



LAW education

Legal Education : Few Observations of a young academic

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WHAT should a law school teach? Should it concentrate on preparing law graduates who know the substantive and procedural law thoroughly and so are well equipped to fight their clients' causes? Should it concentrate on the philosophy of justice and law? Should its curriculum include non-legal courses? How should the law students be evaluated? Should a law school and its academics have close links with the legal profession? What facilities should a law school offer to its students? These are vital and recurring questions for legal education of any country. In this brief essay, I will seek to address these questions in the contexts of law schools of Bangladesh. Brevity in

train lawyers. It is true that they continue to train tomorrow's lawyers, but that role is now, I would claim, one of their principal objectives, not 'the principal objective' any longer. Such a trend would be evident by even a cursory survey of the titles of the degrees awarded by the global leading law schools in all continents. A trend of awarding dual degrees, for example, Bachelor of Law and Business; Law and Arts; Law and History, Law and Economics, is developing. Accordingly, a number of non-legal courses regularly feature in undergraduate curriculum. This shift of the structure of legal curriculum is arguably the result of a strong demand for persons with law degrees in a number of sectors. Core legal courses mandatory for entry into the bar will obviously continue

etc. can sharpen legal minds. More importantly, it would be of immense value for those students whose primary interest is indeed law as a subject, but nevertheless 'legal profession' is not the intended calling. For instance, an ideal legal academic would be expected to teach law critically that is not just what the law is but also why it is so and what it could be. Such a critical understanding of law presupposes good grasp of legal philosophy and wider understanding of social sciences. Similarly, judges in higher courts, in their tasks of interpreting the law, may have to confront policy questions as the fact the black letter law may not provide a clear cut answer in all cases. There is likelihood that judges with greater knowledge of the social sciences and other extra-legal disciplines than those with mere substantive and procedural law would do a better job in such cases.

Secondly, a broader curriculum could open up the law schools to those students for whom law is not the main discipline of interest but who nevertheless seek some degree of legal expertise. Students of commerce, medical science already gain some degree of legal training but broadening the law schools' curricula could make this learning more meaningful.

