REVIEWING THE VIEWS

Admission limit on LLB (Hons) programme in Bangladesh universities: A call for review

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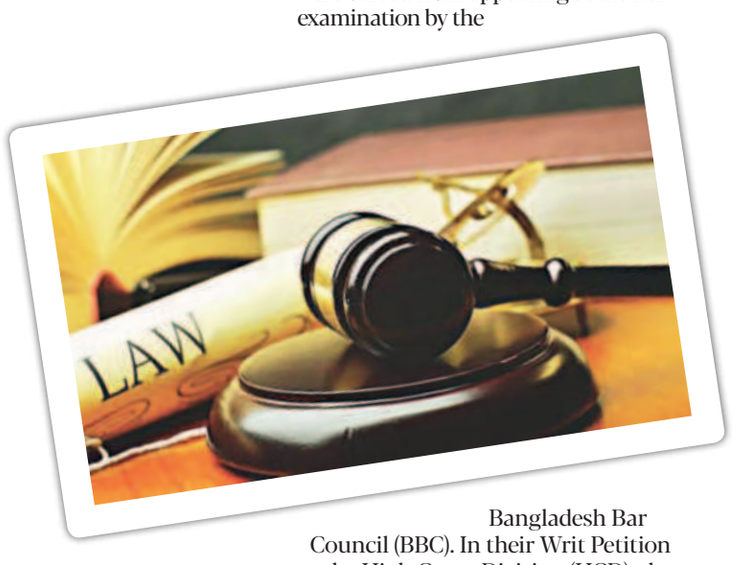
Bangladesh universities, public and private, run their LLB (Hons) programme pursuant to a judicially determined and imposed admission limit of 50 students per semester. This limitation may well have compelling reasons at the time of its imposition. This write-up argues that the limitation so far does not appear to serve its intended purpose and that it warrants a reappraisal with a view to its annulment.

A dispute emerged from the competing (mis)management claims by the Trustee Board of Darul Ihsan University, a private university. Some of its LLB (Hons) graduates were barred from appearing at the Bar examination by the



Bangladesh Bar Council (BBC). In their Writ Petition to the High Court Division (HCD), these law graduates challenged the legality of the ban. The HCD was to determine whether the ban was lawful. But the HCD went beyond the relief sought and imposed restrictions on law students' admission, set the admission criteria, and commented upon the management of the law departments of all private universities. It held: 'No private university shall be permitted to admit more than 100 students in a calendar year ... [the] BBC itself shall monitor the admission process of the LLB (Honours) course in the private universities':*Professor Syed Ali Naki and Ors.* v *Bangladesh and Ors*. (2016) 36 BLD (HCD) 417, para 130, 154. On appeal, the Appellate Division (AD) held: 'No *public or private* university shall admit students in bachelor of law course more than 50 students in a semester': *Bangladesh Bar Council* v *AKM Fazlul Karim* (2017) 14 ADC 271, para 101.

Where did this magic admission number come from and what were the reasons for setting this limit? Nobody knows and the judgments are silent. It is not expected that the public should always understand and be happy with every judgment. But courts are in positions of power to provide justice, and in exercising this power on behalf of the people, they must be able to defend and explain the ways in which they exercise their judicial powers.This 'one number fits all' public and private universities regardless of sizes, capacities, resources, and ages of all law departments requires the century old Dhaka University law department to enrol the same number as that of a recently or yet to be established counterparts. This parity ignores these diversities and creates winners and losers among universities which set dissimilar departmental admission limit based on their logistics and strengths.

The HCD order on all private universities' academic management went beyond any relevance to the relief sought - the eligibility of the Darul Ihsan law graduates to sit for the Bar examination. The AD on appeal rebuked the HCD for passing an order for all private universities when only one of them was a party to the case and found it inconsistent with the law: *Bangladesh Bar Council* v *AKM Fazlul Karim* (2017) 14 ADC 271, para 61. Previously, the AD had advised the HCD not to 'enter into academic discussion' and 'go out of their way to find such topics': *Bangladesh and Ors.*v *Idrisur Rahman and Ors.* (2009) 29 BLD (AD) 79, para 260. Authorising the Bar Council to be the monitor of 'the admission process of the LLB (Hons) course in the private universities', the HCD apparently created a supra-private university authority over and above the law departmental and university administration, the university academic councils and syndicates, and the University Grants Commission. The Private University Act 2010 prescribes no such authority; nor did the Parliament enacting the Act envisage it.The BBC's Legal Education Committee has a role in regulating entry into the *professional practice of law*, not private universities' legal education. The HCD drew no distinction between 'Bar admission to be practicing lawyers' and 'university admission to be law graduates'.

The limit on law admission seems unfair and discriminatory for prospective law students. It has curtailed their freedom of choice of study and employment options. It is discriminatory because prospective non-law students do not face this restriction external to universities. Restricting supply sources does not necessarily improve legal education and the quality of law graduates.

The Bangladesh Legal Practitioners and Bar Council Order 1972 authorises the BBC to take measures to 'promote legal education and to lay down the standards to such education in consultation with the universities in Bangladesh imparting such education'. Did the BBC propose and pursue any standard-setting measures to promote legal education and consult with private universities? If restrictive law admission was meant 'to promote legal education', it was done by the Courts, not the BBC. There are instances of joint venture for the promotion of legal education in some countries, where legal professional bodies, law firms, and individual donors provide funding to enrich university law libraries, hire new chairs/professors, establish new seminar/mooting facilities, and offer scholarships/awards for high performing law students. A new law building, called 'the change maker' at Macquarie University, Australia, is named after Justice Michael Kirby, a retired apex court judge in recognition of his substantial financial contribution to the construction of the building.

