CLR, 'Rebellious Lawyering', and Justice Education: A Few Lessons from Bangladesh

Mizanur Rahman[1]

Abstract

Since the mid-1980s, there has been a noticeable movement in legal education, especially in the common law countries, to transform it into justice education. While 'legal education' in its traditional connotation refers to teaching and learning of the black letter laws, mainly for litigation purposes, justice education ventures well beyond traditional legal education to incorporate ideas of human dignity, empowerment of the poor and the marginalised including their access to justice to make the education socially relevant. The article argues that, despite having certain common features, justice education, both in content and in procedure, is fundamentally different in the global North and South, more so in countries of South Asia with massive poverty and ever-widening gaps between the rich and the poor. The article discusses a particular component of justice education in Bangladesh, the Community Law Reform Programme, popularly known as CLR, which has been experimented with and practiced for almost two decades. The article demonstrates how CLR is different from other socio-legal researches and why it should be considered as an effective way of pursuing justice education for law students. The experience of CLR in Bangladesh since 2001 provides enough evidence to conclude that for justice education to be meaningful in societies like Bangladesh, it has to incorporate CLR in its curriculum. Finally, the article analyses how it has proven to be a challenge to incorporate CLR in the mainstream law school curriculum (even as a clinical component), despite its intricate relation to 'rebellious lawyering' as distinct from 'generic/traditional' lawyering.

Keywords Anti-generic learning · Rebellious lawyering · Community Law Reform (CLR) · Human rights · Justice · Socially relevant legal education · Marginalised communities ·Empowerment · Empathetic learning

[1] Former Chairman of the National Human Rights Commission, Bangladesh, Professor of Law, University of Dhaka; Founder of Empowerment through Law of the Common People (ELCOP). The paper was earlier published in Jindal Global Law Review volume 11, p. 289–308 (2020). It is reprinted here with the permission from the publisher Springer and Jindal Global Law Review.

What is worth legal education if it cannot ensure access of the poor to justice.

NR Madhava Menon [2]

1. Introduction

An issue of great significance in contemporary times is the connection between social justice and legal education in the context of market-driven globalisation processes tending to take law and legal institutions away from the common people. Law is now called upon to mediate not only between the state and the citizens but between varieties of power centres, some of which are larger and more powerful than the state itself. Constitutions are overshadowed by international legal instruments in the adoption of which individuals have no control.

> Big scale corruption and multi-national criminal syndicates are operating with impunity sometimes in collusion with the State apparatus against which law and courts are unable to act effectively. Despite the Constitution and the laws, economic policies are skewed in implementation resulting in the poor becoming poorer and the rich becoming richer![3]

According to the Human Development Report (2016), put out by the UNDP (United Nations Development Programme), over 1.5 billion people in the developing countries still live in multi-dimensional poverty; 53.9 per cent of them are concentrated in South Asia.[4] While the level of poverty fell from 1990 to 2015, inequalities increased significantly.[5] The report noted that the largest gender disparity in development is in South Asia, where the female human development index value is 20 per cent lower than the male values.[6] In World Happiness Report 2017 by the United Nations Sustainable Development Solutions Network, countries are ranked on the basis of the happiness level of their people measured not in terms of economic matrices such as GDP and inflation but in terms of social support, freedom of choice, level of corruption, trust in government and public services, life expectancy, spirit of generosity, etc.[7] In the World Happiness Report 2017 rankings, out of 155 countries ranked, India is placed at 122 while Sri Lanka is at 120, Bangladesh

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[2] From Professor NR Madhava Menon's notes (apparently his last ever handwritten letter) addressed to the principal, Kerala Law Academy, the night before he was hospitalised. Reproduced in Mizanur Rahman, *My Association with Professor Madhava Menon or a Lesson in Experiential Learning* (Rahim Book Depo 2020) 19 (forthcoming).

[3] NR Madhava Menon, 'Rule of Law and Social Justice: The Case for Re-structuring Legal Education in South Asian Countries' (AK Khan Memorial Lectures, University of Chittagong, 2018) 9.

[4] UNDP, *Human Development Report 2016: Human Development for Everyone* (UNDP 2016) 54.

[5] Menon, 'Rule of Law and Social Justice' (n 2) 9.

[6] UNDP, *Human Development Report 2016* (n 3) 5.