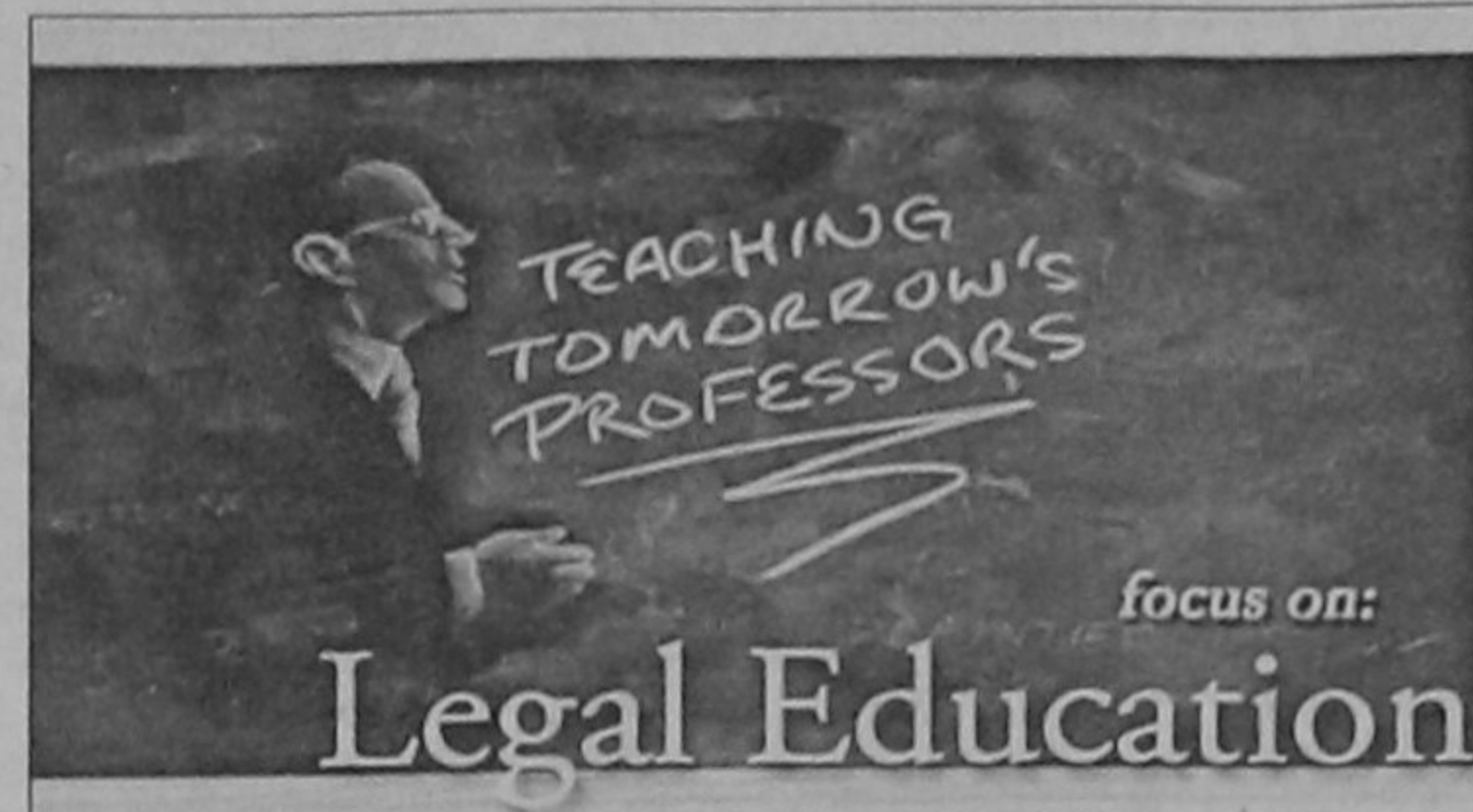
A fundamental flaw of our legal education lies in the evaluation process of students. Students are mainly assessed through written and in a smaller part, oral examinations. Examination papers of law schools in Bangladesh, barring very few exceptions, consist of descriptive questions warranting long descriptive answers. Questions of descriptive nature, if properly framed, can test the grasp of the respective subject as well as writing skill of students. However, whether and to what extent this happens in our law schools is dubious, as descriptive questions often follow a repetitive pattern and can generally be answered by memorising beforehand. Dismally, a great deal of memorising can guarantee success in such written exams. It is puzzling to comprehend the under-

lying rationale of such memory based examination process in a discipline where success in real life inevitably requires critical thinking and understanding. The focus of examination papers should be problem based which would force students to think independently and critically.

There is very little emphasis on the art of writing—either professional legal writing or academic legal writing. Those few cases where students are required to write, they are inadequately supervised. They are hardly given any substantial training on methods of legal research and writing. Mooting, though has started in recent years, is not yet done to a sufficient degree.

All the schools of public universities have their own law journals but, these journals barely involve students and rarely publish works of students. In my view, this lack of students' works reflects the poor state of academic training and support that they receive in the realm of academic writing. If students are assimilated in the editorial process in some form or the other, that can be of immense importance to them. The editorial boards consist of almost entirely academics of our country, generally of the law school publishing the journal. The works that appear in the journals also roughly exclusively feature works of the academics of public universities. While these things in by themselves say nothing of the quality of the journals or works appearing in them, more external involvement would surely enhance the credibility and reputation of the journals.

Almost every law school in the economically advanced countries, these days, provides its students with access to large commercial databases that contain both primary and secondary legal materials. For a least developed country like ours, facilities like that is impracticable but preparing a database containing links to freely available resources and a compilation of the primary and secondary legal materials of Bangladesh is probably not out of



reach. Indeed, the benefits of such a database can be more than harnessing the skills of our students and academia, as it can give up to date legal information of Bangladesh to any entity that would need so. Moreover, the law schools should strive for improving the information technology skills of our students and expose them to open source databases such as Social Science Research Network and Legal Scholarship Network. Such exposure can open the door of a huge knowledge resource for students which our law schools cannot otherwise afford by subscribing to commercial databases for costs which is exorbitantly high for them.