The limit on law admission seems unfair and discriminatory for prospective law students. It has curtailed their freedom of choice of study and employment options. It is discriminatory because prospective non-law students do not face this restriction external to universities. Restricting supply sources does not necessarily improve legal education and the quality of law graduates. Rather it exposes to the risk of unintentionally minimising competition and maximising monopoly of enrolled lawyers. Presumably, a preconceived notion that whoever studies law will end up as a practicing lawyer lies at the root of this limit, a perception no longer tenable. With the steady WTO-sponsored liberalisation and deregulation of professional and skilled service trade, many law graduates compete with non-law graduates for national and cross-border regional and international employment markets. These law graduates and others working as law firms' advisors, consultants, and interpreters do not need the Bar enrolment. This explains why universities should concentrate on producing law graduates with competitive generic skill like all other graduates. Admittedly, it is widely shared view that the university education quality has deteriorated across the board, not only in legal education. The professional legal system is also not free from criticisms of being cost-ineffective and time-inefficient, among others. There appears to be no tangible evidence of mitigating these systemic problems since the imposition of the limit on law admission. Shifting this role to universities is a misplaced bid to improve the standard of legal practice.

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LAW ANALYSIS

Reviewing the New Territorial Waters and Maritime Zones Act

After winning disputes with India and Myanmar, the sovereignty of Bangladesh concerning territorial waters has extended. As a result, Bangladesh has got a new command over the Territorial Sea, Exclusive Economic Zone (EEZ) and Contiguous Zone. To have proper control over the maritime boundary as well as to sustain, protect and persevere the marine resources, the government of Bangladesh has enacted a new legislation, Territorial Waters and Maritime Zones (Amendment) Act, 2021.

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The new Act seeks to amend the Territorial Waters and Maritime Zones Act 1974. The provisions of the 1974 Act were not coherent with the United Nations Convention on the Law of the Sea (UNCLOS) and were proposed to be amended since the UNCLOS 1982 entered into force later.

The new amended Act of 2021 has a completely new overhaul regarding maritime zone and has brought several changes to the provisions of the previous law of 1974. The Act has inserted several new definitions in section 2 such as Artificial Island, Continental Margin, Dumping of wastes, Martine Pollutions Installations, Internal Waters, Maritime Zones, Maritime Tribunal, Blue Economy, Seabed, Nautical Miles, Waste, and Warship.

The newly added provisions address the sovereignty of Bangladesh over Internal Waters regarding water column, the seabed and its subsoil, and the air space, the extraterritorial application of Act which means Bangladesh has jurisdiction of trial against any person or vessel for any offense even if the offense committed outside of the Maritime Zones.

Additionally, new 3A, 3B and 3C have elucidated the Rights of Innocent Passage in the Territorial Sea, criminal and civil jurisdiction over a foreign ship in the Territorial Sea, and the explanation of Remotely Operated Underwater Vehicle (ROV), Autonomous Underwater Vehicle (AUV) and Unmanned Underwater Vehicle (UUV).

The new Act referred the jurisdiction and sovereign power of the Bangladesh government over the Contiguous Zone, EEZ and the prohibition on the exploration or exploitation in the EEZ. Under section 5, the government has power over the EEZ concerning exploration, exploitation, conservation and management of the natural resources and exclusive rights and jurisdiction for construction, maintenance or operation of an artificial island, off-shore terminal, installations and other structures and control of marine scientific research, to preserve and protect the marine environment and to prevent and control marine pollution. Additionally, section 5A bars any person to conduct any kind of exploration of the marine biodiversity without authorisation from the government.

Moreover, sections 7, 7A and 7B specifically address the Continental Shelf of Bangladesh, Rights and jurisdiction in the Continental Shelf. Similar to the EEZ, Bangladesh has jurisdiction over the Continental Shelf regarding authorisation and regulation of the construction, operation, maintenance and use of artificial islands, off-shore terminals. section 7B bars any person from exploiting the natural resources in the continental shelf without authorisation from the government. New provisions regarding the High Seas are mentioned in section 7C.

Section 7F addresses provisions of Blue Economy and under the new legislation, the Government of Bangladesh may make policies, work-plan and implement economic activities that directly or indirectly take place in the Maritime Zones. Coupled with this, to enrich the blue economy and to enhance the economic benefits, the government of Bangladesh takes appropriate measures for sustainable use of marine resources or minerals, including through sustainable management of fisheries,

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mariculture, marine tourism, marine biotechnologies, marine transportation, development of ports and harbors, shipbuilding and recycling.

Furthermore, section 7H embodied Marine scientific research, Hydrographic survey and Military survey and use of research as well as a survey in Territorial Sea, EEZ and Continental Shelf.

To control marine pollution, the government can make rules under section 8 and for marine pollution, the punishments are three years' imprisonment with a minimum of two crore BDT to maximum of five crore BDT as monetary fine. Previously it was five thousand BDT only. For the failure to take any actions to prevent pollution, the punishment is five years imprisonment with a fine not less than ten crore or both.

In the previous provisions of the 1974 Act, if any robbery or theft took place in shipping ports, those were termed as 'piracy'. In the new amendment, piracy, armed robbery, maritime terrorism, theft and unlawful acts against safety of maritime navigation are defined to categorise different crimes.

With new amendments, the government has the power to punish for the violation of innocent passage, for contravention of the law by submarine or any other underwater vehicle, for throwing nuclear or hazardous wastes, for breaking or injuring a submarine cable, telegraphic or telephonic communications.

With amendments under the Act of 2021, Bangladesh has strengthened its maritime law. Since the provisions are in sync with the UNCLOS, the new provisions have vested new jurisdictional power and have given several rights to enjoy over the maritime boundary. With the new provisions, the government of Bangladesh can control marine pollution and take appropriate measures to sustain, preserve the marine diversity and boost the blue economy.

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