Daily Star, November 29, 2007

3 get life for journo Belal murder

Three persons were given life term yesterday in journalist Belal murder case. The convicts are Syed Iqbal Hossain Shahhin, Rafiqul Islam alias Hasan and Sirajul Islam alias Merefal extremists. Three other charge-sheeted accused were acquitted as their involvement could not be proved. They are Yunus Ali Molla alias Goda Yunus, Ekhlashur Rahman and Jamaat-e-Islami leader Shahabuddin alias Dhira. All the six accused were present in the court during delivery of the verdict by Judge Abdus Salam Shikder of Khulna Speedy Trial Tribunal. Shaikh Belaluddin, Khulna bureau chief of Danik Sangram, was injured in bomb attack on February 5, 2005 on the compound of Khulna Press Club and died at the CMH on February 11.

Belal's parents said they did not get justice as godfathers and financiers of the murderers were left out of charge sheet. - The Daily Star, November 29, 2007

UN establishes special representative on violence against children

The UN General Assembly's decision to establish a special representative to the secretary-general on violence against children is a welcome step toward combating this worldwide problem, said a broad coalition of human rights groups and child rights advocates. The decision to create the new position was made under the General Assembly's annual Resolution on the Rights of the Child, adopted today in the Third Committee by a vote of 176 to 1. The only country voting against the resolution was the United States. The appointment follows the release last year of the UN Secretary-General's Study on Violence against Children. This study exposed the shocking scope of violence against children worldwide and its devastating effects on children, their families, their communities, and broader society. "Violence is a daily reality for millions of children around the world," said Jo Becker of Human Rights Watch, co-chair of the NGO Advisory Council for follow-up to the UN Study on Violence against Children, a global network of nongovernmental organizations. "The special representative to the secretary-general will provide high-level international leadership to confront this global scourge."

The mandate for the new special representative includes enhancing the visibility of all forms of violence against children, advocating for the elimination of this violence, and supporting the implementation of the study's recommendations. Other aspects of the mandate include identifying and sharing good practices, and enhancing coordination and communication among key actors (including the UN system, member states, NGOs, children and youth). -Source: Human Rights Watch.

Corresponding with the Law Desk

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LAW reform

New bid to reform UN Security Council begins



scheme, new seats would be allocated to regions, countries of those regions should determine the nature of that representation, the Pakistan ambassador said. Such decisions should not be left to "a few major powers".

Equitable representation would make little sense if a seat allocated to a region would be permanently represented by one country, he said. Africa's demand for a permanent seat was one for an entire region. The African model of regional representation could encourage agreement on reform. Recalling that the reports of facilitators, who were appointed by the assembly president to propose solutions, had concluded that none of the past proposals had garnered the required support. Those reports, he said, had constituted significant progress on the reform issue. To achieve further progress, he called on States to build on their recommendations.

On the negotiation process, the ambassador said, was disturbed that professions of flexibility had been accompanied by the reiteration of unacceptable demands. Pakistan supported negotiations, he said, adding that were intended to lead to agreement, not a vote. To ensure success, they must be carefully planned. Four elements should serve as parameters for talks, Ambassador Akram said. First, discussions should take place within the framework of the Open-ended Working Group. He opposed "restricted conclaves" that excluded States. Next, talks should build on progress achieved at the sixty-first session. Submission of unilateral proposals could retard the process.

Further, states must pursue general agreement, as any process that envisaged a vote would be contrary to that objective. Finally, there must be commitment against unilateral moves while the negotiation process was under way. He urged the Assembly President to hold informal consultations on the negotiation framework. "We are confident that under your guidance we will be able to carry our work forward in an atmosphere of trust and mutual confidence to achieve a compromise negotiated solution through the broadest possible agreement of member states."

Only a formula that included an increase in the non-permanent members and rotation could provide the means for equitable representation, he said. The United for Consensus approach was sensible and realistic. It provided for rotation and a longer-term presence of states. Such arrangements could accommodate regional and political groups, such as the Organization of Islamic Conference (OIC), which had interests to promote in the Council. Since, under any proposed

proposal. Its proposal for six new permanent seats was the same as the G-4's, except that it would give the new members veto privileges. But none of the three proposals had the required two-thirds majority in the 192-member Assembly and therefore were not pressed to a vote last year.

The Pakistan ambassador said the central question was whether objectives could be achieved by enlarging "the coterie of the few", or increasing general membership, adding that the latter was the only feasible approach. That was the basis for Pakistan's opposition to increasing the number of permanent members. Ambassador Akram said he was unconvinced by the argument that the erosion of Council's credibility would be resolved by adding more permanent members. Problems would only be compounded by more States seeking to protect national interests in the Council's work.

The Italy/Pakistan-led "Uniting for Consensus" (UFC) group opposed any expansion of the permanent members on the Security Council. It sought enlargement of the council to 25 seats, with 10 new non-permanent members who would be elected for two-year terms, with the possibility of immediate re-election. The African Union's called for the Council to be enlarged to 26 seats, one more permanent seat than the G-4 pro-

Source: Global Policy Forum