

LAW INTERVIEW

Time to think differently about 'justice needs'

It's not just sitting in a room and blaming people; lawyers, bench officers, judges, infrastructure or anything or anyone else. We are at such a stage where we need to think how we can solve legal problems differently.

Law Desk (LD): Could you tell us about the background of the study titled 'Justice Needs and Satisfaction in Bangladesh, 2018: Legal Problems in Daily Life'?
Farisa Kabir (FK): Jointly published by HiiL (a Netherlands based organisation) and BRAC, the report talks about legal problems in daily life of the people of Bangladesh. A nationwide survey on justice needs and satisfaction was conducted aiming to make the demand for justice in Bangladesh transparent and to outline what people of our country mean by their notion of justice.

Also they talked about how people see their justice journey. The questions here include, if a person is in a legal trouble how do they want to solve the problem? Where do they go first? Who do they consult? Do they seek informal services? Do they seek professional help? Are they satisfied with that professional help?

As their local co-coordinating partner, we assisted in conducting some of the interviews. HiiL did most of it by conducting 6000 interviews in all districts across Bangladesh among randomly selected adults in August and September 2017.

LD: What were the main findings of this study?

FK: The main findings of the study, very briefly, were that 4 out of 5 adults in Bangladesh faced one or more legal problems during the past 4 years. They have also identified

three main legal problems people face, land disputes being the frontrunner. There are roughly 8 million people who are facing land disputes, after that there is neighbourhood conflicts that comes up to about 6.8 million per year. Then you have crime which is about 3.8



FK: BRAC runs a legal aid programme which has coverage in 61 districts in Bangladesh. Through these clinics we try to give local solutions; we have seen people prefer out-of-court settlements. Most of our clients are women, women who have come for divorce, who have faced torture for

we should think and act differently in regards to the backlog of cases? **FK:** It is high time to think about justice differently. It's not just sitting in a room and blaming people; lawyers, bench officers, judges, infrastructure or anything or anyone else. We are at such a stage where we

poor, forums chaired by retired lawyers and judges, etc. We have to have a mechanism for everybody regardless of their socio-economic class.
 Regarding this current backlog, there needs to be more analysis as to understand the nature of these 33 million cases. I think it is also important to understand problems of the people from their perspective, to understand their needs and think about how to create alternatives to the justice system.

LD: Is the current system of justice, formal and informal, catering to the justice needs of the people?

FK: This is a tricky question. It depends on who the client is. There is no end to effort from people, government, NGOs, civil society members to try and solve the problems. I think instead of trying to solve an existing problem we need to create branches to relieve the pressure of the formal system.

A core message of the study is that, a more effective and innovative solution could be implemented if the citizens are at the center of the reform. It also suggests the problems be considered at macro levels and solutions are implemented where people interact with justice mechanisms. Lastly, there should be justice innovation, which is about the redesign and improvement of justice journeys.

LD: Thank you for your time.

million per year. HiiL has categorised these 3 as the most serious current legal problem in Bangladesh. There is also lack of legal awareness. The main barrier to people not seeking legal advice is the belief that it will not make a difference.

LD: What is BRAC doing to make justice more accessible?

dowry, or who have been divorced and now are seeking maintenance. What we offer is solution to their problems through these legal aid clinics. We have conducted about 15,000 mediation in 2017 and on average we receive about 20,000 requests a year.

LD: There are 33 lakh cases pending in courts. Do you think

need to think how we can solve legal problems differently. We need to think about justice system, legal aid, and hybrid justice models.

The system should not be about adding more people to it or giving more resources, but going forward thinking about legal problem as a whole. We can think of mediation, formal arbitration mechanism for the

COURT CORRIDOR

Resolving dilemma of Justice and *Insaf*

PROFESSOR K. SHAMSUDDIN MAHMOOD

In modern days, justice is administered in accordance with the rule of law and not independently. Invariably, the Judge/Court will dispense justice by following set principles of law as contained in different laws of the land, and we will call it "Justice". However, often it may not confirm or live up to the common expectation of the people at large that "Justice" will be or should be fair, equal and just to all concern at all times - something which is very solemn, divine, morally acceptable and adheres to principles of ethics and thus based on honest conscience and common social belief, I mean '*Insaf*'.
 Supposing in a criminal case, X is charged with Y's murder and he voluntarily makes a clean breast of the whole affair to a police officer, who is an extremely honest man. There is no other evidence in that case except the confession of X and the law as contained under the Evidence Act, 1872 is that a

to redress them, once the period of limitation run out, for law is for the vigilant and not the indolent respectively. In common parlance of law in both the above cases, legal justice is done and one cannot term them as cases of injustice but cases of legal justice or justice according to fixed rules.

Question may arise whether Courts can function and administer justice not following the fixed rules always. It is perhaps possible for the Courts to function without fixed rules at all, as there could be a "Tribunal" which would administer justice according to the conscience and natural justice and not in terms of previously fixed or accepted general principles.

