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RIGHTS COLLUM

TIB reports on private university: Rhetoric vs. reality

EMDADUL HAQUE

RECENTLY Transparency International Bangladesh (TIB) through a research study has poked and pried the corruption of private universities along with their present state. The study revealed the level of corruption and involvement of stakeholders in white collar criminality. Aftermath of reaction of those involved or not is as usual denial. Few weeks or at best months later this story will go into oblivion and new event will be at the forefront of debate and discussion.

Undeniably, TIB report also talks about the contributions of the private universities apart from corruption and the 16-point recommendation for healing the discrepancies. Is it true that ill news runs apace but good news often lacks wider coverage? As part of sample for research TIB resorted to 22 private universities out of 79. The TIB, a leading national NGO, being pioneer in anti-corruption research in the country conducted the study which is first of its kinds as to this privatised education sector.

According to study around 62% university students are now studying at private universities while 38% are in the public universities implying the exponential growth of privatisation of education after its inception in 1992. The report referring the UGC report in 2012 disclosed that the admission of foreign students into private universities was 1642 whereas in public universities was only 525. Foreign students are getting attracted to private universities because of credentials of universities as well as absence of some hassles like session jam, violent student politics and English language for being the medium of instruction. Modern teaching aids are also well utilized in some leading private universities.

Of course, out of 79 private universities only 20-30 private universities are striving to maintain standard of higher education. They are in stiff competition to each other in pursuit of academic excellence. Only five to ten out of 20-30 are doing better and are competing with leading public universities. Truth to be told most private universities are dependent on adjunct faculties coming from public university teachers coupled with other government, non-government and technical experts, although the Private University Act (PUA), 2010 delimits the number of adjunct faculties to one third of full time teachers with few exceptions.

Supervision and controlling of such institutions for tertiary education is not beyond question. There are only 13 personnel and one member of the University Grants Commission (UGC), for inspection and supervision of these educational institutions. Manpower in the Ministry of Education (MoE) is only seven for approval, audit, supervision and taking actions under the PUA, 2010. The main source of income of a private university is students paid tuition fees and profit of Fixed Deposit Receipt (FDR) in Banks. Allegedly some varsities are keeping their research fund in bank for FDR but showing the UGC about the allocation for research but taking credit. Maternity leave in most private universities is three to four months raising question. The PUA, 2010 has made six percent scholarship mandatory to the poor and meritorious students including three percent for the off springs of freedom fighters. Is this percentage adequate to the UGC and MoE?

The Daily Star published a special supplement on the private universities on May 29, 2014 with the write ups of leading educationists engaged in some institutions as top level academics and administrators. In these write ups prospects and problems are raised to make such universities better functional in terms of knowledge, innovation and research. Dr. Hafiz G. Siddiqi, Professor Emeritus and former Vice Chancellor (VC) of North South University depicted the prospects and challenges especially of accreditation body and quality. He focused on immediate necessity of accreditation council for quality assurance as per PUA, 2010 questioning the practice of convocation hat as accreditation. Professor Omar Rahman, VC of Independent University Bangladesh (IUB) pointed out four things like highest quality students, faculty, infrastructure and curriculum for its astounding success citing IUB as a dream factory.

Karl Kraus, an Australian writer and journalist once branded corruption worse than prostitution and his rationale was prostitution might endanger the morals of an individual but corruption invariably might endanger the morals of the entire country.

As corruption is omnipresent almost in all spheres in the country so how can the Minister gets over sure that the TIB report is baseless. Protesting, mudslinging and blaming opponents and others in case of conflict of interest is common our nature rather than adapting and mitigating constructive criticism. Even, if our government is asked who is responsible for increase of population in the country then without a doubt the auto reply will be the opposition party. The prevailing blame game and conspiracy theory of politicians are hindering the growth of transparency and accountability in all sectors. So, politicians are considered as the weeds of the galaxy with little exceptions.

Previously, TIB study showed that Government affiliated bodies engaged in corruption in the name of service of the Republic. In reply, Government blamed TIB and other NGOs for doing business with poverty, corruption, environment etc to satisfy foreign donours. Without a doubt many private universities are doing business with education treating education as commodity. People who live in the age of excellence for almost everything including corruption are so witty and slanderous. Power always corrupts and absolute power corrupts absolutely.

Has the education Minister forgotten that the country will not only be destroyed by those who do the evils but also by those who watch them without doing anything? Abdul Kalam, the former President of India entails the formula of a corruption free country transforming a nation of beautiful minds. He felt the three key societal members namely the father, the mother and the teacher who can make a difference. It is also true that if a teacher makes a mistake then his students will be victims but if a journalist makes a mistake the entire nation will be the victims.

