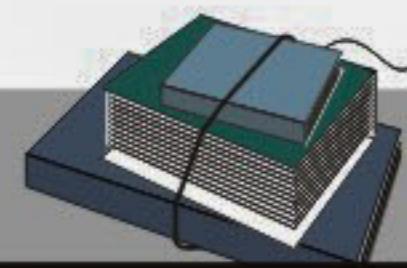




REVIEWING the views



Ethics in legal education

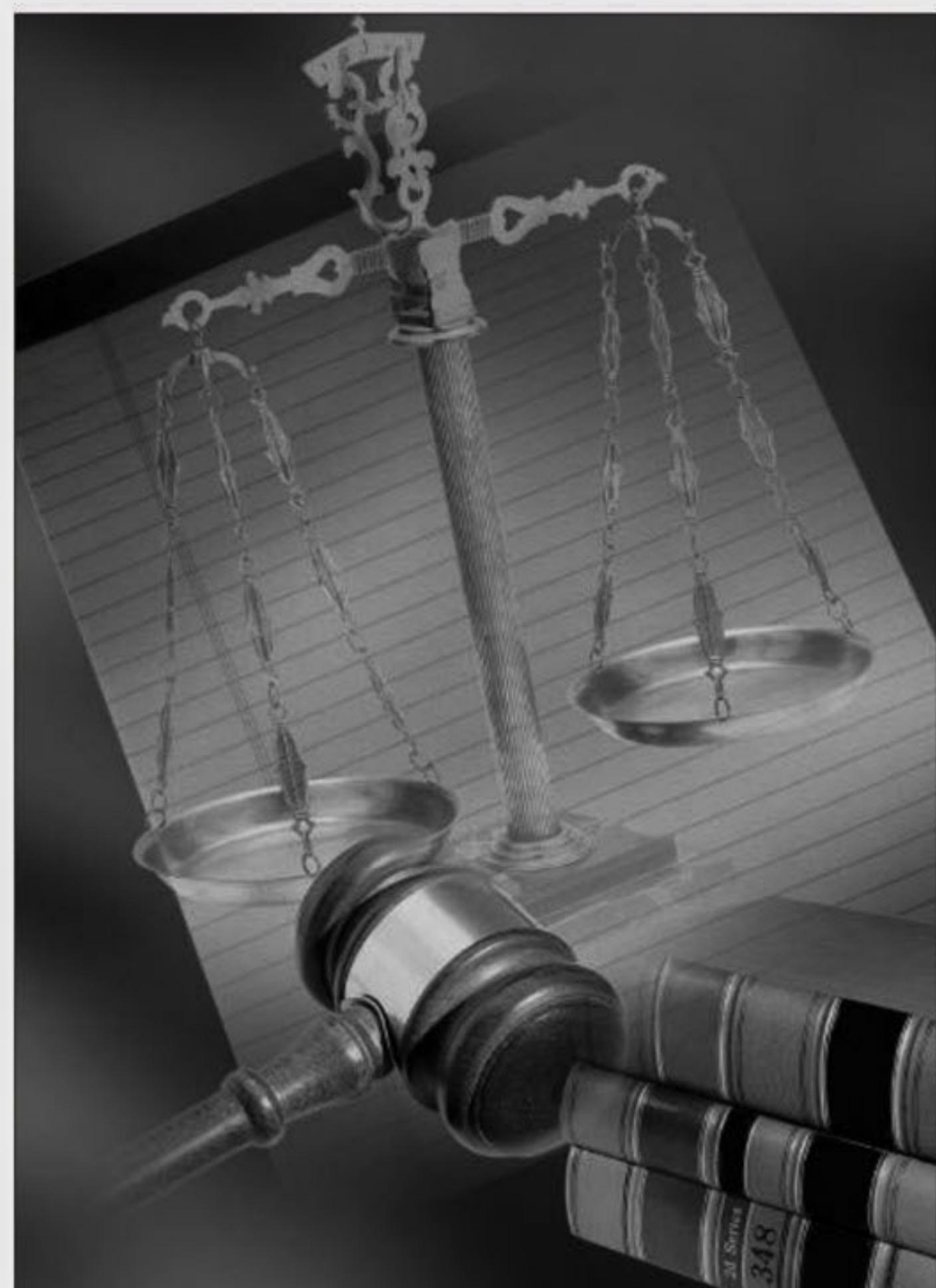
SHAKHAWAT HOSSAIN SHAMIM

A lawyer is a liar" is an expression often seriously or sarcastically resorted by the people at large. As if 'lawyer' and 'liar' both words flow side by side. Does it hurt a lawyer? Lawyers are said to be the driving force of social change or social engineer, but regrettably lawyers' image in folks' parlance, even in the mind of clients, is very disdainful. Matter to be worried: this perception is getting from bad to worse day-by-day. Admittedly, lawyers contribute largely in this venture.

Why this dismal perception about lawyering? Is it for lack of ethics? To a greater extent the answer is in the positive. It is fair to say that "ethics" learning does not generally have an impressive place in our legal education. In our country, law schools' commitment to ethics learning can best be described as irregular. It is obvious that some law schools take their responsibilities in this area far more seriously than others, but overall there is no sustained or coherent emphasis on students' learning of ethics. The immediate reason may not be that difficult to find. As a matter of fact, the priestly requirements on ethics seem to be underestimated.

Experiences we come across in Bangladesh frequently, many lawyers apparently choose to represent the interests of unpopular clients rather than those thought to be more worthy recipients of legal services. They represent them in ways thought contrary to community interests. As to which clients are regarded as unpopular, and by whom, this will vary, but reservations about lawyers' roles in advancing unpopular causes seem to subsist.

We need to investigate the matter from the root. We need to go the state of ethical justice education in Bangladesh. As rightly described by Michael Robertson, a Professor of Griffith Law School, "questions for lawyers about which clients to represent, and in what manner to represent them, go right to the



heart of what we loosely refer to as legal ethics". Making decisions about the "who" and the "how" inexorably involve ethical considerations. Some of these decisions may well be constrained by the rules of legal professional responsibilities. These rules are commonly described by reference to well known duties such as those requiring that the practitioner's highest responsibilities is to the court, protecting the integrity of evidence, avoiding conflict of interest, and maintaining privilege, to name but a few. But much ethical decision-making in the legal professional role, it can be argued, is not constrained by clear, comprehensive and unambiguous rules, which means that there is far more to

