



LEGAL education

Revisiting legal education in Bangladesh

S. M. MASUM BILLAH

Exordium

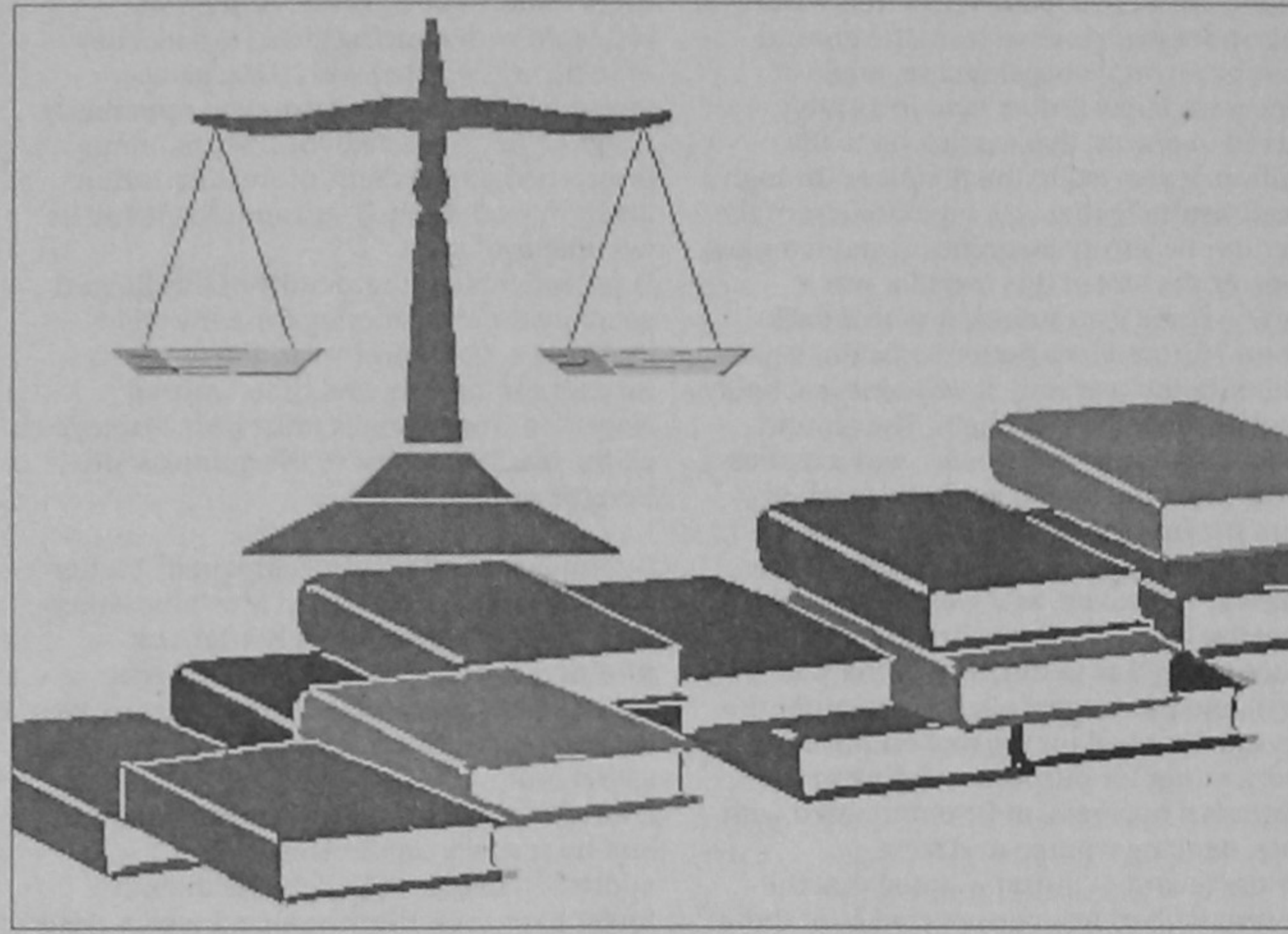
My good friend Rizwan from Australia has pointed out some lacunas of our contemporary legal education and forwarded some possible solutions (Legal Education: Some Observations of a Young academic, the Daily Star Law Page: 16 August 2008). Rizwan hopes that would 'stimulate' a debate on the point. Being stimulated I desire to focus on some few other issues inseparably related with legal education. I substantially concur with Rizwan's contentions but subtly differ on priorities of concentration as advocated by him. Stressing the necessity on more financial investment in this sector I am trying to raise some aspects of legal education in this write up.

