

A Journey into Law and Justice

Chief Justice Surendra Kumar Sinha*

Respected chairman, Special guests, Faculty Members and my successors the legal fraternity-Good Evening.

I feel privileged participate as Chief Guest of the Graduation Dinner of the Northern University Bangladesh. I came to know that this university is currently holding one of the leading positions amongst the private universities. Ideally Educational Institute aims to provide quality education in moulding the young generation into globally competent legal minds to face the present day challenges of the world.

A well-functioning education system is essential to the modern societies, and legal education has a pivotal role to play in the development and maintenance of rule of law as well as provide access to justice to our people. Northern University Bangladesh, I believe, has an influencing role to play on all societal activities. There is no doubt that legal education and practice of law are central to addressing the paradoxes and inequities that challenge our society today.

We live in a country whose people are largely ignorant about the laws, its possible impact, implications and strategies for using them are so unknown. Lack of information about laws on the one hand and methods for assessing law implementing agencies acts as deterrent, on the other hand, citizens who attempt to operate the legal system often get caught within the labyrinth of the legal system that we have inherited. It is, therefore, essential that institution like Northern University Bangladesh fundamentally re-negotiate and change the landscape of legal education in the country and raise the standard for the rest of our legal institutions.

At this juncture, I want to speak a few words about law. It is said, law is a jealous mistress. Its study and application require the strength of an ox and the patience of an ass, the mind and imagination of an artist and the foresight of a prophet, as also an incisive intellect. In addition, one should have the wherewithal, infrastructure the best libraries, the best full-time law teaching professionals who should be well paid, more than judges of the superior judiciary, modern facilities including advanced computers, internet connections, law research wings and law drafting workshops, moot court, and academic freedom for critical evaluation of judgments of public, national, constitutional, environmental, intellectual property international importnace and so on¹. We speak about law, learn about law, study about law and want to

* Speech at Graduation Dinner Fall 2013 at Faculty of Law, NUB

* Chief Justice of Bangladesh

¹ The Perils to Justice, K. Veeraswami.

implement law in every spares of our life. What law is? Oliver Wendell Holmes Jr's aphorism in 'The Common Law' is worth to mention here:

"The life of the law has not been logic: it has been experience. The seed of every new growth within its sphere has been a felt necessity. The form of continuity has been kept up by reasoning purporting to reduce everything to a logical sequence; but form is nothing but the evening dress which the newcomer puts on to make itself presentable according to conventional requirements. The important phenomenon is the man underneath it, not the coat; the justice and reasonableness of a decision, not its consistency with previously held views. No one will ever have a truly philosophic mastery over the law who does not habitually consider the forces outside of it which have made it what it is. More than that, he must remember that as it embodies the story of a nation's development through many centuries, the law finds its philosophy not in self-consistency, which it must always fail in so long as it continues to grow, but history and the nature of human needs.'²

The law embodies the story of a nation's development through many centuries. Holmes viewed that the law is always approaching and never reaching consistency; that it is forever adopting new principles from life at one end, and retaining old ones from history at the other which have not yet been absorbed or sloughed off.

Cardozo contended that in the areas under consideration the law derived 'from the life, the emotions, and the history of men; and consequently resisted 'our efforts to formulate it as a rule of orderly, coherent thought;. Where identity was an issue, Cardozo maintained, because an individual either claimed a certain person for reasons of financial gain or had allegedly committed a crime, courts could properly consider facts pertaining to general appearance, mental and physical peculiarities, or coincidences of history or past experience. But courts were not restricted to these areas. They could also admit circumstantial evidence of 'any fact that in ordinary course of events renders it probable that the person before the court is the person by whom an act in issue has been perpetrated'. In a lecture at Cornell University, Cardozo said, the philosophy of law dealt with 'how law comes into being, how it grows, and whither it tends'³

Law and justice are interwoven, and they cannot be segregated. The principles of justice, in Rowsian formulation, determine the basic social institutions that should govern the society they are, we imagine, about to 'create'. The deliberations in this original position on the principles of justice demand the impartiality for fairness.

² The Common Law (1881)

³ The World of Benjamin Cardozo.

"the original position is the appropriate initial status quo which ensures that the fundamental agreements reached in it are fair. This fact yields the name justice as fairless'. It is clear, then, that I want to say that one conception of justice is more reasonable than another, or justifiable with respect to it, if rational persons in the initial situation would choose those principle over those of the other for the role of justice. Conceptions of justice are to be ranked by their acceptability to persons so circumscribed'.⁴

Rawls argued that the following 'principles of justice'⁵ will emerge in the original position with unanimous agreement.

- a) Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties of all.
- b) Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be of the greatest benefit of the least advantaged members of society.

