

Ethics in the Judiciary System of Bangladesh

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Abstract

In Bangladesh, demand for judicial independence in practice has been a much debated issue and the demand is fulfilled but expectation of people is not only limited to have an independent judiciary but to have an impartial system and cadre of people, which will administer justice rationally being free from fear or force. The independence of judiciary and the impartial judicial practice are related concepts, one cannot sustain without the other and here existence as well as the need of practicing impartiality is well recognized. But the art of practicing impartiality does not develop overnight as it's related to development of one's attitude. It takes a considerable time resulting from understanding, appreciating and acknowledging the moral values, ethics and professional responsibility. The judiciary includes Judges, Advocates mostly who are expected to demonstrate a high level of moral values and impartiality towards people seeking justice and 'rule of law'. This is true that bench officers and clerks are also part of the process to ensure rule of law with same level of participation by the law enforcing agencies such as police. However the paper includes only those who either join judiciary as Judge/Magistrate or Advocate to explore level and extent of ethical knowledge they receive being key role players of the system.

Introduction

The people at the bench are individuals whom we expect to practice impartiality in administering justice without being pressurized by any restriction, influence, inducement, threat or influence. The vast majority of judges and judicial officers are appointed from either the members of legal profession with long professional standing or the law graduates by way of judicial service examination intake.

Judicial Officers/Judges

- Judicial Administration Training Institute (JATI) arranges for training of persons appointed in the judicial service, lawyers and some other professionals connected with the judicial system in order to increase their professional efficiency.
- The Judicial Administration Training Institute (JATI) runs a 60 Day Basic Course for newly appointed Assistant Judges, 21 Day Courses (and sometimes, 3 day short courses) for Senior Assistant Judges, Joint District Judges and District Judges.

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- The curriculum for the "Basic Course" does not include any lecture on ethics or professional responsibility.
- But, the curriculum for Judicial Administration Training Course for the District and Session Judges have a module on "Judicial Ethics and Code of Conduct of Judicial Officers".

Advocates

- As per Rule 10 of The Bangladesh Legal Practitioners and Bar Council Rules 1972, the functions of the Bangladesh Bar Council includes, is to

- admit persons as Advocates on its roll;
- hold examinations for purposes of admission;
- remove Advocates from such roll;
- lay down standard of professional conduct and etiquette for Advocates;
- entertain and determine cases of misconduct against Advocates on its roll and to order punishment in such cases;
- promote legal education etc.

- As per Bangladesh Bar Council, every person shall, before being admitted as an Advocate, pass a written examination, viva-voce and a vocational training course of approx. 7 weeks.

- The syllabus for the written examination for enrolment includes a topic, "Rules of Professional Etiquette" which is examined by assessing a candidate's knowledge on Bangladesh Bar Council Canons of Professional Conduct and Etiquette. Canons of Professional Conduct and Etiquette states about an Advocate's duty towards the Court, his/her clients, colleague advocates and towards the public generally.

- These Canons were framed in exercise of the power conferred on the Bangladesh Bar Council by section 48(q) of the Legal Practitioners and Bar Council Act 1965 and are crucial for any legal practitioners of Bangladesh as they (Advocates) are expected to discharge certain high duties in the society.

- According to Bar Council Enrolment Examination Policy, every candidate is expected to be familiar with these canons and is examined by way of answering a given hypothetical problem of ethical conflict situation. But this is simply not enough to ensure the target result of having an overall ethical and professionally responsible legal profession.

- Every successful candidate who have passed the written examination and viva-voce, would need to go through a compulsory training course known as Bar Vocational Course (BVC) to get a Call to the Bar and the 'certificate'. The BVC is conducted by the Legal Education and Training Institute (LETI) of Bangladesh Bar Council. Within a span of 7 weeks, the students of BVC have approximately 80-84 classes and unfortunately, only 3 classes (each with approx. one hour duration) are allocated to have a discussion on the topic of Professional Ethics. The discussion is of general type and there is no specific syllabus available for those sessions.

Observation

In a bid to understand the level of professional ethics we can explore the answers of the following questions that are directly linked to ethics and we have to take note that the existing legal education system do not teach the law students or graduates te ethics or professional responsibility. There is no conceptual framework that to be a good lawyer a student needs to learn and develop good ethics and as such, there is no subject called legal ethics in the official curriculum of any of the law degree of our country.

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- Do the judges get any systematic training during their process of making to build up a state of mind or attitude whereby they become committed to uphold the moral and ethical values which help them to ensure the rule of law?

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- What level of care are our legal professional bodies and the legal education system is providing to produce a lawyer or a law graduate to practice and appreciate the ethics to ensure the ‘rule of law’?

Conclusion

The need for independent judiciary is no doubt a cornerstone of democratic practice all over the world and in Bangladesh, demand for judicial independence in practice has been a much-debated issue among policy reformers, democratic philosophers and legal academics for a long time and it has been achieved so far, though there are still some conflicts. Many a people have raised this issue at various national levels and demanded a positive change to ensure independence of judiciary at the earliest but expectation of common men is not only limited to have an independent judiciary but also, to have an impartial one, which will administer justice rationally being free from fear or force.

The independence of judiciary and the impartial judicial practice are related concepts, one cannot sustain without the other. The art of practicing impartiality does not develop overnight rather it results from understanding, appreciating and acknowledging the moral values, ethics and professional responsibility over a considerable period of time. It is basically a question of developing an attitude.

In developing that attitude, there is a need for the development of an ethical framework in our entire legal and judicial arena and for which there is no other alternative but raising the knowledge of our legal and judicial professionals with regard to ethics, professional responsibility and accountability. Ensuring of such knowledge will help the society with long time benefit in general and particularly for the legal and judicial professionals.