Legal Information & Research

Rizwan has rightly said that establishing own databases for the universities of Bangladesh require huge resources. I don't know what the universities are thinking on this point. But for effective law education easy access to legal information is the basic prerequisite of the day. In this connection, the government has a predominant role to play. Not only all statutes but also leading judicial decisions of the apex court should be made available online at the government's initiative. However, the human rights NGOs and big law firms should come forward for materializing this purpose. And for the time being, the universities should take initiatives to publish authentic law journals and make it accessible by putting it online. Our law students in most cases depend upon some Indian books for passing out their examinations. Unless and until a culture of in-depth legal research of case laws and statutory laws is evolved we would not be able to establish our native jurisprudence. That is possible only when the law information is easily available.

Socially responsive legal education

Aim of legal education should be 'ethical justice education' geared to the empowerment of the mass people of Bangladesh. To that effect the



legal curricula should contain and address the issues of poverty, injustice, governance, social factors, economy, culture et cetera to equip with the needs of the students. For that, the syllabus is to be diverted to a socially responsive legal education. Legal education in Bangladesh, as urged by Dr. Mizan, must be directed to justice education. "Justice education", is a concept which emphasizes on legal ethics and social responsibility of the legal profession (Review of Legal Education in Bangladesh, Law Commission Final Report: 2006). A simple and stereotype legal education system which takes into account merely mechanics of law is not desirable. There should be a scholastic and professional juxtaposition in reflecting the true content of legal education.

Law in the book and law in reality

Legal education in Bangladesh should be taken

out of the classroom and brought to the community itself. It is absurd to think that a student should get himself admitted into law course and finish his education within the corridors of the universities without coming into contact with the mass people. It has to be a community-focused education where the students must be given the practical experiences regarding how people feel in the society? What is the perception of law in the society? How general people look at law? How the common folks look at justice? What are their legal grievances, pathos and bathos, fobs and sorrows? To change the whole inbuilt mechanism the law graduates, the future Judges, lawyers, professionals, advisers need to interact with the community people more closely. So, legal education should be brought to community, so that it becomes an open door legal education, of course without prejudicing in-house lectures & trainings.

Theory-practice dichotomy

The cultural and social value of legal study is painfully absent in our legal education. We often use to say law schools in Bangladesh put too much importance on theoretical aspects of legal profession. On the one hand the proposition is true, but it is equally true that our students lack convincing knowledge on legal philosophy, legal history and schools of jurisprudence in particular. How many legal thoughts have been developed by our theory centric legal study so far? Theory should be translated into practice. In many cases, 'students pass out, qualified as law graduates and practitioners who may never have heard of Bentham or Pound' (Kulshreshtha, VD, Landmarks in Indian Legal & Constitutional History: 1995). The clear vision of law schools, division of degrees according to the aim of the graduates can solve this riddle.

Language question

It is an ignominy that we still suffer from indecision as to the medium of law teaching in Bangladesh. Many people argue that English should be the medium of instruction in legal education. The candid reason behind this is that the upper echelon of the profession is well tuned to English. But question is that should it be made compulsory in legal curricula? Public Universities have made it optional while private universities have made it compulsory to write in English. But I am afraid, the flexibility of admission quality in private universities has opened a plethora of uncertainty in grasping the legal knowledge by the students having sheer weakness in English. Consequently, the private university students in most cases struggle to learn English very well that result in dismal failure in exams. In the meantime they use to forget the art of Bangla writing. Needless to say we have failed to develop a very accessible Bangla legal literature either in terms of books or of research articles. Development of legal education cannot be addressed without unfolding this paradox. To my understanding, studying law is much more a concern of language (interpretative horizons) than a question of law. A lawyer to be a good

craftsman must be endowed with effective vehicles like language, logic and concept.