[7] United Nations Sustainable Development Solutions Network (SDSN), *World Happiness Report 2017* (SDSN 2017).

at 110, Nepal at 99, and Pakistan at 80.[8] It is a matter of concern to rule of law countries that they are not able to reach the fruits of freedom and development to large sections of people in spite of progressive laws in the statute book and having democratic governance in place. This situation, it is submitted, warrants introspection on the part of all those involved in law and governance including those in charge of legal education.

This task was well conceived by Prof. Madhava Menon. His idea of the National Law School model of legal education added newer dimensions of legal education in the subcontinent and has been able to draw a permanent line of demarcation from the existing 'traditional' legal education. The main thrust in Prof. Menon's concept was that legal education must be socially relevant. The expression 'socially relevant legal education' may sound quite simple and easily comprehensible but contains a deep commitment to making law and lawyering meaningful for the vast majority of the population. Socially relevant legal education, therefore, ultimately must usher in people-friendly laws, rule of law, and access to justice.'[9]

Why was this departure from traditional legal education and lawyering felt necessary? The answer may be found in 'undue overwhelming emphasis on positivist approach to law, reliance on rule of the text of law rather than the spirit of the law, and consequential traditional lawyering'."[10]

How you practise law ultimately is defined by what kind of legal education you were exposed to. Education and practice are therefore interrelated and interdependent. Traditional legal education leads to traditional (generic) lawyering where lawyers formally represent clients. They litigate more than they do anything else. They consider themselves the pre-eminent problem solvers and focus on litigation based problem solving, assuming that such cyclical repetition of subordination is the normal state of affairs in certain subcultures. Therefore, traditional lawyers work peripherally while the root causes of those problems continue to exist and prevent people from helping themselves. More importantly, most lay and professional people operating within the regnant idea don't feel any need to break away.[11]

Such a pessimistic approach to lawyering is a direct consequence of our traditional legal education which today may be viewed as obsolete, archaic, reactionary and anti-people. Some two and a half decades ago I wrote, 'Legal education, hitherto imparted in Bangladesh has been a dismal failure. This statement is not a foregone conclusion but is merely a depiction of the utter poverty of legal education in the country. [12]

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[8] Ibid.

[9] Mizanur Rahman, 'Socially Relevant Legal Education: Role of Law Schools and "Rebellious Lawyering" (2009) 30(1) *Journal of Law and Development* 30.

[10] Ibid.

[11] Mizanur Rahman, 'Anti-Generic Learning and Rebellious Lawyering: A Challenge to Regnant Legal Education and Lawyering in Bangladesh' in Mizanur Rahman (ed*), Human Rights and Empowerment* (ELCOP 2001) 136, 138.

[12] Mizanur Rahman, 'Clinical Legal Education in Bangladesh: Establishing a New Philosophy?' (1996) 1 *Chittagong University Studies* 1.

There was indeed a felt urgency in transforming legal education and lawyering in the country. By then I had already been in close contact with Prof. Menon, and his ideas on reforms of legal education came in very handy.[13]

2. Regnant legal education

The constitutions of most countries expect lawyers to maximise justice in society and have given the profession a unique place in the scheme of things.[14] The Constitution of Bangladesh, for example, in its Preamble, states that 'it shall be a fundamental aim of the state to realise ... a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.'[15] Vindication for infringement of rights is generally attained through the justice delivery system in which the lawyers have a significant role to play. Rule of law, in this sense, may be viewed as rule for lawyers. Social justice lawyering or advocacy focused around needy people and their problems is what legal professionals in Third World countries are obliged to do as agents of justice. Law schools as part of the legal system are supposed to offer legal education and training designed to transform social and economic institutions to move towards equity, equality, and social justice. It is unfortunate that the design of legal education followed in Bangladesh has not been in tune with the aspirations of the people or the expectations of the Constitution makers.

> The market forces of demand and supply govern the profession as well. The promise of justice and the lived reality full of barriers and impediments to access justice for a large majority of people in the region is a matter of shame for the profession and a serious challenge for those who educate the lawyers.[16]

Is the profession continuing the same old pre-liberation role disregarding the constitutional vision? Are law schools turning out law graduates who continue to defend the 'rule by law regime' of the Pakistan era instead of the 'rule of law governance' envisaged by the Constitution? In short, one would be justified in asking what, after all, is the difference law education has made after victory in the war of liberation from Pakistani occupational forces and adoption of the Constitution promising 'equality, human dignity, and social justice'?

