



## REVISITING LEGAL EDUCATION

# Time to look beyond books

*Clinical legal education has been a large movement across the legal academic globe, and it is indeed one of the idiosyncrasies of Bangladesh that we failed to develop clinical practice despite having a few handful professors with extensive clinical background.*



amounts of readings on interviewing techniques, attitudes and mistakes, prepared a trip plan to the fictitious country, decided how to ensure our security in case someone attacked us, and what type of information shall we find. Doing this, you learn that you cannot "assume" facts. Reading the fact sheet you think the tea garden management is abusive. But during interview you find out everybody is talking about how the labour union abducted the branch manager last week and he is still missing. So you learn your crucial lesson in human rights practice in an embarrassing way: you never know if your 'assumed' victim can actually be a violator!

You are provided with email addresses to contact potential interviewees. You pick interviewees you believe best fits your purpose and find out he is out of town and cannot give you an appointment. You are shocked. Was not the Law school supposed to make the process work smoothly? This person is my classmate, how can he be out of town? But he is not your classmate anymore! You must think he is really the businessman you called who is a very busy person. You learn your first lesson in human rights interview: the circumstances are always difficult, and it is not easy to find out the truth.

Then the day for role play comes. You reach the classroom that is supposed to be the interview venue, and you find it is secured with a yellow crime scene ribbon. You cannot enter. You have no idea where your witness is! You rush to reschedule the interview, to find that the witness is busy with her sick son and is disgusted by your presence. This witness is your clinical instructor: you meet her every week. But the voice, the anger, the rudeness she displays: you never saw that. You end the interview without getting any information you needed.

Actually, the whole set up is a very professional preparation. The victims, perpetrators and witnesses are all law students and teachers in your school. But they are given specific facts of the story you do not know. They have

dialogues, they have special attitudes, gestures, postures, remarks to catch you off guard. They are stakeholders, and they are traumatised: so they are doubtful about our activities and hide information. If you can't get the information, you have failed as a human rights fact finder. As army officers, your classmates refuse to give interviews because you didn't have your passport in your bag! Seriously? I need to bring my passport for a mere role play? You are embarrassed: you thought that since simulation is meant for developing your skills, the role players will assist you to execute your plan. But no! it's as if you really are in the army camp! Then one of your teammates is called to the other room and 15 minutes later you are informed he has left, and the rest of the day you cannot find your teammate in the entire law school. He has been disappeared by the army!

The level of professionalism is astonishing. And you wonder, why does it have to be so serious. It's JUST an exercise! But hey, this is what actually happens when people from Ain o Salish Kendro, BRAC, BLAST, MJF are in the fields. These are the exact hurdles they face. By the end of simulation, you are extremely annoyed, but also happy to taste the surprises of novelty.

This is the level of preparation that builds up confidence in a student. He gets to know the world he will deal with. I think about the police officers in my country: how many of them have any idea before they go to their first investigation assignment? How many lawyers know how to retrieve necessary facts from his clients? Does the new NGO officer really know how she can gain the trust of the village woman sitting in front of her?

The questions are numerous. The answer is one: we have to rethink our boring legal education, and the commitment we have as teachers. It is time we took our students out of their books, and into the world.

THE WRITER IS POST-GRADUATE STUDENT AT HARVARD LAW SCHOOL.

ARPEETA SHAMS MIZAN

GIVEN the intensely formal approach of legal education in Bangladesh, it is often difficult, and in some cases unimaginable, that how much we deprive our students from the practical knowledge of legal practice. Clinical legal education has been a large movement across the legal academic globe, and it is indeed one of the idiosyncrasies of Bangladesh that we failed to develop clinical practice despite having a few handful professors with extensive clinical background.

In my human rights advocacy seminar at Harvard Law School, we study various approaches and theories of promoting and protecting human rights. A crucial aspect of this course consists of engaging in practice by transcending the boundaries of text books. As part of the seminar, the students have to participate in a fact finding simulation. The students are given a fictitious case of alleged human rights abuses in a fictitious country, and their job is to conduct interviews with potential violators and victims to retrieve as much fact as possible.