Role of the Bar Council

In Bangladesh, the Bar Council is entrusted with the responsibility to look after the standard of legal education. But there is no visible role of it other than organizing a stereotype Bar Vocational Course burdened with some outdated materials. Legal education Committee of the Bar Council should be made more resourceful by assimilating people having recognized competence and contribution to the field of legal education. More importantly, a National Body of Legal Education, say for example, like that of the Indian Law Institute (ILI) of India, is necessary. The Bar Council can work together with the Law Commission to form such a Body in imparting and ensuring practicable facets of legal research and education.

Law teaching

Students are not rare who are often frustrated with the state of dismal law teaching in classrooms. They often lament that our law teaching lacks visionary aspects and qualities of leadership. The standard of law teaching currently should be viewed from cumulative aspects of private and public universities. The private university law teaching largely depends upon the youngsters of legal academia and often been supplemented by expertise from public universities and bars or benches. The recent judicial reform has enticed a good number of young talents to the judiciary. So, the private universities are in acute shortage of their teaching resources. As a consequence, career teachers may not be found in sufficient numbers to mitigate the increasing demand of legal education. It appears that teachers training, scholarships, legal research back up have been the far cry of the day.

Appreciation of Human Rights

The all-embracing evolution of human rights jurisprudence has unfolded new dimensions of human rights concept. Legal education in Bangladesh cannot remain isolated from these trends. So, it is well felt that there should be a

reflection of human rights appreciation in our course designation (Law Commission: 2006). Let me provide an example. In land law, we study the procedure of making a khatiyon, but we hardly study how complexities in khatiyon making procedure messes the right to property of the masses. We never study, for example, the women's access to land in Bangladesh in our land law curricula. We study principles of granting temporary injunction or appointing receiver in civil procedure code, but we perhaps do not analyze how much temporary injunction or receivership is an effective remedy in the civil justice delivery system in this country. Like examples can be made in some other subjects seemingly not having any relationship with human rights. So, human rights inculcation in legal study is the urge of the day.

In lieu of conclusion

In 2006, Law Commission of Bangladesh produced a comprehensive report on legal education under the able supervision of Professor Shah Alam. About twenty-point scientific and practicable recommendations have been suggested in the report. The outcome of the report is yet to be implemented. We urge for its early implementation. The diverse rivulets and anomalies in legal education system should be reconciled as soon as possible. To that effect legal education is to be made a development agenda. Before ending let me quote from the Law Commission's Report, "It is clear life's demand on law is diverse and all-embracing.... Law graduates need to be equipped with intellect, knowledge, skills and values which they would be required to apply not only in the formal dispensation of justice through courts, but in maintaining justice and rule of law in the broader field of life by observing, interpreting and applying law. Legal education, therefore, would aim to produce enlightened educated citizens, specialising in law and understanding the problems and needs of life through law."

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FOR YOUR information

PROCEDURAL JUSTICE IN THE SUPREME COURT

A concern for new lawyers

BARRISTER MD. ABDUL HALIM

SUPPOSE, after the hearing of your writ petition, you've got rule and stay or status quo. Now you need to send notice of this stay or rule to all respondents through courts and if you cannot send this notice in appropriate time against a government body, which is normally made a party to a writ petition, the fruits of your writ hearing (the stay or status quo or rule), in other words, the fruits of substantive justice becomes completely meaningless as the respondents might, in the meantime do whatever they want to do against

you, may serve this within two or three days, even on the same day. How can you do that? It all depends on how much you are ready to spend on the Bench Officers and Section people who are there to prepare and make ready all the court orders and they are paid by the government.

