

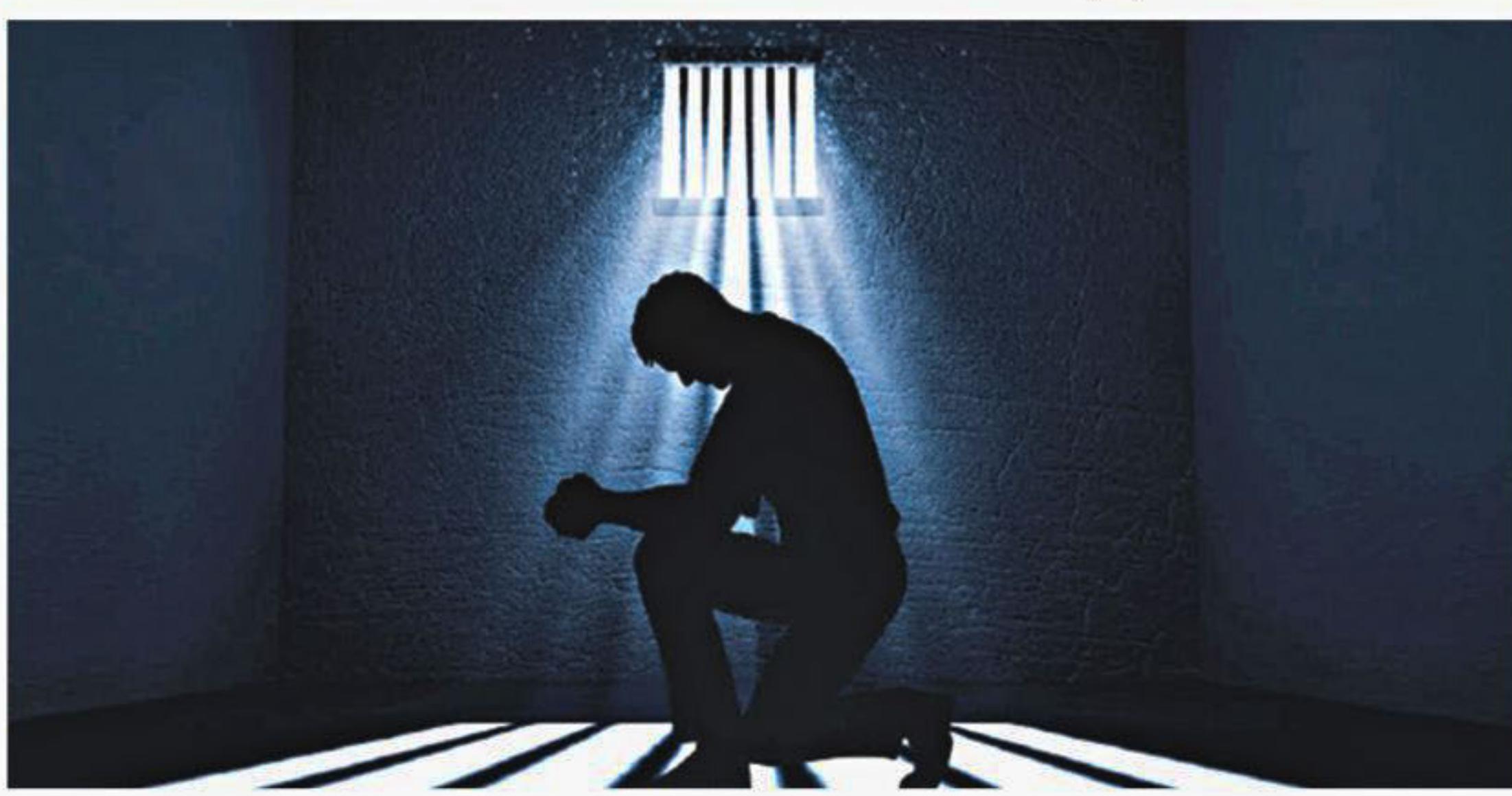
Article 11 of UDHR states that, "everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all guarantees necessary for his defence."