The TIB report is not absolute in term of denial and acceptance. Even remour has the element of some truth in it. So, TIB research study to some extent has authenticity. Sometimes doubt is better than over confidence as doubt leads to enquiry and enquiry often leads to innovation. Now, people expect that the UGC, MoE and authorities of the private universities will work together to transform failures into success in line with the PUA, 2010, other than blaming each other. To a great extent concerned university authorities may consider the report as diagnosis report for healing of their disease of corruption and other loopholes.

THE WRITER IS SENIOR LECTURER IN LAW AT SOUTHEAST UNIVERSITY, DHAKA.

FOR LAW STUDENTS

Using 'law review'

EMRAAN AZAD

IN the context of law schools in Bangladesh, the idea of introducing a 'law review' institutionally is extremely imperative and challenging one while talking on the development of legal education. At this backdrop, curious minds reasonably wish to know what a law review actually is and what it particularly intends to do. To entertain the question what a law review is, popularly it is described as an exclusively student-managed and edited law journal that publishes articles written by law professors, judges, and other legal professionals.

In the West, most of the law schools have a mainstream law journal that features articles from a wide variety of legal issues and often has 'law review' named after the respective law school, for example, Harvard Law Review, Cornell Law Review etc.

Involving with the law review activity is a continuous process of skill development and knowledge sharing, which starts up from the early year of study in law school. To be selected as a student editor, the editing exercise is often required. As a part of work responsibility, student editors oversee the running of the law review, from selecting the articles to checking citation and footnotes. In the United States, 'The Bluebook' is the most widely used legal citation system, while in Europe and some commonwealth countries, 'OSCOLA' is a popular numeric referencing style published by the Oxford Standard for Citation of Legal Authorities. The art of editing articles for law review largely depends on learning and practicing the system of citation and reference. On that note, any law journal in Bangladesh does not have a uniform system of citation.

The most pertinent reason that a law student should try to get on law review is that in the West, employers, particularly large law firms and judges selecting law clerks, prefer to interview students who have participated in law review, especially as an editor. Obviously, in Bangladesh the picture is quite different. Here the practice is yet to be introduced and developed. Students on law review have to spend many hours doing precisely the kind of in-depth, meticulous legal research and writing that is required of solicitors/attorneys and law clerks.

However, law review can be useful even if one does not plan on working in a big firm or clerking, particularly if he or she plans to pursue an academic legal career. Law review can give a great start on the road to becoming a law professor, not only because of the editing experience, but also through the opportunity of having one's own note or comment published.

To conclude, participating in law review facilitates a law student with a healthy support system and professional networking strength since all the team members go through the same things at the same time. Moreover, law review offers immense opportunity to read and edit the submitted articles and get to know the citation system in and out. Serving on law review requires an enormous time commitment, but for most members, the benefits greatly outweigh any negative aspects.

THE WRITER IS A LLM STUDENT AT THE UNIVERSITY OF DHAKA.

DAILY LIFE BLUES

-PHOTOGRAPH & CONCEPT BY NABIL AHSAN

OPEN man holes are a common sight for us. While mostly, it is a public nuisance, at times it even causes accident and serious bodily harm. In this case (the picture) the concrete slab that probably cracked after a heavy loaded truck went over it, remained unattended for weeks causing serious traffic congestion in an otherwise fairly wide roadway.

We citizens feel a range of emotions from being merely bothered by this problem to feeling extreme anger at the lack of initiative by the concerned authority to repair the man hole. But who is the concerned authority? As per the law, it falls within the purview of the City Corporation to maintain and repair man holes. But as a citizen how am I to inform them? I checked both the Dhaka North and Dhaka South City Corporation web sites. There is a lot of information there, but I could not find any help line to lodge a complaint about this. It appears for now; we have to resort to non-digital means of communication. Every locality is supposed to have an elected representative, in the form of a counselor who maintains an office within his electoral jurisdiction commonly referred to as the commissioner's office. However, at present Dhaka city has no elected representative in the City Corporation, which is presently being managed by government appointed administrators. Nonetheless, complaints may be lodged at the respective counsellor's office or directly to the City Corporation.

The problem with the public administration of Bangladesh is that there is very little room for citizens to raise grievance. Everything happens in the usual course, following bureaucratic timelines; citizens are not encouraged to participate in the process of good governance. In the day and age of digital communication, perhaps it is time to change the status quo. Role and function of the City Corporation should be widely advertised along with a functional helpline system for citizens to lodge complaints.

NABIL AHSAN IS BARRISTER-AT-LAW.

LAW VISION

MH17 crash under legal scrutiny

TOMASZ LACHOWSKI

THE Malaysian Airlines plane crash in the eastern part of Ukraine on the last Friday raises a lot of doubts and questions, not only of political character, but also the legal one. Who is responsible for shooting down the aircraft with almost 300 passengers and plane crew? Is it possible to attribute this action to any state? Finally, would it be easy to prosecute and punish the perpetrators of the tragedy?