Getting the order typed and signed

Section people cannot be activated to make copies ready for service until and unless the Bench Officers get the order typed and signed by the Judges. Thus the first thing you need to do is to manage or per-

may leave the expectation of getting the fruits of stay or status quo; alternatively you will have to end up with empty pocket if you want to give justice to your client. Bench Officers are not the end of the initial game. Once the order is typed, it will be taken to the chamber of the judge by Ardali (personal attendant of judges) and if you do not manage or persuade that Ardali, it is less likely that your order will be placed before the judges. Once the order is signed by the Judges, it is again sent back to the Bench Officer for sending to the respective section. It is again Ardali who will take the file to the section.

Respondents (your clerk will get this typed on his own, as shown below);

(iii) A form of chalan to be filed up with appropriate fees for service (your clerk will collect this from the Section);

(iv) Photocopies of the Writ Petition (as many as the number of Respondents); and

(v) A form to apply for a certified copy of the court order (your clerk will collect this from the 'Form Section'; this is supplied free of cost but the people in the Section will not allow your clerk to get it without one or two taka).

Steps to be followed:

(i) Within 24 hours of the order, your clerk will have to complete the above first four steps. He submits talabana by affixing stamp (Tk. 4.00) on the application of talabana. To submit fees for service of notice to the respondents you need to file an application and secondly, you need to fill up a chalan with appropriate fees which will be received by the Cashier of the Supreme Court. While you submit talabana and chalan you must give copies (as many as the number of respondents) of Writ Petition too.

(ii) Once you have done the above, the Account Section will receive chalan and you will be given a receipt thereof from the Treasury of the High Court Division.

(iii) Once you get the receipt you go to the respective Section (Writ Section) where they will record the same against the number of the Writ Petition in the registration book. They will arrange sending the court order for service through the court messenger (here you or your clerk's job is completed as far as service of notice is concerned).

However, this is not the end of the story; actually the story of sordid picture will start from here again. There are a number of people who would be involved in preparing and processing certified copy and serving process and the order would be as follows:

Steps to be followed after getting the order ready:
(i) Receipt: The UD (Upper Division Clerk) will receive the order (from the Ardali who has

taken the original copy of the order signed by both the judges along with the first and second copy of the Writ petition).

(ii) Distribution: The UD will distribute the work of typing to a typist clerk.

(iii) Typing: Typing will be done by the clerk assigned for the same; after typing he will also sign at the bottom of the copy.

(iv) Comparing: Comparing will be done by the compare clerk who will also sign at the bottom after so compared.

(v) Copy ready: That a copy is ready is declared and signed by the UD (this signature will appear not on the copy of the typed order but on the application for certified copy).

(vi) Signature: There must be signature on the back of the copy by the Superintendent who is a second class gazetted officer.

(vii) Certification: Signature and seal by the Assistant Registrar, who is a Commissioner of Affidavit; he will certify the copy; after all these the copy of the order is duly certified.

(viii) Seal of the Supreme Court; this is the round seal given on the back of every page of the copy.
(ix) Delivery or service to the respondents through court messengers or handing over the certified copy to you or your clerk (remember the application will not be given to you; only the certified copy of the order will be given to you).

The above steps may be a matter of one month and again, by managing or persuading the Section people you may get all then and there. You will realise very soon that in the court corridor justice is for those who can pay a lot. The more you will spend, the quicker will be the Section people for your work. When you enter into the section for anything, you will see how their eyes are blinking for money or illegal gratification. This is an attitude which is ingrained in the culture of our court corridor everywhere in the country resulting in the deep morass into which our judicial system has sunk.

The writer is practicing in the Supreme Court.

RIGHTS column

Spain: Give migrant children legal aid

SPAIN'S accelerating effort to send back unaccompanied children who enter the country illegally might subject them to danger, ill-treatment and detention, Human Rights Watch said in a report released on October 17, 2008. The government needs to halt repatriations until it has a process to ensure their well-being, and, as an immediate step, give them the same right to an independent lawyer that adult migrants have under Spanish law.