AMENA JAHAN JHILIK

A few days back while reading the book "Sapiens" by Yuval Noah Harari, I stumbled upon an information which seems harmless in plain sight but in fact is quite gargantuan in the consequence it ensues. One of the many evolutionary dramatics which helped us

consequences does not stop there, our psychological need for simulation has gone so far that people now make a living out of unearthing conspiracy theories about real life events. But, the going gets tough when the point of imagination takes a turn into the abyss and a person's reputation and livelihood is in line.

While it is safe to sympathise with the fact the



situate on the top of the food chain is the ability to think about things that do not exist, i.e. the power of imagination. This may seem like a gift from the heavens above until this very blessing started feeding the mouth of gossip magazines and paved the way for defamation cases. The

there are monsters living in the flesh suit of humans who are worthy of the most severe punishment, there is also some value in the statement that some people like making monsters out of mere humans. Although that might not be the case in every situation but people do act out of

vengeance and jealousy and often for political reasons and in such scenarios filing false suits is the norm.

However, the problem starts to rot when laymen blur the lines between an accused and a convict: media trials being the worst case scenario as the accused gets a life sentence of doubt, defame and disgust by default. In any case for someone's stature to get smirched it is not necessary for him to be behind the bars, a dash of accusation in the realm of public arena and our age old gift of imagination is all the more sufficient.

The presumption of innocence is one of the cornerstone principles of law, and we as law students had an immeasurable pressure weighing on our shoulders when it came to opining on different case scenarios, as it was not only necessary to analyse the facts in question but it was even more important to do so while keeping in mind that the person charged or about to be charged has not been convicted by a court of law and we were barred from presenting him as a convict. Nevertheless, such a stringent rule of thumb does not apply to the public at large and there is no dire resulting consequence if anyone thinks that an accused is guilty.

But when this thought which *prima facie* seems innocuous is being sown with thread of qualm by a population of the size of a mediocre country, the so called presumption of innocence turns into a myth. But the question remains if this legal presumption is meant to have a home in the minds of the laymen. The answer is yes, as it is not only a legal presumption but a human right of

every Homo sapiens under the United Nation's Universal Declaration of Human Rights (UDHR). Article 11 of UDHR states that, "everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all guarantees necessary for his defence." Article 35 of our Constitution similarly provides that every accused of a criminal offence has the right to a speedy and public trial by an independent and impartial Court or tribunal established by law. Moreover, no person accused of any offence can be compelled to be a witness against himself. Section 101 of the Evidence Act 1872 rather requires the complainant, who brings criminal allegation against an individual, to prove the existence of facts concerning the charge/allegation.

On 10<sup>th</sup> of December in 1948 when forty eight member states became signatories to the Universal Declaration of Human Rights, René Cassin compared it to the portico of a Greek Temple, with foundation, steps, four columns and a pediment. Nevertheless, the value enshrined in this principle should go beyond the judicial system. For instance, there should be journalistic codes of moral and ethics in our country which without conflicting with the right to free speech should also uphold the sanctity of presumption of innocence. It should also be understood that an apology in the aftermath of someone's reputation being tarnished does not restore the person's lost dignity.

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PROFESSOR DR. MIZANUR RAHMAN'S NEW BOOK

## Anti-Generic Learning and Rebellious Lawyering

THE Book Launching Ceremony of 'Anti-Generic Learning and Rebellious Lawyering: Reflections on Legal Education in Bangladesh', authored by Professor Dr. Mizanur Rahman, Director, Centre for Advanced Legal Studies (CALS) of the Faculty of Law, University of Dhaka (DU) and Former Chairman, National Human Rights Commission (NHRC), took place at the Nabab

Throughout their speeches, the speakers mentioned that the idea of 'rebellious lawyering', which aims to bring a change from top to bottom of our traditional legal education curriculum, is the brainchild of Dr. Mizanur Rahman. They noted that Dr. Mizan's viewpoint regarding the pre-liberation war era legal education system not being effective at all to deal with the problems of the mass people and

center of all his initiatives till now has been rebellious lawyering, i.e. the use of law to empower the poor.