It is not the interviewing that makes the simulation so intense. It is the whole set-up and preparation. We had to cover huge



# Redress for women divorced unjustly

MUHAMMAD MAMUNUR RASHID

EVERYDAY thousands of women are divorced unjustly without any faults on their parts. In deciding the questions relating to divorce, maintenance and some other issues, where the parties are Muslims, Bangladesh is following the Muslim Personal Law (Shariat) like its predecessors Pakistan and India.

It is the obligatory on every husband to provide maintenance to his wife. But after the divorce, a husband is not bound to maintain her beyond the period of iddat. This provision is practiced almost all over the Muslim countries including Bangladesh.

However, in 1985 the Indian Supreme Court decided in *Mohd. Ahmed Khan v. Shah Bano Begum* that a divorced wife is entitled to maintenance until she remarries, even in the case of Muslims.

Following the Ayat No. 241 of Surah Baqara, the High Court Division of Bangladesh Supreme Court decided in *Muhammad Hefzur Rahman v. Shamsun Nahar Begum*, 15 BLD(34), that women are entitled to maintenance beyond the period of iddat. The Court held, "a person after divorcing his wife is bound to maintain her on a reasonable scale beyond the period of iddat for an indefinite period, that is to say, till she loses the status of a divorcee by remarrying another person".

In 1998, the Appellate Division set aside the judgement. Mustafa Kamal J. observed, "It is plainly inhuman, unjust, inequitable and unfair to impose on a man the burden of maintaining a divorced woman whom either he has not even touched or from whom he receives no consideration after divorce". The Apex Court

could not be satisfied as to the interpretation given by the High Court referring to the Ayat No. 241, Surah Baqara. For interpretation, the High Court Division picked up the said Ayat in isolation that is strictly prohibited in the Holy Quran itself as well as contrary to the general criterion of interpretation.

In this case, the Arabic term 'Mataa' derived from Ayat No. 241 of Surah Baqara was raised for explanation and got a legal dimension after being illustrated by the learned Judges. The High Court Division considered this term as maintenance that was not accepted by the Appellate Division at all.

In Pakistan, the Law and Justice Commission have approved a draft Bill namely 'Muslim Family Laws (Amendment) Act 2009' keeping the provision of Mataa entitled to the divorced wife. In Malaysia, under the Section 56 of 'Islamic Family Law (Federal Territories) Act 1984', the women divorced unjustly are entitled

to Mataa in addition to their right to apply for maintenance. The provisions of Mataa are also effective in Iraq, Egypt, Turkey, Jordan, Morocco, Tunisia, Brunei-Darussalam etc. However, Mataa is not similar in each country. It is practiced in different manner. In Egypt, Mataa is equivalent to at least two years' maintenance subject to the consideration of husband's financial status and payable in instalment. In Iraq, a suitable residence is provided for Mataa subject to certain conditions.

The women, who after the divorce are thrown on the street without any roof over their heads, become completely destitute and vulnerable. To support these women, there should be something in addition to the maintenance, whatever it is -Mataa or something other. It is the teaching of Shariat to treat the women with just and due respect.

THE WRITER IS AN ADVOCATE, JUDGE COURT, SYLHET.



## FOR YOUR INFORMATION

# Women's voices in climate change solutions

AIMING to develop more gender-sensitive services, a United Nations-led conference held from 5-7 November in Geneva is spearheading a drive to ensure that weather and climate services reduce women's vulnerability to disasters and climate change, and help them realise their potential as champions of community resilience.

Hosted by the World Meteorological Organization



(WMO), the Conference on Gender Dimensions of Weather and Climate Services, hopes to produce concrete actions to empower women to produce and use weather and climate services.

Women, especially in developing countries, are often more exposed to the risks of extreme weather because they can be less mobile than men, lack access to traditional means of communication, and are more vulnerable to associated risks such as under-nutrition and water-borne diseases, according to the WMO.

For instance, in the 1991 cyclone disasters that killed 140,000 people in Bangladesh, 90 per cent of victims were women. Explanations for this include the fact that more women than men are homebound, looking after children and property. In May 2008, Cyclone Nargis came ashore in Myanmar. Among the 130,000 people dead or missing in the aftermath, 61 per cent were female.

