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LAW INTERVIEW

Towards creating an indigenous legal corpus in Bangla

Arif Khan *is an Advocate at the Supreme Court of Bangladesh. He studied law from the University of Dhaka. He is one of the co-founders of Reading Club, a Dhaka University based platform for enthusiastic readers and young scholars. For the last four years, he has been editing a legal magazine named Legal Issue. In 2013, he co-edited an anthology titled "Use of Bangla in the Higher Courts: Necessity and Limitations", published by Bangladesh Law Association. On the eve of International Mother Language Day 2019,* **Psymhe Wadud** *and* **Emraan Azad** *from Law Desk talks to him on the following issues:*

Law Desk (LD): In 1987, our parliament enacted "Bangla Bhasha Procholon Ain" (Bengali Language Implementation Act) for ensuring the use of Bangla in all public offices. Do you think the legislative intent has been translated into actions in the truest sense?

Arif Khan (AK): The law enacted in 1987 was a revolutionary step taken by the State. Other than certain amendments brought to the laws originally enacted in English, all the laws by parliament and all Ordinances promulgated by the President are being enacted in Bangla in pursuance of the law. The benefit of having a law enacted in Bangla is that all the rules, regulations, notifications made under the law are also issued in Bangla. Therefore, it can be said that all that comes within the purview of the definition of law as appears in the Constitution today come in Bangla and it has become possible because of that revolutionary piece of legislation.

LD: In the context of 1987 Act, would you say that Bangla as a language has become a common medium of communication in our courts too?

AK: The official activities in courts have not undergone any major change by dint of the law. I can say from my experience that maximum official activities in courts are being conducted in Bangla. There are two aspects of judicial activities. One is the administrative aspect and the other one is the functional aspect. The judgments as well as decisions rendered by the court come within the ambit of administrative aspect while the functional aspect includes the activities of the court in its day to day life. It is noted that in the subordinate courts, Bangla is the medium of communication both for speaking and writing (judgments and petitions). In the higher tier of judiciary, many of the submissions given by the lawyers are given in Bangla. Even the lawyers being bilingual and proficient in English also speak in Bangla and the judges also pose questions and communicate with the lawyers in Bangla. However, the judgments in most of all cases are given in English. Therefore, to put it like this, in the higher tier of the judiciary, the administrative aspect is linguistically governed by English whereas the functional area is predominantly steered by Bangla.

LD: If this is the situation in the judiciary, why do we often make demand of making Bangla as the medium of communication in the higher tier of judiciary?

AK: To me, this demand itself is something which is not a well-thought out urge and it gives a wrong message. Because this urge goes on to give an impression as if Bangla were not at all used in the higher tier of the judiciary. This however is not the case. At the Supreme Court level, now only the judgments and orders are overwhelmingly written in English; other than that, all other official activities in courts are conducted in Bangla. Now emphasis should be given on how to make sure that all judgments and orders can also be written in Bangla. And then a new yet formidable challenge will surface in respect of linguistic quality of judgments written by the higher court judges since we are yet to develop and institutionalise strong technical features of Bangla writing.

LD: Isn't it a challenging task to ensure that all the judicial decisions are rendered in linguistically standard Bangla?

AK: Yes, it is. More often than not we forget that legal study in its present form is a foreign discipline and a very technical subject. Complete internalisation of a foreign discipline through local and indigenous language requires a long period of time. And certainly, even a period of fifty years is not sufficient. For our nation, the urge for using Bangla in all spheres started from 1972. However, that urge was not translated into laws very soon. For more than a decade, there was this mixed use of language(s). Till late 90s, the dominant language for studying law was English. In fact the very culture of using Bangla and studying different disciplines in Bangla started at the end of the 1990s. Keeping all these nuances in mind, it will not be out of place to say that without a long standing culture of using Bangla, if the judges are directed to write judgments in Bangla overnight, it will be a very short-sighted decision.

LD: Do you think that since we don't practice bangla predominantly in our legal education, we are facing the subsequent consequences in both bar and bench?

AK: I don't really agree. The life of a university student, his education and learning as well as scope of both the two, are far different from those of a practitioner. When a student gets done with his education and enters in his early-life career in law, it is an entirely different world for him. At the university, he/she studies the subject from an evolutionary or historical point of view. However, the practitioner only wants to understand the practical implementation and use of the provisions of the text in question. Therefore, the idea or the assumption that only if a university student could be made adept in Bangla while studying law, he/she could properly translate the same into his practising life as a lawyer or a judge is not too well connected with reality.

LD: How do you see and evaluate the academic research pursued in Bangla by young legal researchers?

AK: The numbers of academic research in Bangla are very few. Even at university level, we do not find much works done in Bangla. The reason is understandable. The textbooks that are taught in universities are written in English, the students prefer to study in English and 'access to justice' as a concept is something that we cannot apply to universities. The higher education for the last forty years has not undergone any substantial change. The entire university education is overwhelmingly in English. For teachers to start researching in Bangla, a very significant period of time has to go by. All the universities including University of Dhaka followed and adapted themselves to the British legal education system.

LD: What is then needed to do?

AK: I think the change has to come in a reverse order. When courts and legal practice become entirely Bangla-based, legal education too will undergo changes. It should have been the other way round. But since we have the colonial legacy, it has to come in reverse order for us. Furthermore, I strongly believe that creating an indigenous legal corpus in Bangla is more of a sine qua non than implementing the mere demand of changing the court language. Until we have all major narratives of legal discipline hence jurisprudence translated into Bangla, it will be counterproductive, to some extent futile and chaotic, to change the medium of court language and academic studies.

LD: Thanks for your time.