The prevailing legal education and training in our part of the globe are devoid of any serious concerns for 'real peoples with real problems'.[17] Whereas this may be true for other jurisdictions too, the 'puritan' nature and content of our legal education has been more noticeable due to the absence of clinical legal education programmes, an absence that results in emphasising more the

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[13] For the impact of Prof. Menon's ideas on this author, see Mizanur Rahman, "The Story of Rebellious Lawyering or Approaching of a Silent Revolution' in Mizanur Rahman et al. (eds), *Human Rights and Rebellious Lawyering* (ELCOP 2019) 1.

[14] Constitution of Nepal, Art. 50; Constitution of South Africa, Art. 35; Constitution of India, Art. 39(A).

[15] Constitution of Bangladesh, Preamble.

[16] Menon, 'Rule of Law and Social Justice' (n 2) 9.

[17] Rahman, 'Socially Relevant Legal Education' (n 8)31.

letter of the law without relating it to the real-life problems of the common citizens. Our legal education has more or less avoided confronting the fundamental question of the relationship of law and politics. In a world where 'politics is crystallised economics' and 'law is crystallised politics', our educators have prohibited the entry of politics into the classrooms, making legal education not too different from theological instruction. Austin and Bentham are worshipped as undisputed, unchallenged gods whereas the political economy of law is made the pariah.

In the prevailing situation, indeed some teachers and students seem to have cut something of a deal. The students permit themselves to be bored, boring, and infantilised, so long as no one challenges too openly their disengagement. The teachers permit themselves to be bored, boring, and thoroughly unambitious so long as no one examines too closely their teaching. Neither demands too much of the other and neither exposes the considerable fatuousness of their time spent together.

3. Legal education and traditional lawyering

This unpalatable picture is reflected in contemporary legal practice. Regnant legal education understands 'lawyering' as the 'application of existing categories of legal knowledge (rules) to the case at hand (facts) in a world where there is presumed to be a right answer and where "thinking like a lawyer" means learning the ways in which a competent practitioner would finally connect category to case'.[18] As a result, legal education largely ignores what ought to be both the challenge and artistry of the practice of law: the dynamics of inevitably working with other people in framing and responding to conflicting, uncertain, and unique situations, the interaction of lay and professional understanding and know-how, and the impact of income and other power disparities on perceptions and strategies. In short, our teachers have long acquiesced in visions of lawyering that suit, most of all, their pedagogical comfort.

Our legal education spends a great deal of time and effort transmitting the law of property, tort, company, Constitution in a way which is nothing more than the fairly uninspired and uncritical statement of rules and principles of law to call 'black letter law'. By contrast, our courses invest very little time and effort what some like explicitly identifying and elaborating underlying theoretical conceptions----conceptions of human interaction, of conflict, of the capital market, of problem solving, and of the state. It seems questionable whether our students truly comprehend even the 'black letter law' since they do not have an understanding of its social and political history and how it affects everyday problems. Thus, our legal education continues to reflect, as much as anything, what the teachers feel both equipped to put into their teaching and rewarded for doing with their teaching. Law schools do now what they have always done and teachers train now as much as they themselves were trained. Consequently, and ironically, our legal education and law teachers simply reproduce one another.

Too much of legal education seems, in short, schematic, ungrounded, and bloodless. As long as far too little of everyday life makes its way into and gets serious attention in the general approach

[18] Gerald P Lopez, Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-generic Legal Education' (1989) 91 West Virginia Law Review 305, 322.

to legal education, we can expect that too many of our future lawyers will continue to believe that they do their best work only and always at a distance from, and without a deep appreciation for, those with whom they work. By ignoring the soul of law and that of a human being who happens to be a lawyer, our legal education converts law students into expressions of 'technique', causing their human side to atrophy and leaving many of them unprepared to face the moral chaos and distortions inherent in law practice in the subcontinent, more so in Bangladesh.

