"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH • dslawdesk@yahoo.co.uk

LAW OPINION

Linguistic rights
Rhetoric v Reality

The government should implement the existing laws adopting a timely language policy avoiding one sided emphasis on English only.

EMDADUL HAQUE

As an emotional nation, the month of February reminds us the right to language. This right is recognised in the entire world but its protection is not guaranteed with the same gravity. Despite clear constitutional mandate subsequently backed up by a specialised law, the dignity and glory of Bangla language is on the wane.

Articles 3, 23 and 153 of the Bangladesh Constitution, 1972 envisages right to language, literature, culture and heritage. Section 3 of the Bangla Language Application Act (BLAA), 1987 obliges courts, government offices, semi-government and autonomous institutions except in foreign relations to use Bangla. Under section 137 of the Code of Civil Procedure, 1908 and section 558 of the Code of Criminal Procedure, 1898 Bangladesh government may issue Order making use of Bangla language mandatory in superior and subordinate judiciary. On June 7, 1988 the Eighth Amendment Act of the Constitution was enacted substituting the spelling 'Dacca' with 'Dhaka' and 'Bengali' with 'Bangla', but the later one has no tangible impact.

Bangla is used in the subordinate judiciary to a large extent but very minimal in the Supreme Court. The recognition of the mother tongue, as an aftermath of painstaking sacrifice is also ignored in the other government and non-government offices. Out of 81 private universities, only five universities have 'Bangla Literature' as a separate department undermining the concept of full-fledged university. Children in the Hill Tracts areas in Chittagong are deprived to use around 75 mother tongues in their educational institutions despite obligation under the laws including Parbatya Zilla Parishad Act, 1989 and the National Education Policy, 2010.

Around 1792, English entered into the field of education in India and about 1830 it became the *de facto* official language in the colonised territory. In 1991 Census, 1576 mother tongues were recognised and grouped into 114 languages in the country. The Indian constitution, 1950 declares Hindi and English as official languages, while Schedule VIII of the supreme document has recognised 22 state languages. The post apartheid South African Constitution, 1996 has recognised 11 state languages. There are nearly 6,500 languages in the world and out of which 5,000 indigenous languages are on the verge of extinction. The United Nations has officially recognised six languages while English and French are the working ones undermining the linguistic equality. Bangla turned as a state language of the then East Pakistan (Now Bangladesh) after a valiant sacrifice of leaders including Salam, Rafiq, Jabbar, Barkat in the language movement of 1952. As part of recognition of the martyrs, the 21st February is declared as the International Mother Language Day by the UNESCO in 1999.

Language has been a thriving stone behind astounding success for many countries including China, France, Japan, Korea, Russia, Spain, and Malaysia. Most of the people in these countries use their mother tongues as medium of instruction in education, office and personal dealings but do not hesitate to learn second language preferably English. They do not compromise with their own language while attunes the quote of Nelson Mandela that "if you talk to a man in a language he understands, that goes to his head and if you talk to him in his own language that goes to his heart."
Contrarily, European, Latin American and Arab universities are now switching to English language scaring the isolation and linguistic inability to face globalised competitors. Roman Empire might have been the cradle of the last great global language "Latin" but now their universities have embraced English as the medium of global business communication.

On February 16, 2012 Bangladesh Supreme Court in an order outlawed 'Banglish' the mixed use of Bangla and English at all levels terming the distortion of language "tantamount to rape" and instructing the government initiating efforts to protect Bangla having 1,000-year history. The court on February 17, 2014 directed the government to take steps to use Bangla in all advertisements of electronic media, signboards, personal name plates and registration plates of vehicles within a month submitting a compliance report within April 1 of 2014 but no change apparently. Previously, the apex court in *Hasmat Ullah* v *Azmiri Bibi* and Others [44 DLR (HCD) 1992] held that as the government did not declare any order under section 137(2) of the CPC of, 1908 and so in spite of enactment of the BLAA of 1987, the proceedings of the subordinate court could be continued in English. But in *Eldridge* v *British Columbia*, [1997] 3 S.C.R. 624, the Canadian SC ruled that sign language interpreters must be provided by doctors and other health care providers in the delivery of medical services to those having hearing impairments and doing so is necessary to ensure effective communication to avoid the risk of misdiagnosis and ineffective treatment.

So, rhetorically Bangla is getting recognition with meagre protection facing double whammy. The government should implement the existing laws adopting a timely language policy avoiding one sided emphasis on English only.

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LAW ANALYSIS

Who will compensate the victim?

TAPOS KUMAR DAS

COUNTRYWIDE political terrorism and agitated entreaty of the victims and their family for 'justice' require a revisit whether our 'sentencing policy' and 'penal scheme' are capable of providing them 'just remedy' or widely cherished 'justice'.