being an ethical lawyer than being able to identify and apply the rules of professional responsibility (A. Hutchinson: 1999).

The main argument is simply that ethical lawyering must become a far greater part of the venture of legal education than is presently the case. If we need to translate it into a reality, we need to set our student learning objectives in "ethics" much more clearly and ambitiously than we have hitherto been willing to do.

In line with the theme of this article, it is relevant to make few observations about lawyer and social change. Whether "good lawyering" necessarily contributes to, or results in, social change is difficult to determine. While there

is some empirical evidence to suggest that zealous advocacy sometimes brings about welcomed social changes in some cases, there is probably also ample evidence to show that the opposite is often true. An ethical lawyer may contribute to solid and lasting defences of the stability of the society. We need therefore acknowledge that lawyers might just as easily frustrate social change if it is in their clients' interests to do so. Such as the price we pay for partisan, zealous advocacy, with its attendant absolution from moral responsibility. And even where lawyers' work does bring about change, it is surely not necessarily true that is inevitably the result of good lawyering. Might not bad lawyers also achieve good social change outcomes?

Some of legal experts encouraged to learn that discretion is an inevitable and regular feature of the practitioner's role, and learn to develop a deeper appreciation of the practitioner's responsibility to make difficult ethical choices in a variety of situations. Students must learn to develop a capacity to exercise careful judgment when called upon to do so, and that reflective deliberation and justification for choices is itself a key professional attribute. These practice may open the door to a more sustained exploration of emphasize ethics as some kind of technical, market place competency that can bought and learned alongside other skills like legal research, analysis, advocacy and interviewing.

