

132

Legal Education And Profession-II

—Dr. Kaisur Rahman

IN Bangladesh there are at present two sources of producing law graduates. First, the universities, which produce honours law graduates. For the LL.B. (Hons) courses the students are admitted on completion of their H.S.C. Examinations. It takes about four years to obtain the LL.B. (Hons) degree. And, secondly, there are other types of law graduates produced by the country's law colleges, although the certificates/degreess are awarded by the respective universities. These are the students who having obtained their graduation in other fields, such as, arts, science and commerce, come to study the LL.B. courses run by the law colleges and which takes about two years to pass, both the LL.B. Preliminary and Final Examinations.

Both groups of law graduates are equally eligible to appear before the written and viva voce examinations of the Bangladesh Bar Council on completion of six months' pupillage under a senior lawyer of seven year's standing. Recently, however, there has been demand from certain quarters to abolish these examinations of the Bar Council and to allow the intending law graduates to be directly enrolled at the Bar on completion of their law graduation. Considering the position of legal education leading to Bar of many other countries it would appear that this demand to cut short the examinations of the Bar Council is unreasonable and unacceptable.

There are too many new entrants to the legal profession every year. Already the number of lawyers eligible to practise is too big. As stated, besides universities, a big number of colleges have been producing thousands of law graduates. And although the nature of legal practice has to certain extent been changed over the years and there is now a growing tendency towards commercial practice, yet there is a genuine fear that the legal profession shall soon become overcrowded, or perhaps it is already overcrowded and too many people are perhaps competing with each other over relatively small number of cases.

From the teaching experience gained in a law college it can be said that the standard of non-law graduates coming to study two year's LL.B. Preliminary and Final courses is not good and this is the general picture of most of the students, although with exceptions. For this, one can blame the systems of our general education; the prevailing examination systems; and unfair means adopted in the ex-

aminations, including the law examinations.

So far as law examinations are concerned, it may be easy to a great extent to check unfair means in the examinations. Traditional essay type "common questions" being repeated almost in the same form and language in alternate years can be easily replaced by quiz type small questions, covering the entire syllabus in a given subject. A student could not answer such small questions, if tactfully set by the examiner, covering the entire syllabus, unless the student has studied the subject thoroughly and has grasped most of the topics. The chances of either copying or reproducing in the memorized form may be greatly eliminated. This modern system of setting the examination questions can be followed from the countries like the U.S.A. or the U.K.

It is submitted that like many other progressive countries there should also be introduced in our country one year bar course after law graduation, and in which the prospective lawyers may be taught the following subjects: (i) certain areas of procedural law, evidence, remedial law, etc. that always recur in practice; (ii) drafting of various kinds of documents, pleadings and so on which occupies a great part of legal practice; and (iii) conducting of cases, examining witness, taking evidence, arguing the case and the like. Such a bar course may take nine to twelve months and on successful completion of the course a students may be enrolled at the Bar subject to completing his twelve months' pupillage under a senior lawyer.

Basically there are at present three categories of practising lawyers in our country. First, those who are eligible to practise in all the courts subordinate to the High Court Division. Secondly, those who are eligible to practise in all the courts subordinate to the Appellate Division. And thirdly, those who are eligible to practise in all the courts, including the Appellate Division. A junior lawyers of two year's standing is now eligible for enrolment in the High Court Division and after a period of five year's practice in the High Court Division he may be eligible for enrolment in the Appellate Division. This kind of grading of practising lawyers is not found in the U.K. or many other countries. In the U.K. once a barrister is called to the Bar and on completion of his twelve months' pupillage he can conduct cases in any court without any restrictions whatsoever, although a

senior barrister may be honoured with the title of "Queen's or King's Counsel" (Q.C., K.C.) and a Q.C. has to appear in a case with his junior. So far as these rules of graduation of lawyers are concerned, these could be amended in two respects: first, a junior lawyer of only five year's standing may be eligible for enrolment in the Supreme Court of Bangladesh; and secondly, as soon as an advocate is so enrolled in the Supreme Court, no further restrictions need be imposed necessitating further enrolment in the Appellate Division of the Supreme Court. Enrolment in the High Court Division should automatically entitle one to practise in the Appellate Division. Both the High Court Division and the Appellate Division are part of the Supreme Court of Bangladesh and so it is in accordance with reason that any advocate enrolled in the High Court Division should also be able to conduct cases in the Appellate Division without engaging another advocate. Talking of enrolment, the Supreme Court has stated that "enrolment is more akin to the grant of license to practise a trade or profession" (17 DLR (SC) 1965 424 at 427).

The Bar Association including the Supreme Court Bar Association of the country are voluntary associations run by the subscriptions of the members and through the elected representatives at elections held annually. Membership of the respective Bar Association is compulsory. As stated by Rule 66 (1) of the Bangladesh Legal Practitioners and Bar Council Rules, 1972, "No person shall practise as an Advocate unless he is a member of a Bar Association of the place at which he ordinarily practises..." Membership must be obtained within six months of enrolment. The respective Bar Associations have been formed mainly with the aim of providing various facilities to the advocates in their legal profession. But these associations need more funds to be able, to offer better services to the members.

The present Bangladesh Legal Practitioners and Bar Council Order, 1972 (President's Order No. 46 of 1972) was preceded by a number of related statutes, among which were: the Legal Practitioner's Act, 1846 (I of 1846), the Legal Practitioner's Act, 1853 (XX of 1853), the Legal Practitioner's Act, 1879 (Act XVIII of 1879), the Bar Council Act, 1926 (XXXVIII of 1926) and the Legal Practitioners and Bar Councils Act,

1965 (Act No 111 of 1965). The Bangladesh Bar Council formed under the Bar Council Order of 1972 is responsible for admission of advocates on its roll maintained by it and to see that the conduct and etiquette of the advocates is maintained and to investigate cases of misconduct against any advocate.

Historically speaking, it may be stated that the legal practitioner's Act, 1879, by its section 13 provided, inter alia, that any pleader "guilty of fraudulent or grossly improper conduct in the discharge of his professional duty" may be suspended and dismissed from practice. Similarly under the present Order of 1972 an advocate found "guilty of professional or other misconduct" may be "reprimanded, suspended or removed from practice" by the Bangladesh Bar Council.

It is stated in the Bar Council's "Canons of Professional Conduct and Etiquette" that "in order effectively to discharge these high duties Advocate must conform to certain norms of correct conduct in their relations with members of the profession, their clients, the courts and the members of the public generally".

An advocate cannot solicit for his professional purpose nor can he engage anyone to solicit on his behalf. He is not supposed to "acquire an interest adverse to a client in the property or interest involved in the case" (40 DLR (1988) 170). He has to show respect for the courts and the Judges and he is not permitted to prosecute or defend a case out of spite or for the purpose of harassing anyone or delaying any matters. Elaborate and stringent rules have been set out by the Bar Council in so far as the conduct and etiquette of the advocates is concerned.

From the discussions, it may, however, be concluded that there is a need to examine our legal education and the legal profession. A pertinent committee of qualified and experienced people may be set up to thoroughly examine various aspects of the legal education and legal profession, a matter which has long been overdue. It is noteworthy that the recent decentralization of Judiciary and especially the High Courts has greatly affected the lawyers in one way or another. This needs to be assessed. It is marked that the legal profession is going through the periods of strains and stresses. These and other pertinent matters have to be soon looked into with a view to improving the standard of our legal education and professions. — (Concluded).