In fact, history of development of the English Common Law reveals that a time came when Common Law Courts in England were found to be scanty to address different situations of the society to provide justice to all concerns, because there were no Common Law principles to be relied upon by the Judges and they used to feel constrained (though could

individual judgment and the required need of guidance from the experience and wisdom of the world at large, of which, the law is the record; and (d) they would be reliable since law is more reliable than individual judgment, because human mind is not infallible and the judges are no exception. Therefore, it is safer and more reliable, to rely on the wisdom of the legislature and sagacity of the legislature, than the momentary fancy of an individual judge trying the case.

However, despite benefits of doing justice confirming to fixed rules, such benefits are not obtained without incurring cost. Law brings with it evils of its own, such as, (a) rigidity, (b) conservatism, (c) more reliance on formalism/technical requirements than to substantial rights and wrongs, and lastly (d) complexity of law. Though the benefits of law are great, evils thereof are also not insignificant.

In this regard, judicious use of discretion by the Judges can increase

LAW EVENT

Launching of Legal Stories of Life



A grand launching ceremony of the book titled 'Legal Stories of Life' authored by Barrister Omar H. Khan was held on June 27, 2018 at The Westin, Dhaka. This book provides necessary insight, in sufficient details, into various problems encountered by the people of Bangladesh on a daily basis. Having less usage of legal jargons, this is a compilation of the author's responses to the readership of the popular English daily, The Daily Star in its fortnightly column namely 'Your Advocate'. The richly written replies to real-life stories make the book a very interesting read, promising to be an excellent resource to students, educators, young-lawyers and the people at large.

The book is divided into several chapters, namely, Commercial, Criminal, Employment, Family, Property and Miscellaneous. National Professor Dr. Anisuzzaman has written the foreword of the book. Renowned

painters of Bangladesh, namely, Rafiqun Nabi, Monirul Islam, Shahid Kabir, Jamal Ahmed, Rokeya Sultana, Mohammad Iqbal and Mustafa Khalid Palash have painted seven paintings for the book, which also tell the story from an artistic point of view.

In order to increase the practical utility of the book, a total of nine photographs has been used in this book, selected through a photography contest organised for amateur photographers. As such the book focuses on legal stories not only through the theoretical legal write-ups, but also through the paintings and photographs.

Mr. Asaduzzaman Noor, MP, Hon'ble Minister, Ministry of Cultural Affairs, Government of the People's Republic of Bangladesh, graced the occasion as the Chief Guest and hoped that the circulation of the book in various educational and other institutions may prove to be very useful for shaping the future of legal

compliance amongst the youth and the society as a whole.

Special guests were National Professor Dr. Anisuzzaman, His Excellency Dr. René Holenstein, Ambassador of Switzerland in Bangladesh, Mr. Justice Syed Reefat Ahmed, Supreme Court of Bangladesh, Dr. Kamal Hossain, Senior Advocate, Supreme Court of Bangladesh, and Barrister M Amir Ul Islam, Senior Advocate, Supreme Court of Bangladesh.

Invited two hundred and fifty guests included many other prominent figures from different spheres of the society, including more than fifty diplomats from different foreign missions, persons from the civil society, Professors of different universities, eminent lawyers, representatives from reputed business houses, artists, media personalities and different other professionals.

EVENT COVERED BY LAW DESK.



confession however sincerely made to or before a police officer cannot be used as honest and trustworthy evidence in criminal trials. In the result, X will be discharged (unless pleads guilty).

In such a case like this, however willing the Judge may be to do real justice, his hands are tied by law and the accused offender will be released. Many such cases may also be cited from civil law jurisdiction, where honest litigants are defeated owing to law being against them (cases where parties sue after the period of limitation is over and the Court cannot decree the plaintiff's legitimate claim, since it is time-barred) and one cannot term them as cases of injustice.

In the above two situations, principles of justice underlying them are that it is dangerous and unsafe to convict on the strength of a confession to the police and that law should not help litigants to sleep over their rights and thereafter seek Court's assistance

understand and realise that a wrong has been committed and justice is required!). That was the reason behind the creation of a new set of Courts, known as Chancery Courts of England, where Judges used to function and administer Justice by their good conscience and natural justice.

Across different countries and societies, the modern trend in general is to follow the 'fixed rule principle' and confirm justice accordingly considering the advantages contained therein (vis-à-vis the defects) that (a) fixed rules of law would impart, to a considerable extent, uniformity and certainty towards administration of justice; (b) they would provide protection against improper motives on the part of those entrusted with the judicial functions; (c) they would secure freedom from the errors of individual judgment, since law serves to protect the administration of justice from the errors of

fairness and promote an equitable legal process thereby allow judges to take into consideration individual instances and situation where the law is silent or insufficient. Moreover, legislation simply cannot address all situations, whereas the judges being present during proceedings of trials and also by hearing evidences, places themselves in a unique locus/footing to appreciate the need of the hour and sentiments affecting the social conditions and general expectations.

In this backdrop, applying discretion by the judges can be a way out to overcome the "dilemma"-whether justice done by following fixed rules/justice will be enough to live up to the common expectation, or ways need to be pursued to mitigate the gap in between.