There is a disconcerting gap between the academia and legal profession in Bangladesh. This is perhaps inevitable as academics in our country are barred from practicing law. In this regard the relevant provision of law reads, 'An Advocate should not as a general rule carry on any other profession or business, or be an active partner in or a salaried official or servant in connection with any such profession or business.' (Clause 8, Chapter IV, Bangladesh Bar Council Canons of Professional Conduct and Etiquette). The use of the terms 'should' and 'as a general rule' raises a question as to the binding nature of the norm. Nonetheless, academics in law schools despite having bachelor degrees in law and being enrolled in the bar are believed to be barred from practicing law in the

courts as soon as they take up the their academic posts in public universities. While the prohibition is easily understood, its rationale is a conundrum. This prohibition is standing in the way of any academic who wants to gain the experience of the real court room. This is not just hurting the academics themselves but surely depriving their students too. On the other hand, the members of the bar and bench should feature in different events of the law schools on a more regular basis. Members of the judiciary and distinguished lawyers could be invited as guest speakers in law schools and share their professional insight with students. Students would surely be inspired by these events and in few cases may well be able to establish links with the legal profession at an early stage.

The issues noted in this essay and suggestions made herein would in few cases require resources for implementation which may not be immediately feasible to be spent. However, most of the recommendations made here can be implemented by administrators of law schools with no or little extra resources. More than resources, indeed it is the dedication, bold vision and passion for students' cause on the part of the university grants commission, the bar and the academia that can reinvigorate our outdated legal education.

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LAW amusements



One may not dye a duckling blue and offer it for sale

Kentucky 436.600
No person shall sell, exchange, offer to sell or exchange, display, or possess living baby chicks, ducklings, or other fowl or rabbits which have been dyed or coloured; nor dye or colour any baby chicks, ducklings, or other fowl or rabbits; nor sell, exchange, offer to sell or exchange or to give away baby chicks, ducklings or other fowl or rabbits, under two months of age in any quantity less than six, except that any rabbit weighing three pounds or more may be sold at an age of six weeks. Any person who violates this section shall be fined not less than \$100 nor more than \$500.

It is illegal to sell artificially coloured potatoes in Alabama

Alabama 20-1-30
Sale, offer for sale, etc., of certain artificially coloured potatoes. (b) Offence. It shall be unlawful for any individual, partnership, corporation or association to sell, offer for sale or keep for sale in the State of Alabama any artificially coloured potatoes; provided, however, that the application of non toxic coating materials to potatoes when such use does not conceal damage or inferiority is not a violation of this subsection where such polishing or coating material does not contain any colouring agents. The term "artificially coloured" as used in the subsection means the application of any natural or synthetic substances to potatoes which changes their natural appearance.

Alabama's bear-wrestling law

Alabama 13A-12-5
Unlawful bear exploitation; penalties.
(a) A person commits the offence of unlawful bear exploitation if he or she knowingly does any one of the following:
(1) Promotes, engages in, or is employed at a bear wrestling match.
(2) Receives money for the admission of another person to a place kept for bear wrestling.
(3) Sells, purchases, possesses, or trains a bear for bear wrestling.

(b) Unlawful bear exploitation is a Class B felony and is punishable as provided by law.

(c) Upon the arrest of any person for violating this section, the arresting law enforcement officer, conservation officer, or animal control officer shall have authority to seize and take custody of any bear in the possession of the arrested person.

(d) Upon the conviction of any person for violating the provisions of this section, any court of competent jurisdiction shall have authority to order the forfeiture by the convicted person of any bear, the use of which was the basis of the conviction. Any bears ordered forfeited under this section shall be placed in the custody of a humane shelter, a society that is incorporated for the prevention of cruelty to animals, or the state Department of Conservation and Natural Resources.