Much of this discretionary activity can be described as the art or practice of making sensible choices or simply the art of good judgment. Weighing competing considerations in routine, mundane spaces, and less frequently in not very common place situations and exercising judgment on all these matters, is inevitably part of the life of a practitioner. These practice may open the door to a more sustained exploration of emphasize ethics as some kind of technical, market place competency that can bought and learned alongside other skills like legal research, analysis, advocacy and interviewing.

We might conclude, therefore, that behaving "ethically" in the sense of being a partisan and effective representative who is not expected to judge the client's cause-may have very little, or nothing, to do with being an advocate for and agent of social change. But it surely has everything to do with being a good lawyer.

tinently faced by legal practitioner, and therefore it does not really warrant more than limited and frequently discrete study in the curriculum. It goes without saying that subject learning objectives need to fit with the curriculum, and teaching methods and assessment need to be in alignment with the learning comes designed in each subject.

As has recently been argued, legal education has tended to exhibit a casual indifference to the learning of the other disciplines. In the context of learning about ethics, it is important to recognize that inter-dilemmas are just as much part of other professions, which are also "forced to use moral reasoning and judgment to resolve ethical issue". To ignore valuable and relevant insights from other discipline that might assist in developing our understanding of ethical reasoning in the legal professional role amounts, it is argued, to a "disservice" to our students.

By the time they graduate, law students will have developed an understanding of the inevitable need for practitioners to exercise discretion in their professional roles, together with an understanding of the situational constraints that may have a bearing on ethical decision-making. At the same time they have to be able to recognize their consequent responsibility to exercise careful judgment in all situations calling for deliberation and choice, in the interests of their clients, the administration of justice, the community and themselves. This is what we may call community lawyering.

We might conclude, therefore, that behaving "ethically" in the sense of being a partisan and effective representative who is not expected to judge the client's cause-may have very little, or nothing, to do with being an advocate for and agent of social change. But it surely has everything to do with being a good lawyer.

The writer is Lecturer, Department of Law, BGC Trust University Bangladesh.



Rab men told to be people's friend

The High Court observed that the law enforcers should behave in such a manner so that people can treat them as their friend, and human and fundamental rights are not violated by their activities. An orientation course should be arranged to train up the law enforcers in order to make them aware of human and fundamental rights guaranteed in the constitution of the republic, it said. An HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Delwar Hossain made the observation when two Rapid Action Battalion officials appeared before it to explain allegations against them of their attempt to implicate a Satkhira businessman in a false arms-possession charge last month. - *The Daily Star*, June 10, 2010.

Cops start to guard rivers

The High Court ordered the officers-in-charge (OCs) of six police stations in the capital to submit to it every three months reports on their actions to stop dumping of waste into the Buriganga as per its earlier directive. The OCs appeared before an HC bench in connection with a contempt of court petition filed with it for their non-compliance with the previous directive. The bench comprised of Justice Md Mamta Uddin Ahmed and Justice Naima Haider. - *The Daily Star*, June 10, 2010.

Magistrate, SP, expert asked to appear in HC

The High Court ordered the chief judicial magistrate superintendent of police (SP) and another police official of Rangpur, and a forensic medicine expert to appear before it in connection with a report on violation of a woman. The HC also ordered the SP, and the officer-in-charge of Kawnia Police Station to produce the woman before it, and explain what action they took against alleged perpetrators of the crime. It directed the deputy commissioner of Rangpur to shift the victim, now in Rangpur central jail, to safe custody under a government or non-government organisation. - *The Daily Star*, June 9, 2010.

Full-fledged National HR Commission by this month

The government will constitute a full-fledged national human rights commission (NHRC) through appointing a new chairman and six members within this month, Law Minister Shafique Ahmed said. As per provision of the law concerned, the NHRC will be comprised of a chairman, one permanent member and five non-permanent members, the minister said. "I have already talked to the Speaker of Jatiya Sangsad, who is the chief of the NHRC selection committee, about appointment of its chairman and members." Shafique said this while talking to newsmen after a meeting with Swedish Ambassador Britt Hagstrom at his Secretariat office. The law minister said the NHRC's incumbent chairman Justice Amirul Kabir Chowdhury will go into retirement on June 20. - *The Daily Star*, June 9, 2010.