"We have made great progress in improving weather forecasts and climate services such seasonal outlooks to help protect lives and livelihoods," said the head of the WMO Secretary-General Michel Jarraud.

But if we are to help communities cope with long-term climate change and the anticipated increase in hazards like floods and heat-waves, then we need to do more to reach out to women with gender-sensitive services, he added.

The gathering was co-sponsored by a wide range of partners including the World Meteorological Organization (WMO), the Food and Agriculture Organization (FAO), and the World Health Organization (WHO), among others. Among UN agencies, conference participants include meteorological and hydrological experts, academic institutions and civil society representatives, national authorities, and national and international women's rights advocates.

SOURCE: UN.ORG.



## TO COMBAT CHILD MARRIAGE

# Laws need to be drafted on the basis of public opinion

A Sharing Meeting on "Child Marriage Restraint Bill 2014" and "Muslim Marriage & Divorce (Registration) Bill 2014" was organised by Bangladesh National Woman Lawyers Association (BNWLA) on October 28, 2014 at the auditorium of BRAC Centre INN, Dhaka. Adv. Fawzia Karim Firoze, President of BNWLA and Hon'ble Member of National Human Rights Commission, Bangladesh presided over the meeting and Advocate Salma Ali, Executive Director of BNWLA moderated the program.

Md. Imman Ali, Hon'ble Justice of Appellate Division, Supreme Court of Bangladesh graced the programme as Chief Guest. Kazi Reazul Hoque (Fulltime member of National Human Rights Commission); Md. Lokman Ahmed, Honorable Senior Assistant Secretary, Ministry of Women and



Children Affairs and Mr. Hector D. Soliman (Team Leader-Community Legal Services) were attended as the Special Guests. Representatives of different GOs, NGOs, INGOs, lawyers, media personnel and other stakeholders participated and shared their opinions. Advocate Towhida Khondker, Director of BNWLA presented a power point presentation on the

bill. Hon'ble Justice Md. Imman Ali stated that law is enacted for people and is amended for the need of people as well. He then remarked that child marriage is a social disease that harms our society. "Minimum age of marriage for both male and female should be same; otherwise it will be unconstitutional which guar-

antees equal right", He added. Advocate Salma Ali, urged the Government to fix 18 years as minimum marriageable age for women. She further stated that child marriage is one of the causes of domestic violence and further stated that BNWLA filed a writ petition for a direction upon government to make provision regarding the determination of age on the basis of national ID card and also to make birth registration digitalised.

Adv. Fawzia Karim Firoze, stated that accountability of relevant persons has to be ensured through enacting provisions in laws. All columns of Nikahnama need to be compulsorily filled up by Nikah Registrars as per wish of both parties so that women can exercise their rights as per the terms and conditions of Nikahnama.

Mr. Hector D. Soliman remarked that issues included in

the draft bills are very significant with the present context of Bangladesh. He expected that the proposed bills would be enriched through the judicious recommendations of Justice Imman Ali and it would definitely be helpful for women and children.

Kazi Reazul Hoque, said that child rights need to be ensured by setting up Ombudsmen or Child Commission.

Laila Karim, Save The Children; Ruma Sultana, Manusher Jonno Foundation; Faruq Ahmed, Plan International Bangladesh; Nadira Parveen, Nagorik Udyog; Shahnaz Akter, Nari Pokkho, Fatema Rashid Hasan, Community Legal Services; Shirin Lira, Community Legal Services; Advocate Kamrul Islam also spoke among others.

SOURCE: BANGLADESH NATIONAL WOMAN LAWYERS ASSOCIATION (BNWLA).

## LAW QUOTATIONS

*"It is essential that justice be done, and it is equally vital that justice not be confused with revenge, for the two are wholly different."*

-Oscar Arias Sanchez

*"When every man lives without law everyman lives without freedom."*

-Joseph Ratzinger (Pope Venedict XVI)

*"It is more dangerous that even a guilty person should be punished without the forms of law than that he should escape."*

-Thomas Jefferson