The 22-page report, "Returns at Any Cost: Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards," says that in Andalusia, the southern region that is a common entry point for migrants, authorities have said they intend to send up to 1,000 unaccompanied children in their custody to Morocco, claiming that safeguards are in place. But officials could not explain how they determined it was in a child's best interest to return, as required by law. They also said that the Moroccan government's agreement to take a child back was in itself a sufficient guarantee of the child's well-being after return.

"Spain is taking a chance with these children's safety," said Simone Troller, children's rights researcher in Europe for Human Rights Watch. "Why deny these especially vulnerable children more safeguards, including the same right to an independent lawyer that adult migrants have?"

On October 20, 2008, Spain is scheduled to appear before the United Nations Human Rights Committee, which will review the government's implementation of the International Covenant on Civil and Political Rights (ICCPR). In its official report to the committee, however, the Spanish government does not address its efforts to repatriate children who enter the country without parents or caregivers, though research by Human Rights Watch and other organizations has shown that it routinely violated their rights under the ICCPR when returning them.

In repatriation decisions, government officials fail to analyse or even collect information about what could happen to these children in their home countries, Human Rights Watch researchers found. In many cases children are not allowed to be heard as officials



consider whether to send them back. Spanish courts have stopped at least two dozen repatriations in the past two years because the process violated the country's own laws.

Although Spain provides adults facing deportation with lawyers, it denies legal assistance to children. Instead, they are represented by the same body that often proposes to deport them. The government has tried to block pro bono lawyers who have taken up a minority of children's cases on appeal.

"More than any other migrants, children who come to Spain alone need lawyers to protect their interests," Troller said. "Spain should provide children with legal aid, just like it does adults."
Most of the children who arrive unaccompanied come from Morocco. Spain's strategy to speed up the return of unaccompanied children to Morocco and Senegal, another country from which hundreds of unaccompanied children arrived to the Canary Islands, has led it to conclude bilateral readmission agreements followed by high-level meetings with both countries. It has also financed the construction of residential reception facilities for children in Morocco.