Jamaat accepts JS power of lawmaking

Bangladesh Jamaat-e-Islami has finally agreed to accept the parliament's plenary power to make laws by omitting a phrase from its charter that said people must not accept anyone except Allah as the maker of laws. It also agreed to include a provision in its charter to reserve 33 percent posts in all committees of the party for women, according to a letter it submitted to the Election Commission. A delegation of Jamaat leaders had a meeting with the EC and they placed the letter explaining its stance on some provisions of the party charter the commission earlier asked to amend. The commission had asked for the Jamaat constitution to be amended so that the party conforms to the criteria for registration with the EC. - *The Daily Star*, June 8, 2010.

Locals join crackdown on chemical outlets

Hundreds of locals took to the street and chanted slogans as a mobile court raided warehouses and factories of flammable materials in Nimgoli after the deadly inferno on June 3. The local people helped the mobile court of the Fire Service and Civil Defence tipping off location of warehouses and factories with poor fire safety equipment and names of the owners. "Actually we started this drive before the Nimgoli tragedy, which sped up our activities. Now it will continue till all chemicals godowns and factories are shifted elsewhere," said Abdur Rashid, deputy director of Fire Service department. - *The Daily Star*, June 8, 2010.

Govt gets 4 weeks to explain selection

The High Court directed the government to inform it within four weeks the process or system followed for selection of persons for appointment as judges both in the Appellate and High Court divisions of the Supreme Court since independence of the country. It issued a rule asking the government also to explain within the same period why specific guidelines should not be framed for the process of selection for such appointments to bring transparency and competitiveness in it. Moreover, the government has to explain why the guidelines should not be published in the gazette notification, the HC rule said. The law secretary was made respondent to the rule. - *The Daily Star*, June 7, 2010.

Check all transformers, report within 3 weeks

The High Court directed the authorities of Dhaka Electric Supply Company (Desco) and Dhaka Power Distribution Company (DPDC) to examine the city's all transformers by an expert committee, and submit a report to it within three weeks. An HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Delwar Hossain came up with the order following a writ petition filed by the Human Rights and Peace for Bangladesh (HRPB), an NGO. The writ petition has been filed following some media reports, which mentioned that the Nimgoli fire originated from the transformer blast. The HC also asked the government within three weeks to explain its failure in this regard. - *The Daily Star*, June 7, 2010.

Follow code of conduct

Chief Election Commissioner (CEC) ATM Shamsul Huda urged the candidates to carry on electioneering maintaining the electoral code of conduct to hold a free and fair election. Huda made the remarks while addressing a view exchange meeting with candidates for the Chittagong City Corporation polls at the Muslim Institute auditorium. All the mayoral candidates including ABM Mohiuddin Chowdhury, M Manjur Alam, Solaiman Alam Sheth and ward councillor candidates participated the meeting. - *The Daily Star*, June 5, 2010.

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HUMAN RIGHTS advocacy

Women's access to land in Bangladesh

SHIMONTI AHMED

LAND is the most beautiful thing in this world"---why? "so that you can walk over it, idiot". Right to property is essentially related with the concept of land. The issue of land rights is a complex one. It is the common fact in Bangladesh that millions of farmers don't have any secure right to land. Lack of secure land rights hinders the overall production process of the country. The landless farmers do not pay attention to their farming method, they care a little whether it is sustainable or not. The land less farmers i.e. those who are merely participating in the production process and not the owner of land knows that they will not be able to pass the land to their children and for that working to protect the land for future generations makes little sense for them. These are admitted fact and the Government, NGOs; International organizations are working to mitigate the problem. Many reform processes are taken in this regard. But in this entire process the fact, which remains unsettled, is the access of the women to land. The participation of woman in the production of food is a common fact.