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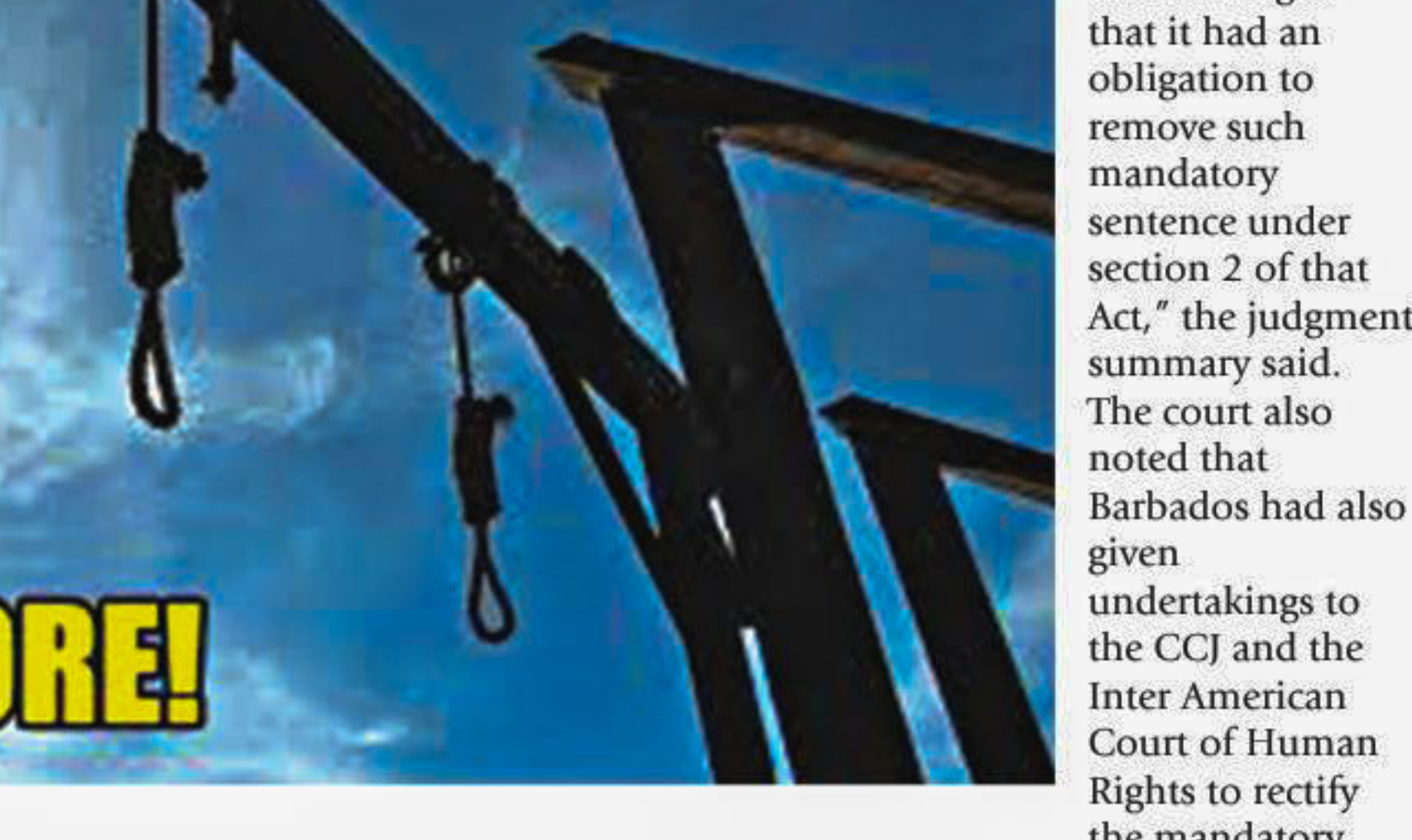
GLOBAL LAW UPDATES

Mandatory death penalty banned in Barbados

AFTER decades of campaigning, the Caribbean Court of Justice (CCJ), following a majority vote has ruled that the mandatory death penalty in Barbados is unconstitutional.

The decision was reached after two appeals were sent to the CCJ regarding the fate of convicted murderers Jabari Sensimania Nervais and Dwayne Omar Severin. The cases were otherwise unrelated. However, both of them challenged the automatic (mandatory) death sentence imposed upon convicted murderers.

The court stated that a section of the 'Offences Against the Person Act' was unconstitutional because it provided for a mandatory sentence of death. "It was indisputable that the nation, through its actions, had



sentence which was reflected in the Barbados Privy Council's consistent commutation of the mandatory death penalty.

Justice Winston Anderson, however, opposed the majority and said that removing the mandatory sentence would jeopardise the judicial powers.

acknowledged that it had an obligation to remove such mandatory sentence under section 2 of that Act," the judgment summary said. The court also noted that Barbados had also given undertakings to the CCJ and the Inter American Court of Human Rights to rectify the mandatory

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