Professor Dr. Shah Alam meticulously reviewed the book and observed that this masterpiece would enormously impact and improve legal education and legal practice in Bangladesh. Referring to Dr. Mizan as the political economist of jurisprudence, Dr. Abul Barakat made an interdisciplinary review of the book, stating various discomforts that the author has faced throughout his career and the means to effectively lessen the plight of the poor for creating a level playing field for all to ensure justice in the society.

The Chief Guest, Dr. Shirin Sharmin Chowdhury, who happened to be a student of Dr. Mizan, praised the author for emphasising more upon clinical legal education in his book, which she felt was essential to disseminate practical knowledge to the students. However, she strongly stated that rebellious lawyering should be done for people in every sector of life, not just for the poor people only.

The Vice Chancellor of DU, Professor Dr. Akhtaruzzaman delivered his vote of thanks to all the guests of the event and said that the insightful discussions from all the speakers have enlightened everyone's minds and it would help everyone to stand for truth and justice.

Numerous law students, academics, legal practitioners and researchers, judges of lower courts, members of the civil society, etc. were present at the event.

THE EVENT WAS COVERED BY ALI MASHRAF, A STUDENT OF LAW, UNIVERSITY OF DHAKA.



Nawab Ali Chowdhury Senate Building of DU on July 21, 2018.

The Honourable Speaker of the House of Nations, Dr. Shirin Sharmin Chowdhury was the Chief Guest while Professor Dr. Md. Akhtaruzzaman, Honourable Vice Chancellor, DU presided over the event. Professor Dr. M. Shah Alam, Former Member of the Law Commission of Bangladesh, as well as Professor Dr. Abul Barakat, Professor of Economics, DU, reviewed the author's work. Moreover, Professor Dr. Md. Rahmat Ullah, Dean, Faculty of Law, University of Dhaka delivered the welcome speech of the programme.

to uphold the lofty principles of equality, human dignity and social justice as laid down in our Constitution, led to him striving towards bringing a change in the way legal education was imparted in Bangladesh.

The distinguished speakers also lauded the various initiatives of Dr. Mizan, including but not limited to street lawyering for the common people, human rights summer school, community law reform, etc. They advocated for a pro-people, pro-social legal education in all law schools of Bangladesh in future, in the light of his successful initiatives. Professor Dr. Mizanur Rahman, in his speech, noted that the

claims for medical malpractice, that is, clinical or medical negligence, arise when doctors, healthcare service providers, and hospitals owe a duty of care to individuals admitted under their care, and fail to fulfill such duty, causing the patient to suffer pain and loss of amenity.

We are all privy to the various instances of medical negligence – careless medical staff and practitioners, denial or delays in admission of patients, and substandard and wrong medical treatment. However, what continues to be alarming is the absolute lack of accountability of healthcare providers and doctors in public and private medical care establishments.

Under the current legal framework, no codified law exists on medical negligence, and in the absence of a developed tort regime, laws on negligence are dispersed and general. Sections 304A and 336 of the Penal Code 1860 penalise and define negligence as an act which is "so rash or negligent as to endanger human life or the personal safety of others". The Bangladesh Medical and Dental Council Act 2010 penalises individuals who (i) falsely represent themselves to be medical or dental practitioners (section 28), (ii) use any such name, designation, description or symbol which others could reasonably consider to be true (section 29) and (iii) prescribe medication which has not received government approval (section 30).

Sections 52 and 53 of the Consumer Protection Act 2009 also penalise negligence, and significantly empower the Director-General of the Directorate for Consumer Rights Protection to take measures against 'anti-consumer activities'.

On the 2018 World Day against Trafficking in Persons, UNODC focuses on 'responding to the trafficking of children and young people'. This year's campaign highlights the fact that almost a third of trafficking victims are children. Hence, the theme draws attention to the issues faced by trafficked children and to possible action initiatives linked to safeguarding and ensuring justice for child victims.

COMPILED BY LAW DESK (SOURCE: UN.ORG, UNODC.ORG).

THE World Day against Trafficking in Persons is an annual event held on July 30th of every year. People trafficking and modern day slavery is a massive worldwide problem with very few countries immune to human trafficking, and the event by the United Nations is to raise awareness and increase prevention of that. Children make up almost a third of all human trafficking victims worldwide, according to the United Nations Office on Drugs and Crime Global Report on Trafficking in Persons. Additionally, women and girls comprise 71 percent of human trafficking victims, the report states.