AK: You are welcome.

FOR YOUR INFORMATION

How does the Bar Council Tribunal function

The procedure of filing an application against the lawyer for professional misconduct is very simple. One can send a complaint to the Bar Council by email, facsimile or post outlining the details of concerns by using the complaint form.

ALL lawyers who practice in Bangladesh must maintain the ethical standards imposed by the Bangladesh Bar Council. As an arm of the Bangladesh Bar Council, the Bangladesh Bar Council Tribunal investigates and prosecutes complaints against lawyers. For example, in *Islamia Automatic Rice Mills Ltd* v *Bangladesh Shilpa Rin Sangstha and others* 55 DLR (2003), the High Court Division observed that, if a lawyer is found to be careless in rendering legal advice in the course of his professional duty, he would be liable for negligence. In another case, namely *Bangladesh Bar Council* v *Khawja Abdul Gani & another* 50 DLR (1998), the Appellate Division found the respective lawyer liable for professional misconduct when he filed vokalatnama on behalf of the plaintiff as well as on behalf of the defendant in the same suit.

The Bar Council is empowered to constitute one or more Tribunals where complaints regarding the advocate's professional misconduct, criminal or unjust activities are adjudicated. In a recent exercise of right to information (RTI), the Daily Star has come to know that at present there are five such Tribunals. Each Tribunal consists of three persons of whom two are elected by the Council from amongst its members and the other one is a person co-opted by the Council from amongst the advocates on the roll, and the senior-most advocate amongst the members of a Tribunal functions as its Chairman.

The procedure of filing an application against the lawyer for professional misconduct is very simple. One can send a complaint to the Bar Council by email, facsimile or post outlining the details of concerns by using the complaint form. The complaints must be in writing and the document must be signed. The fee for filing a complaint is BDT 1000/. One should also supply photocopies of any papers relevant for the complaint (such as letters or cancelled cheques that relate to the problem).

Upon receipt of a complaint made to it by any Court or by other person that any advocate has been accused of misconduct, the Bar Council prima facie scrutinises the case. After primary scrutiny, the Bar Council may reject the complaint. However, if it does not summarily reject the complaint, it shall refer the case for disposal to a Tribunal. The Council may also of its own motion refer any case in which it has reason to believe that any such advocate has been so guilty. After that, upon completion of enquiry, the Tribunal may either dismiss the complaint or, where reference to the Tribunal was made at the motion of the Bar Council, direct that the proceedings be filed; or it may make an order imposing penalty. If an advocate is found guilty of professional or other misconduct, he may be reprimanded, suspended or removed from practice. The Daily Star has come to know from the Bangladesh Bar Council that in the last four years, from 2014 to 2018, 378 complaints were made and 250 of them have been disposed till date.

Where the Tribunal makes an order for the suspension of an advocate from practice, it shall specify the period of suspension, and for that period the advocate shall be debarred from practising in any court or before any authority or person in Bangladesh. In the 250 complaints lodged in between 2014 to 2018, fifteen lawyers have been penalised with suspension for limited/ permanent time period. Among these, nine have lost their license forever and 6 of them have lost it for a limited period of time. It is to be noted that there is no provision for appeal in the Bar Council Tribunal.

However, the Tribunal may, of its own motion or on application made to it in this behalf, review any order passed and maintain, vary or rescind the same, as it thinks fit. Moreover, if any person is aggrieved by an order of a Tribunal, he may, within ninety days from the date of the communication of the order to him, prefer an appeal to the High Court Division (HCD) of the Supreme Court. Every such appeal shall be heard by a Division Bench of the HCD which may pass such order thereon as it deems fit and the order of the HCD shall be final. However, the HCD may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit. For example, in the *Khawja Abdul Gani Case*, the HCD substituted the punishment of reprimand in place of debarring the lawyer for 5 years as in fact no harm was done to the lawyer himself.

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LAW LETTER

The long forgotten law of probation of offenders

Very recently, Chief Justice of the Supreme Court of Bangladesh Syed Mahmud Hossain has directed the judges to apply to a forgotten law of the 1960s, namely the Probation of Offenders Ordinance 1960, to reduce the pressure on prison and to implement 'corrective' punishment policy on the basis of the recommendation of a Reform Committee headed by Justice Imman Ali. Such direction comes on the heels of the urgency for minimising the number of prisoners which was more than twice of the capacity of prisons according to a report of Parliament prepared two years ago.

It is to be noted that the option of probation shall not be available to convicts under the Prevention of Oppression against Women and Children Act and the Special Powers Act. Upon certain conditions provided by section 4 of the Ordinance, the Court may discharge any person, not proved to have been previously convicted, convicted of an offence punishable with imprisonment for not more than two years, after its admonition or subject to the condition that he enters into a bond, with or without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order.

Section 6 of the Ordinance contains provisions empowering the court to direct an offender, against whom a conditional discharge order under section 4 of the Ordinance or a probation order under section 5 of the Ordinance is made, to pay compensation or damages to the person or persons injured by the offence committed by the offender.

The law of 1960 had little to no application in the post-independence context for Bangladesh. The Bangladesh Supreme Court has issued a circular on February 12, 2019 with the directives to the judges across the country to apply the law. The fact that the law is not in use is fully attributed to how the judges exercise their discretion in this regard.

The current practice of probation has been aphoristically described by Justice Imman Ali. In his words: "The use of probation by our Trial Courts is very rare, possibly due to the punitive attitude of the learned Judges which appears to be prevalent across the country." Previously, in 2006, Justice Imman Ali, in consultation with Minister Anisul Haque and Dr. Shahdin Malik, had allowed a convicted person probation.

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