As we know, a 'remedy' is 'just' if it is lawful or fair. Likewise, 'justice' denotes fairness, moral rightness; it represents a legal scheme in which every person receives his or her due from the scheme. Now, consider a scenario: an innocent truck driver while driving his loaded truck is attacked with petrol bomb. The severely injured truck driver after several days struggle for life dies in hospital leaving (i) huge medical expenses, (ii) unpaid bank loan for the truck, and (iii) the helplessness of the dependants. Now what is 'justice' for this ill-fated truck driver or what will bring 'just remedy' to his family?

Assuming that in this given scenario, the police succeed in bringing the offender/s to trial and the prosecution succeeds in proving the case beyond any doubt. Now, as per section 302 of the Penal Code 1860 or section 6 of the Anti-terrorism Act 2009 the court awards the offender/s capital punishment, or imprisonment for life, and an amount of fine. Under these sections amount of fine is indefinite and depends on judicial discretion. Section 545 of the Code of Criminal Procedure 1898 authorises criminal courts to pay expenses or compensation to victim/s out of the fine. However, experience suggests that whenever an offender is awarded death penalty or life time imprisonment the amount of fine (if is not absent) remains mere nominal and disproportionate to the consequential lose. Now, with 'no' or 'little' compensation paid out of the fine, is the 'victim' said to have received 'just remedy' or 'justice'?

The penal scheme of Bangladesh is mainly preventive in nature. It intends to prevent recurrence of crime by incapacitating the offender. But, how to restore the direct and associated lose sustained by the victim? Mere imprisonment of the offender serves interests of the society but damage sustained by the victim remains un-restored. Modern criminologists propose for restorative justice and suggest that an ideal punishment should include both compensation as well as imprisonment. Therefore, in addition to the imprisonment, payment of compensation is the best possible means to indemnify the victim. In fixing the amount of fine the court must consider the present and possible future loses or injury to the victim, magnitude of the offence, previous crime record and financial capacity of the offender.

In Bangladesh, jurisdiction of the magistrate courts to impose fine is seriously abdicated. As per section 32 of the Criminal Procedure Code 1898 the amount of fine which the first class, second class and third class magistrate may respectively impose is ten thousand taka, five thousand taka and two thousand taka. The amount of fine was updated by an Ordinance lastly in 1982. After expiration of more than three decades, it is imperative to substantially enhance the fine so as to enable the magistrates to provide just compensation to the victim. The upper criminal courts though have no limit in imposing fine, often lack uniformity in imposing and fixing the amount of fine. It is desirable that the High Court Division in exercising supervisory jurisdiction under article 109 of the Constitution should prepare and issue a 'Practice Direction' to bring uniformity in 'imposing', 'fixing' and 'using' fine.

Jeremy Bentham in Hedonism principle suggested that achievement of pleasure is intrinsic human desire and pain is intrinsically undesirable. To Gregg Barak, for criminals with little or nothing to lose, imprisonment may be perceived as little more than an inconvenience, an opportunity for a little rest and a chance to renew old friendships in jail. He observed that mere imprisonment is not enough to stop 'falling back' into criminal behavior.

The criminal administration of justice must create a high degree of certainty that punishment will follow a crime immediately, and quite harshly. Moreover, if crime is to be deterred, punishment must overrule the pleasures gained from the crime. Hedonistic and rational criminals weigh the costs against the benefits of crime, and give up, if on balance, the costs exceed the benefits. Therefore, the punishment must encompass proportionate fine: firstly, to maximize the cost of the offence so as to induce the offender to choice rationally not to indulge in crime; secondly, to restore the victim justly.

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LAW LETTER

To improve legal education

This is undeniable that the quality of legal education in Bangladesh has been failing to satisfy the global standard of studying law. The general misunderstanding about the concept of university education may be the major cause of this failure. Thus, the improvement of legal education in Bangladesh depends largely on the understanding of the real meaning of university education. Given this, the following points deserve to be signified with a view to improving the quality of legal education in Bangladesh:

1. The overall improvement in the standard of teaching law is the fundamental precondition for the improvement of legal education in Bangladesh. This will require that the method of teaching law accommodate a three-fold scheme of dealing with the legal issues, which are (i) the doctrinal approach, (ii) case-based approach, and (iii) the clinical approach.
2. One of the major problems of the legal education in Bangladesh is that it is founded upon premise of nurturing the learners with the technique(s) of lawyering. But law being a sophisticated field of social science should not be studied with a monopoly of legocentrism. Because, Law has long been thought worth studying for its intrinsic philosophical or social interest and importance, which relates to but extends beyond its immediate instrumental value or professional relevance. Thus, the legal curricula should accommodate the lesson plan considering social and political interests.
3. In the field of legal education in Bangladesh, there is a serious scarcity of reading materials including the texts, references and journals. In most of the cases, the outdated and substandard books are followed even by the teachers as reading materials. Thus, in order to improve the quality of legal education, every university must establish a resourceful law library, and should require the teacher to follow the standard and well-run reading materials.
4. Legal education is not only for lawyers. To make the legal education dynamic, it is thus indispensible to channelise the interactions between different stress and stances of the diversified legal professionals, such as lawyers, judges, academicians and activists etc.
5. Internship for a particular duration (or under the law clinic program) should be included within the curriculum as the partial requirement of the Bachelor degree of Law.
6. The legal curricula should be designed incorporating specialisation of courses and programs that will facilitate the intensive and analytical study of legal enterprise.

More importantly, the entire fabric of legal education should be founded upon an intellectual reorientation—a movement of searching for the legal philosophy of our own, and of eliminating the colonial understating of law, "inherited" as Goethe says "like an old sickness."

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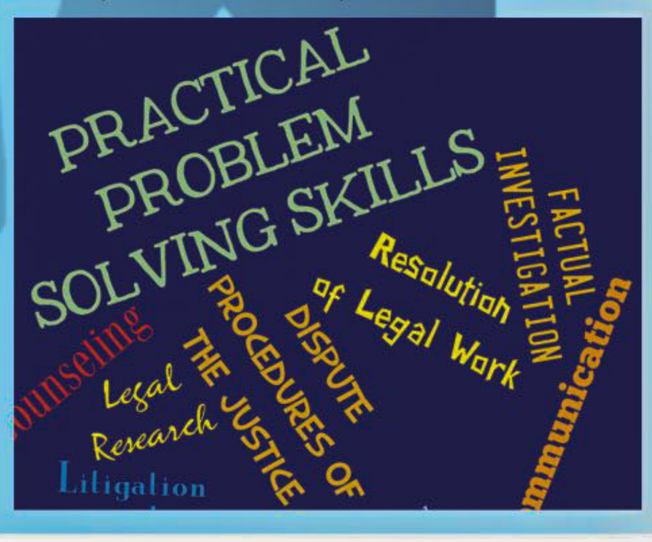

RIGHTS INVESTIGATION

Allegation of rape in false promise of marriage

SHEKH MD. MUHIBBULLAH

NADI (not real name) filed a case accusing Sagor (not real name) of luring her into an affair with false promises of marriage. She also brought allegation of rape and cheating against the accused Sagor. In our country and many other parts of the world such kind of incidents are happening every now and then. Only few victims dared to get redressed by Law.

In order to address this type of Problem few keywords deserve to be attended which are: deceit and misconception of fact, love-desire, consent, rape and cheating. In *Uday* v *State* of Karnataka, (2003) 4 SCC 46 the Supreme Court of India held that 'the consent given by prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the code (Penal code). We are inclined to agree with the view'.

In Bangladesh in the case of *Lukus Miah* v *State* 43 DLR 230 The Apex Court held that 'the victim of alleged cohabitation knew that there was no marriage between her and the accused and that the latter only compromised to marry her on some future date- such allegation made in First Information Report did not come within the mischief of section 493 of Penal Code nor can be considered as rape'.

In one of the Indian case, *Karthi @ Karthick* v *State Rep. by Inspector of Police, Tamil Nadu* on 1 July, 2013, the Apex Court referred the decision given in *Deelip Singh@Dilip Kumar* v *State Of Bihar* on 3 November, 2004, saying as follows: 'a representation deliberately made by the accused without having intended to marry her will vitiate the consent. If the facts of a given case reveal that at the very inception of making of the promise to marry, the accused did not really entertain the intention to marry her and the promise was a mere hoax, consent ostensibly given by the victim will not exculpate the accused from the ambit of Section 375 penal code'.

So here we see Apex Court of India not only lessened the domain of the plea of 'consent on the part of the prosecutrix' in a very restrictive way but also open a gateway to try the accused on allegation of cheating also as it says '...the act of having sexual intercourse with such a woman would amount to cheating if the act of the woman in letting such a man have sexual intercourse with her causes or is likely to cause damage of harm to the person of such a woman, her mind or reputation'.

In the final analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent. However, the court in each case, may judge the evidence before it and the surrounding circumstances prior to reaching a conclusion. As each case has its own peculiar facts and the question whether the consent was voluntary or was given under a misconception of fact should determine accordingly.

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