(e) In addition to the fines, penalties, and forfeitures imposed under this section, the court may require the defendant to make restitution to the state, any of its political subdivisions, or a humane shelter or a society that is incorporated for the prevention of cruelty to animals for housing, feeding, or providing medical treatment to bears used for unlawful wrestling.

10 years in prison for stealing crawfish in Louisiana

Louisiana RS 14:67.5
Theft of crawfish; penalty
A. No person shall knowingly, wilfully and intentionally fish or take any commercial crawfish from any crawfish farm, except with the consent of the owner thereof.

B. (1) Whoever commits the crime of theft of crawfish when the misappropriation or taking amounts to a value of five hundred dollars or more shall be imprisoned, with or without hard labour, for not more than ten years, or may be fined not more than three thousand dollars, or both.

(2) When the misappropriation or taking amounts to a value of three hundred dollars or more, but less than a value of five hundred dollars, the offender shall be imprisoned, with or without hard labour, for not more than two years, or may be fined not more than two thousand dollars, or both.

(3) When the misappropriation or taking amounts to less than a value of three hundred dollars, the offender shall be imprisoned for not more than six months, or may be fined not more than five hundred dollars, or both. If the offender in such cases has been convicted of theft of crawfish one or more times previously, upon any subsequent conviction he shall be imprisoned, with or without hard labour, for not more than two years, or may be fined not more than two thousand dollars, or both.

Source: www.theatomeystore.com

HUMAN RIGHTS advocacy



Respect rights of migrant workers

FORUM-ASIA (FA) is gravely concerned over the recent arrest and deportation of nearly 800 Bangladeshi workers by Kuwaiti government. The government has shown total disregard for fundamental economic, social and political rights of migrant workers. Its actions goes against the Convention on the Elimination of Racial Discrimination.

Bangladeshi workers took to the streets to protest the inhuman condition they were forced to work and live in, the long overdue of payment of salaries, fake contracts, extortion by agents and exploitation by employers.

However, these workers were deported on charges of staging illegal strike. Beating and torture of some of the detained Bangladeshi workers prior to deportation has also been reported. FA regrets that despite the government's acknowledgment of problems commonly faced by migrant workers in the country, including review of several policies, Kuwait has resorted to deportation of the workers rather instead of alleviating their miseries and ensuring that the overdue payment to the workers are paid immediately. It has also maintained silence over the practice where contract terms were agreed to in Bengali in Bangladesh but upon arrival in Kuwait, workers were expected to sign papers in Arabic.

Migrant Forum for ASIA (MFA), in its statement dated 8 August 2008, said it had received reports that the workers are paid as little as 10 Kuwaiti Dinar (\$37 USD) monthly when, in fact, their original contract stipulates they should be paid 50 Dinars (\$187 US).

On 4 August, the Kuwaiti cabinet set a minimum monthly salary of 40 Dinars. This, however, only applies to government-contracted workers and still does not deal with the thousands of workers whose salaries remain unpaid or underpaid. FA urges the Kuwait government to apply this policy to all eligible migrant workers.



Migrant workers are not a burden to such an expanding economy as Kuwait but they do contribute to the expansion.

FA also urges the Kuwaiti government to meet its obligations in the Abu Dhabi Declaration to protect migrant workers. In January 2008, Kuwait, with other members of the Gulf Co-operation States, adopted the Abu Dhabi Declaration, which asserts that states would prevent illegal recruitment practices and exploitation by employers.

We demand for a full investigation into the allegations of underpayment and abuses which led to protests by Bangladeshi workers. The government should take action against the individuals responsible for violation of the rights of the migrant workers. The Kuwaiti government must also ensure that exiled Bangladeshi, with no proven evidence of wrongdoing, be paid back their wages.

Kuwait's recognition of the abuses suffered by migrant workers and the move to institute minimum legislation is positive but ratification and implementation of the 1990 UN Convention on the Rights of Migrant Workers and their Families as well as the ILO Conventions on Migration for Employment and the Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (ILO Conventions 97 and 143) would enable the government to claim itself as being obliged to UN principles of human rights.

Source: Forum Asia.