Amartya Sen, profound social philosopher pointed out grave problems with Rawls 'transcendental' approach and argued that what we urgently to implement in this troubled world is not a theory of an ideally just state, but a theory that can yield judgments as to comparative justice, judgments that tell us when and why we are moving closer to or further away from realizing justice in the present globalized world. His theory gives us a political philosophy that is dedicated to the reduction of injustice of Earth rather than to the creation of ideally just castles in the air. He applied his formidable skills of argument to the task of bringing political philosophy face to face with human aspiration and human deprivation in the real world.⁶

The departure in Amartya Sem's theory of justice is on political and moral philosophy, for example, the case for what is called, open impartiality, which admits voices from as well as near in interpreting justice of laws (not only for the sake of fairness to others, but also for the avoidance of parochialism, as discussed by Adam Smith in *The Theory of Moral Sentiments* and in *Lectures of Jurisprudence*, has direct relevance to some of the contemporary debates in the Supreme Court of the United States.)

⁴ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

⁵ *Political Liberalism* (1993), based on the Dewey Lectures at Columbia University.

⁶ *The Ideal of Justice*, Amartya Sen.

We live in a country where some people are alienated from the benefits of the legal system and the freedoms offered by the Constitution due to no fault of their own. It is this gap of knowledge and information that each of you must strive to bridge, and bring the law at the doorstep of every citizen of the country, and you must understand and appreciate the several approaches towards using law as a tool of social engineering in our society. The aim of education is to make a person equipped to face the basic challenges of life.

Our freedom and independence were achieved by the sacrifice of millions of martyrs who had imbibed the spirit of John Stuart Mill⁷ and the democratic traditions of British and India. In including the spirit of nationalism, democracy, freedom and secularism, noble service was rendered by the universities. During the liberation movement, almost all university students were a nationalist at heart whether they were active in the movement or no. Even so every university student today must be an integrationist at heart, whatever be his or her field. He must also reflect and promote, along with national unity, the democratic and economic renaissance of Bangladesh.

This country is becoming world's biggest ready made garments exporter. Its people and products can move freely from any corner to any region of the globe. Its size and growing economic strength have earned the country a respected place among the nations of the world. We have transformed the backward benighted agricultural Bangladesh that it was prior to independence, into a modern industrialized nation in the world. If scientific and technological developments are not translated into schemes for the relief of the vulnerable sections of the society, these developments will soon get discredited. So you have to study and understand the law of globalization with a specific focus on questions such as copy right violations, trade sanctions, and protections for increased foreign investment. The term globalization refers to international integration arising from the interchange of world views, products, ideas, and aspects of culture. Advances in transportation and telecommunications infrastructure, including the rise of the telegraph and its posterity the internet, are major factors in globalization, generating further interdependence of economic and cultural activities.⁸

You should keep in mind the impact of the technological developments. With the emergence of technologies, uncertainties arise with regard to the application of existing laws. This needs to enact new laws to cope with the advancement of science and technology to regulate their use. Our investigative agencies have to rely on

⁷ John Stuart Mill, friend of liberty and an English philosopher. He was an influential contributor to social theory political theory and political economy.

⁸ Al brow, Martin and Elizabeth King (eds) (1990) Globalization, knowledge and Society London.

forensic science for investigation of incidents for secret killing such as, analysis of fingerprints, voice, handwriting, blood samples, DNA for evidence collection. Software is also used for re-constructing the images of suspects. Unless you know those technologies it would be difficult on your part to defend an offender in a case which will be based on digital evidence.

Swami Vivekandanda said: "The ideal of all education, all training, should be this man making. But instead of that, we are always trying to polish up the outside. What use in polishing up the outside when there is no inside? The end and aim of all training is to make man grow. The man who influences, who throws his magic, as it were, upon his fellow-beings, is a dynamo of power, and when that anything will make it work."⁹

"Education is the manifestation of the Divinity already in man."¹⁰

If University education inspires patriotism everything for the freedom and honour of our liberation and motherland, humanism to regard every person, irrespective of religion, caste or creed as a brother and discipline to perform one's duty to one's satisfaction, it would have rendered a real service to its alumni. You have to keep in mind that true democracy rests on voluntary observance of the laws of the land and not on the enforcement thereof by the authority. In the ultimate analysis, the welfare of the people is the ultimate aim of laws. Laws come into existence to protect life and to ensure a good life for the citizens.

The essential purpose of convoking an assembly of a university at the end of an academic year is to invest graduating students with parchments signifying their educational attainments. The occasion, therefore, founds off a period of preparation. Another object is to inform the students that they stand on this day at a threshold and at a door which leads both out and in; out of the world of preparation, and into the world of action.

Your education must not end today. You will enter into the practical life and your real learning starts from now. Unless you concentrate your mind and labour hard, you will miss your path. Education is an endless process and we go on learning day after day in the vast laboratory of mankind. The strength of institutions like this and potential student like yourself gives us confidence that future justice dispensation in this country is bright.

Many thanks and best of luck to you all.

⁹ The Complete Works of Swami Vivekananda, Vol-2 P15

¹⁰ Ibid, Vol. 4, P.358