A study of FAO (Food and Agriculture Organization) shows that women produce about half of the world's food but they own only about two percent of all land. The situation is even worse in Bangladesh. In Bangladesh women are working in land, they are contributing in the process of food security but without any appreciation. Their labour in land is not recognized. Their participation in national economy is not at all admitted as if they are working in disguise. In order to secure the real empowerment of women, women must be given greater land rights. The real development of the country would be a far cry leaving this issue behind. This write up attempts to



analyse the reasons of non-access to land by women in Bangladesh, its legal consequences.

Land plays an important factor in the formation of social and cultural identity. It is the main source of power defining in society. The term land includes agricultural land, forest land, pasture land, water bodies etc. Generally land rights means property rights and land registration is one of the mechanism for regulating land rights. Land can be obtained by ownership or tenure based arrangements or other forms of legal arrangements. Access to land denotes the ability to own and to use land and other natural resources. Women in Bangladesh play a vital role in ensuring food security. But women have low access to land. It is due to social norms, intra family arrangements and inheritance laws. Moreover access of women to land through ownership differs from religion to religion. In short it can be said that traditions and laws creates sometimes barrier for women to own property. There are a number of factors, which puts women in a disadvantageous situation to access land.

In our social structure for owning and enjoying land, connections with higher-ups in political and administrative sphere, organization in local groups etc are required. All of these factors are monopolized by men in Bangladesh. So it is contended that the reasons for low access of women to land is rooted in the culture and structure of society. In Bangladesh women are recognized for their reproductive role and cannot easily participate in public life. Lack of mobility, especially in rural areas forces women to depend on male for any entrepreneurial activities. Women are working in land, giving labour for better production but do not retain control over their crops as well as in land. Despite the growing role in agriculture, women fail to have flexible direct access to land.

In Bangladesh the Constitution

affirms gender equality, but state legislation and institutions frequently disregard women's rights. The important land laws of Bangladesh comprise State Acquisition and Tenancy Act, Non-agricultural Tenancy Act, Land Reform Ordinance etc. One of the purposes of distributing Khas land is to ensure the empowerment of women.

There are certain rules regarding how landless people can apply for Khas land. One of the rules require that with every application of having khas land three copies of the dual photos of the head of the family husband and wife should be submitted. Impliedly the provision says that a single woman or a widow cannot apply for khas land. In this connection we may take into consideration the Circular published by the Land Ministry of the Peoples Republic of Bangladesh being Sharok no: B H U : / M A : / S A - 8 / K H A J A BA/46/84/260 dated on 16 April, 1997. The Circular embodies the principles of distribution and settlement of agricultural land. In that Circular it is

mentioned that agricultural Khas land will be provided jointly in the name of husband and wife. Further it is said that while preparing the priority list of landless family a widow with an adult son will be given importance. All these provisions make it complicated for widows to apply for Khas land. Inheritance is one of the common ways of acquiring land or access to land. The role of women to achieve food security, poverty reduction is noteworthy. Still the fact remains that for non-access to land and for lack of ownership women are not financially independent. It is because of this reason women's status and bargaining power within the household and society is not up to the expectation.

The establishment of good governance is needed to reform land rights and distribution of land to women. When women have access and secure rights to land, they will be able to improve the lives of their families and themselves. As a whole it will strengthen the development process of the country.

In many rural areas of Bangladesh agriculture is feminised because of globalisation, which has encouraged young male persons to go out of the village and leave their ancient profession. But their land are not left, it is cultivated by the female family members. Despite farming load is increasing on women day by day, they do not have adequate access to land. The role of women to achieve food security, poverty reduction is noteworthy. Still the fact remains that for non-access to land and for lack of ownership women are not financially independent. It is because of this reason women's status and bargaining power within the household and society is not up to the expectation.

The establishment of good governance is needed to reform land rights and distribution of land to women. When women have access and secure rights to land, they will be able to improve the lives of their families and themselves. As a whole it will strengthen the development process of the country.

The writer is a legal researcher.