In 2010, the General Assembly adopted the Global Plan of Action to Combat Trafficking in Persons, urging Governments worldwide to take coordinated and consistent measures to defeat this scourge. The Plan calls for integrating the fight against human trafficking into the UN's broader programmes in order to boost development and strengthen security worldwide. One of the crucial provisions in the Plan is the establishment of a UN Voluntary Trust Fund for victims of

trafficking, specially women and children.

The Trust Fund facilitates effective, on-the-ground assistance and protection to victims of trafficking, through grants to specialised NGOs. In the coming years, it aims to prioritise victims coming from a context of armed conflict and those identified among large refugee and migration flows. It will also focus its assistance to victims trafficked for the purpose of sexual exploitation, organ removal, forced begging, forced criminality and emerging exploitative purposes (e.g. skin removal).

In 2013, the General Assembly held a high-level meeting to appraise the Global Plan of Action. Member States also adopted resolution A/RES/68/192 and designated July 30 as the World Day against Trafficking in Persons. This resolution declared that such a day was necessary to "raise awareness of the situation of victims of human trafficking and for the promotion and protection of their rights."

In September 2015, the world adopted the 2030 Sustainable Development Agenda and embraced goals and targets on trafficking in persons. These goals call for an end to

trafficking and violence against children; as well as the need for measures against human trafficking, and they strive for the elimination of all forms of violence against and exploitation of women and girls.

Another important development is the UN Summit for Refugees and Migrants, which produced the groundbreaking New York Declaration. Of the nineteen commitments adopted by countries in the Declaration, three are dedicated to concrete action against the crimes of human trafficking and migrant smuggling.

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## Medical negligence and duty of care



With the front pages of newspapers increasingly reporting incidents of deaths and injuries arising out of road traffic and workplace accidents, dialogues on the urgent need for a dynamic tort regime have taken centre-stage. Concurrent to this is the social media outcry about wrongful treatment and denial of medical care to patients, highlighting the need of the hour – remedy under the tort law for medical malpractice.

Claims for medical malpractice, that is, clinical or medical negligence, arise when doctors, healthcare service providers, and hospitals owe a duty of care to individuals admitted under their care, and fail to fulfill such duty, causing the patient to suffer pain and loss of amenity.

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victims in glaring cases of medical negligence. In 2011, a ruling by Mr. Justice AHM Shamsuddin Chowdhury Manik and Mr. Justice Jahangir Hossain directed Labaid Hospital to pay the wife of Mridul Kanti Chakrabarty, a Dhaka University professor, who died owing to delayed medical treatment and alleged negligence on the part of the hospital. In 2017, the Suo Moto ruling by Madam Justice Salma Masud Chowdhury and Mr. Justice AKM Zahirul Haque directed respondents to pay to the victim Tk. 9 lakhs in compensation for falsely representing himself as a certified doctor and performing a surgery on the victim, leaving pieces of gauge inside her stomach, thereby causing her endless suffering and additional medical expenses.

However, in jurisdictions such as the United Kingdom, established bases exist for calculations of claims arising out of personal injury and medical negligence. Instruments such as the Judicial College Guidelines (JCG) and Ogden tables standardise the level of compensation for different degrees of injury to individual parts of the body, and take into account other factors, such as the loss of income and follow-up expenses of victims in recovering from the consequences of the negligent act. In India, despite the laws being similarly dispersed, medical negligence is regularly entertained not only by the Court, but also by the Maharashtra Medical Council (MMC), a quasi-judicial body with significant powers.

Although recent awards in Bangladesh signify a positive move in the direction of establishing accountability of healthcare service providers, Courts still shy away from giving detailed directions and guidelines on negligence, determination of compensation and other non-pecuniary punishment. Further, cases of negligence are entertained solely under the writ jurisdiction, and only in glaring cases of negligence. Instances where such petitions are allowed and heard, the amount of compensation is based on the sole discretion of Courts, in the absence of guiding principles similar to that in the UK. This signifies the need to strengthen the tort regime in the country in the hopes of reducing devastating front page stories of lost lives.

Faria Ahmad  
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