Most of the foreseen issues are of complicated nature, which is even multiplied by the factual situation in the Donetsk region. Ukraine and other involved states in the tragedy, like the Netherlands or Malaysia, postulated the establishment of an international commission to carry on the independent inquiry. Bearing in mind the obligations under the 1944 Chicago Convention on International Civil Aviation that force the host-state (Ukraine, in particular) to undertake actions aimed at the proper investigation of the causes, if the plane crushes, this article is to shed more light on the legal character of shooting down MH17 – was it an act of terrorism or the war crime? If yes, who is to be held accountable?

The most possible scenario in which the Malaysian Airlines plane was shot down by the pro-Russian rebels (their leader Igor Girkin vel Strelkov confirmed it on the Internet social media), operating in the Donetsk Oblast does not preclude the direct involvement of the Russian Federation, however makes it very difficult to find any link between separatists and Russia. In such situation, we talk about the non-state actor(s), controlling some part of the Ukrainian territory, being (most probably) equipped, trained and politically, logistically and financially supported by the Putin's Russia. Both countries – Ukraine and Russia constantly blame each other for causing the MH17 crash. It is true that the tragedy took place on the Ukrainian soil; nevertheless it does not automatically lead to its international responsibility. Contrary, the Ukrainian government is only de iure host of the eastern part of the country, which is de facto ruled by the pro-Russian rebels and, by so, has no influence on what was happening in the Donetsk region since few months time. On the other hand, in order to attribute the action conducted by separatists to Russia we need to prove that the latter possesses effective control over the rebel groups (e.g. the chain of command), what appears to be problematic, especially in the light of (any) international court proceedings (compare for instance the Nicaragua case of 1986 before the International Court of Justice).

Concerning the individual criminal responsibility, it is necessary to underline that the situation in the eastern Ukraine creates the case of the so-called non-international armed conflict. Again, to speak about the 'full' international armed conflict, we should prove any form of the Russian direct involvement. Maybe, if the missiles were launched from the Russian territory, it would internationalised the conflict, but this is still just the hypothesis without any hard confirmation. The non-international armed conflict is definitely less described in the international humanitarian law regulations, although the rule of distinction (MH17 was the civil object) still applies.

However, to judge that shooting down the Malaysian aircraft was a war crime or – how it is indicated by the President of Ukraine Petro Poroshenko – a crime of terror, it is essential to prove the intent of the potential perpetrator. Both crimes to be committed require also the mental element to be met by the wrongdoers, which basically means intent and knowledge of a crime. We have to remember that one possibility of the Friday's tragedy sequence provides rebels into shooting down the military Ukrainian aircraft, only by accident firing at the civil plane. If it confirms, we cannot speak anymore about a war crime, but – at most – only grave breaches of Geneva Conventions, although to state it still wrongdoers need to have 'guilty minds'. The next problematic issue connected with laws of war is linked to the legal status of the rebels –the Ukrainian authorities cannot bring them to justice 'just' for taking part in hostilities (as terrorists, for instance), if the formal status of rebels as combatants is confirmed.

A war crime, at the same time belonging to the international core crimes, would entail the possibility of the international prosecution. Unfortunately, neither Ukraine, nor Russia (most of the rebels are Russian citizens) is the state-party to the Rome Statute of International Criminal Court.

To trigger the Tribunal without the ratification, the UN Security Council's referral is necessary, however Russia as a P5 member effectively bar such solution. Because of the same reasons it is not possible to establish any temporal international body, with mandate tailored solely on the Malaysian aircraft crash. Of course, each non-member state can ad hoc accept the ICC jurisdiction, as it was done by the Ukrainian government concerning crimes committed on Maidan in Kyiv during protests against the former President Viktor Yanukovych, but even if Ukraine decides so, there is a long way to open an investigation before the Hague Tribunal. Inquires conducted by the local authorities in Ukraine are at risk of being ineffective, mostly because of the difficulties to get as fast as possible to the place of catastrophe and collect evidences. Moreover, pro-Russian rebels are obviously not in a position to cooperate with Ukrainian government in identifying the people responsible.MH17 crash was an extraordinary, hard to believe tragedy, but for the legal, sufficient response, which would guarantee that the perpetrators will be bring to justice, we still lack too many elements.

Either individual, or state responsibility for the abovementioned reasons appear to be almost 'mission impossible', at least at present, for any, domestic or international body. If the Russia-Western World relations improve in the future, maybe Putin would decide to compensate victims of the tragedy, but only ex gratia, with no courts' trials and without any official confirmation of the Russian responsibility.

THE WRITER IS PHD CANDIDATE AT THE UNIVERSITY OF LODZ, POLAND.