LAW week

Elected city leader's won't quit party posts

The Awami League (AL)-backed mayors- and councillors-elect prepare to pursue a legal challenge against the new electoral rules that require the winners to resign their party positions before taking the oath of office.

The Local Government (City Corporation) Ordinance-2008 and Local Government (Municipality) Ordinance-2008 were promulgated by the army-backed caretaker administration to deal with the formation and functions of the local government bodies.

But those elected in the August 4 polls, mostly belonging to AL, view those as 'unconstitutional' and 'undemocratic'.

The AL policymakers on Sunday directed the mayors-elect to challenge the laws at courts, said party insiders.

Talukder Abdul Khaleque, the mayor-elect of Khulna City Corporation, said, "Since the High Court ruled that the candidates can use their political identities in the polls and scrapped the curbs in that regard, then why we should have to leave our party posts."

Talking to The Daily Star, he said he is now in Dhaka consulting lawyers to file a writ petition with the High Court soon. -The Daily Star, August 12, 2008.

Top graft suspects' huge wealth stays safe for legal barriers

The Anti-Corruption Commission (ACC) could have charged Bashundhara Group Chairman Ahmed Akbar Sobhan alias Shah Alam with amassing ill-gotten wealth worth Tk 606 crore had he not whitened Tk 498 crore under the money whitening schemes offered by successive governments.

The anti-graft watchdog on Sunday finally charged him with amassing ill-gotten wealth worth only about Tk 107 crore. Alam whitened the money over the years during the rule of both Awami League and BNP.

Detained businessman Giasuddin Al Mamun also whitened Tk 30.22 crore taking the same opportunity, while his brother former lawmaker Hafiz Ibrahim and his wife Mafruz Sultana whitened Tk 11 crore under 2005 SRO (Statutory Regulatory Order) on different occasions.

Like Shah Alam, Mamun and Ibrahim, many high-profile graft suspects whitened huge amount of ill-gotten wealth and ACC cannot take action against them due to legal barriers. -The Daily Star, August 12, 2008.

45 cheated workers return from KL

Battered by employers and cheated by agents, 45 Bangladeshi workers returned from Malaysia after over one year with bruises all over their bodies.

The returnees who spent over Tk 2 lakh each to get an overseas job allege Bangladesh High Commission in Kuala Lumpur did not address their issue. As a result, they had to leave the "dreamland", which has now turned a "nightmare".

At a press conference organised by IMA Research Foundation at Dhaka Reporters Unity, Shahadat Hossain said he went to Malaysia in a group of 40 through recruiting agency Mark Overseas in July last year and was employed in plastic company Classic Board Services Servicing Centre in Kelang at monthly RM 700.

"We were told that we would work 12 hours, but we had to work 18 to 20 hours a day. In case of any single mistake, the Chinese boss would beat us up," he said.

He said the workers were given work target and if anyone failed to fulfil it, the boss used to hit them hard. Fifteen of the workers fled the company in less than a month as they could no longer endure the torture.

Arifur Rahman of Mark Overseas said he learned that there were problems and Bangladesh High Commission in Kuala Lumpur tried to solve those. He however said he did not exactly know what the problems were. -The Daily Star, August 12, 2008.

Thaksin flees to UK amid graft case

Deposed Thai prime minister Thaksin Shinawatra and his family have

fled to the United Kingdom, the former leader said after he and his wife skipped a hearing on corruption charges in a Thai court.

A handwritten statement from Thaksin issued Monday said he fled because he could not expect justice in Thai courts. It came amid newspaper reports that he would seek asylum in Britain.

"My wife and I have travelled to reside in England," Thaksin said in the statement. "If I still have luck, I would come back and die on Thai soil like every other Thai person."

Thaksin's statement, which did not mention asking for asylum, was read Monday afternoon on state-run television. -The Daily Star, August 12, 2008.

Govt reinstates Aug 15 as Nat'l Mourning Day

In compliance with a recent High Court (HC) ruling, the government reinstated August 15 as National Mourning Day and a public holiday to commemorate the assassination of Bangabandhu Sheikh Mujibur Rahman.