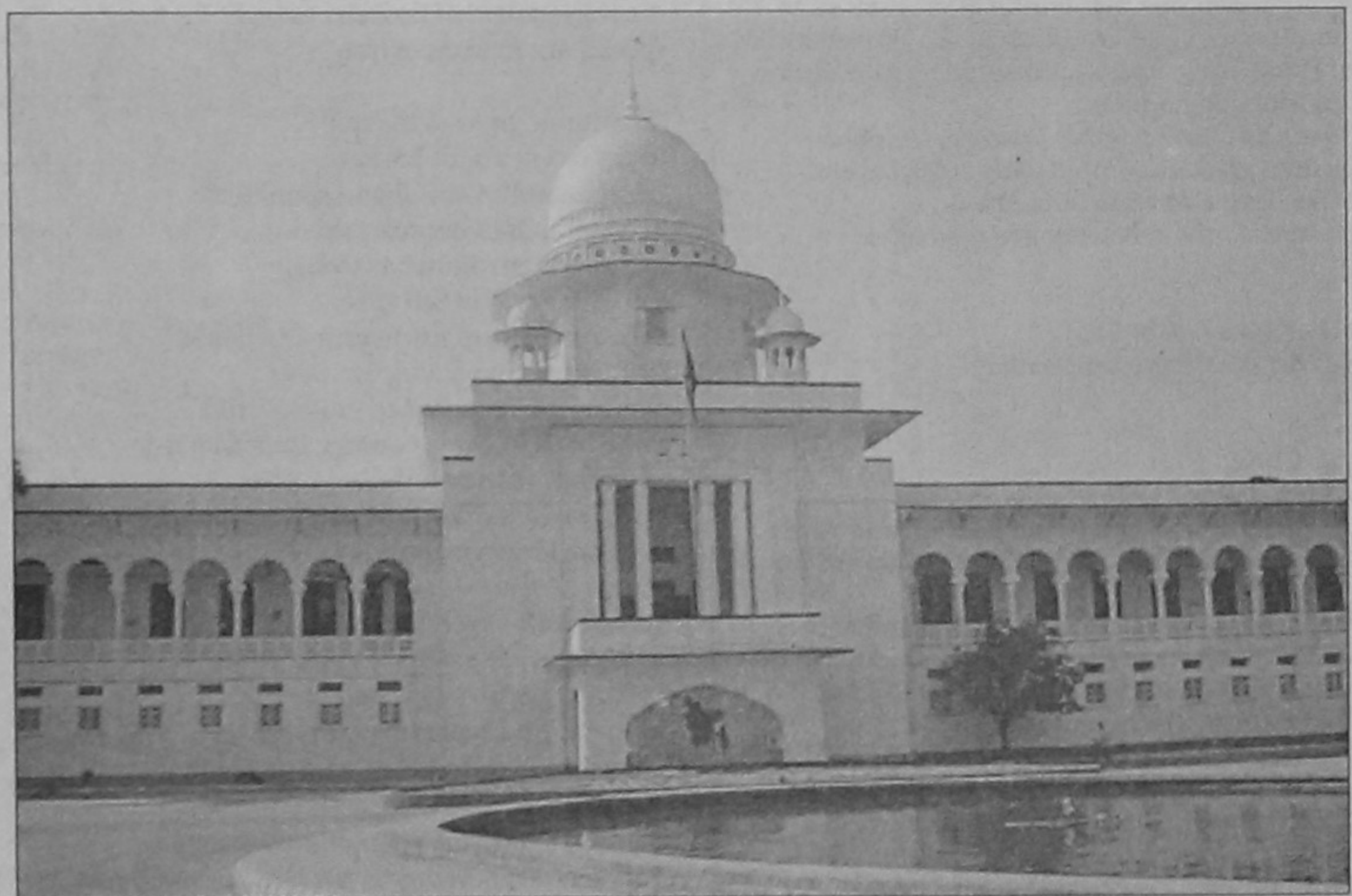
But Human Rights Watch and other international and Spanish nongovernmental organisations have repeatedly documented

Spanish and Moroccan abuses of unaccompanied children during and following returns to Morocco. Instead of being reunited with their families, Moroccan security officials turned children out onto the streets and left them to fend for themselves.

"Spain must investigate what children will face upon return before deciding whether to send the child back," Troller said. Human Rights Watch urged Spain to:

- Provide all unaccompanied children with competent independent legal assistance throughout repatriation proceedings;
- Adopt regulations that clearly state the government's obligation to carry out an individualized best interest determination and a risk assessment before deciding to repatriate a child, as well as specific procedures to be followed and standards to be met; and,
- Put in place procedures for regular public reporting about how the readmission agreements for unaccompanied children with Morocco and Senegal are being carried out, and allow for independent monitoring of these agreements.

Source: Human Rights Watch.



the petitioner. In other words, by pronouncing judgment, order, rule, status quo or direction a Bench of the Supreme Court just completes the task of substantive justice but realisation of this substantive justice remains in the hands of the Section people. There is no system of personal service in Bangladesh with regard to court matters. However, service through court will normally take time, like 15 days to a month. Again, if you manage or persuade Section peo-

suaude those Bench Officers so that they get the order typed quickly for the Section people to speed up process. You will see that most of the lawyers who get rule and/or stay on a motion day becomes very tensed and agitated to get their order typed by the Bench Officers and in that case they do not bother to lead competitive race of giving tips more and more to Bench Officers. In such a situation if you work for a petitioner who has paid you a little amount of money, you

Getting a certified copy
You need to follow the following four steps for the purpose of serving notice to the respondents and you need to follow the fifth step for the purpose of getting a certified copy of the order:

(i) A talabana form to be affixed with proper stamps (your clerk will get this typed on his own, as shown below);

(ii) An application to submit fee for service of notice to the