The decision came at a weekly meeting of the council of advisers, said Chief Adviser's Press Secretary Syed Fahim Munaim.

The last BNP-led alliance government had cancelled the state observance of August 15 in 2002. The HC on July 27 declared the decision illegal. It also cancelled the order that had prohibited flying of the national flag at half-mast on the day.

August 15 was first declared National Mourning Day by the then Awami League (AL) government in 1996. -The Daily Star, August 11, 2008.

Factory in Gazipur set ablaze; owners blame 'outsiders'

Garment workers demanding back pay ransacked at least 15 garment factories and four shopping centres at Jamgorah in Ashulia on the outskirts of the capital.

The violence triggered closing of more than 60 garment factories in the area.

The agitating workers also blockaded the Dhaka-Tangail highway for over two hours and vandalized three vehicles, causing panic and a severe traffic jam.

At least 20 people were injured as police clubbed the mob of agitators to restore order in the area.

Meanwhile in Dhaka Export Processing Zone (DEPZ), two garment factories -- Softex Sweater Factory and Feather Light -- were shut down for various other reasons. Softex was closed due to labour unrest while Feather Light for insufficient work order, said sources.

In a late development, angry workers set fire to a factory of Meem Garments in Gazipur around 8:30pm damaging a huge quantity of fabrics and yarns.

Five units of fire fighters from Tongi and Gazipur rushed to the spot and put out the blaze around 11:00pm. -The Daily Star, August 11, 2008.

Registration With EC

Three major political parties -- Awami League (AL), BNP and Jatiya Party --- must amend their constitutions severing ties with at least 17 of their auxiliary organisations in order to be registered with the Election Commission (EC), according to the planned new electoral law.

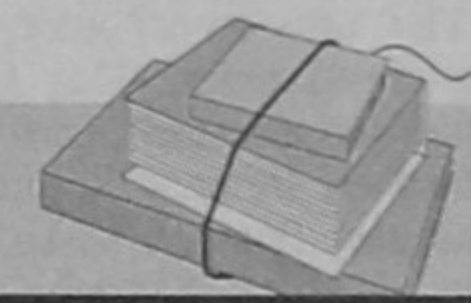
The parties will also have to scrap from their constitutions the provision that allows them to have overseas chapters.

A new provision in the electoral law will make it mandatory for political parties to be registered with the EC for becoming eligible to contest in the parliamentary poll.

The council of advisers to the caretaker government on Wednesday approved a number of proposed amendments to the Representation of People's Order (RPO) 1972.

But successful implementation of the proposed laws remains uncertain as major political parties have been vehemently opposing the restriction on having auxiliary organisations of students and professionals. -The Daily Star, August 10, 2008.

LAW lexicon



Immigrants - Persons who come into a foreign country or region to live.

Immigration - The entry of foreign persons into a country to live permanently.

Immigration and Naturalization Service (INS) - A federal agency which regulates immigration and naturalization of aliens.

Immunity - Grant by the court, which assures someone will not face prosecution in return for providing criminal evidence.

Impanel - To seat a jury. When voir dire is finished and both sides have exercised their challenges, the jury is impanelled. The jurors are sworn in and the trial is ready to proceed.

Impeachment - A criminal proceeding against a public official.

Impeachment of a witness - An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.

Implied contract - A contract not created or evidenced by the explicit agreement of the parties but one inferred by law; as the use of electric power in your home implies a contract with the light company.

In loco parentis - "In the place of the parent"; refers to actions of a custodian, guardian or other person acting in the parent's place.

Inadmissible - That which, under the rules of evidence, cannot be admitted or received as evidence.

Incapacity - Lack of legal ability to act; disability, incompetence; lack of adequate power.

Incarceration - Imprisonment in a jail or penitentiary.

Incompetent - One who lacks ability, legal qualification, or fitness to manage his own affairs.

Independent executor - A special kind of executor, permitted by the laws of certain states, who performs the duties of an executor without intervention by the court.

Indeterminate sentence - A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.

Source: Jurist International.

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