'Thus prepared', I wrote a long time back,

our students are more familiar with Donoghues and Stevensons, Murburrys and Madisons, Liversidges and Andersons, but fail to feel the sense of deprivations of the millions of Rams and Rahims living in a situation of unimaginable 'human indignity'. Lawyering for them becomes a highly rewarding in financial terms profession, a vocation blessed with the 3 Ps - privilege, power and position while the object of their activities, the central figure of all activities of a lawyer the human client remains in oblivion - ignored, overlooked, bypassed.[19]

4. Need for justice education

This situation of legal education and lawyering infused in us the conviction that legal education must be socially relevant if the ultimate goal of the law is to ensure justice. More importantly, the issue confronting legal educators in the South Asian countries which continue to suffer extreme poverty, inequality, and exploitation, is the response to the demands of social justice commitments of the Constitution. How long can the legal profession remain a private monopoly with large sections of people denied access to justice? Prof. Menon quite aptly remarked, 'the picture of the lawyer as litigator in the adversary system may itself serve largely symbolic functions. Lawyers for individual clients under the conventional adversary system have to undergo structural changes if the profession has to fulfill the new role as change agents for social change and social justice."[20]

Lawyering for justice, in other words, human rights advocacy, requires a new concept of lawyering whose time has come. In Western countries, pro bono work is obligatory on the part of lawyers; this is more in the nature of free representation in litigation. The social justice challenge is less intense in those countries and individual representation in a few cases will perhaps meet the requirements of access to justice. The problem in South Asia, Bangladesh in particular, is vastly of disadvantaged people denied equal opportunities and basic necessities of life because of long-standing institutionalised discrimination, often with legal sanction! Sometimes law itself is to be challenged in seeking justice; sometimes legal institutions and procedures have to be transformed to make them deliver equal justice. Established notions of justice and methods of justice delivery are themselves found perpetrating injustice among the disadvantaged sections. This is where the lawyers have to work as change agents in close association with the central figures in the activities the human beings, or more appropriately, the half-naked, half-fed, the of lawyers powerless, weak citizen! Prof. Menon wanted to see that the 'National Law School will produce graduates who will

[19] Rahman, 'Socially Relevant Legal Education' (n8) 33.

[20] Menon, 'Rule of Law and Social Justice' (n 2) 5; emphasis mine.

empower the indigent, will work for the communities and make a fundamental departure from the way lawyering is perceived by the society.'[21]

In the mid-1990s, we began exploring this new concept of lawyering, dubbing it as 'rebellious lawyering'.[22]

5. Concept of 'rebellious lawyering'

In a milieu of activism against regnant injustices, the lawyer-advocate must embody the roles of being rebellious, critical, facilitative, and collaborative. These are lawyering roles that embody varying degrees of lawyer involvement in supporting or assisting the subordinated (clients and communities) in taking control and effecting positive change. Rebellious lawyering seeks to empower subordinated clients and questions whether legal intervention is good for the clients' material existence.

Although critical lawyering is often synonymous with rebellious lawyering, involving various actors to facilitate clients' objectives leads to an expanded and enhanced view of critical lawyering to encompass collaborative and facilitative lawyering.[23] Collaborative lawyering includes interdisciplinary efforts, values, and diversity, and recognises the need for client education to promote self-sufficiency and reduce reliance on lawyers. Collaborative lawyering recognises that lawyers are outsiders to client communities and that their status interferes with client autonomy. Therefore, the lawyer must strive to become an insider, diminishing the distinction between lawyer and laypersons. This aspect of collaborative lawyering is an essential part of rebellious lawyering. By being intensely involved in the client's work, the lawyer attempts to help politicise the clients' efforts.[24] Collaborative lawyering also informs lawyers' work in cross-cultural and interdisciplinary contexts. Collaboration allows for the development of shared ideas that are emergent; it is a process that makes maximum use of the experiences and knowledge of the collaborators, cherishes difference, and recognises that conflict can be valuable and constructive.

Facilitative lawyering recognises lawyers' time and ability limitations, emphasises client autonomy, and involves working on client-defined issues. The facilitative lawyering model recognises that the client may not want the lawyer to do more than provide legal advice and the lawyer may not be able to do more.[25]

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[21] Rahman, 'Socially Relevant Legal Education' (n 8) 33.

[22] For more on this, see Rahman, 'Anti-Generic Learning and Rebellious Lawyering' (n 10) 136; Mizanur Rahman, *Anti-Generic Learning and Rebellious Lawyering: Reflections on Legal Education in Bangladesh* (Bijoy Prakash 2018).

[23] Rahman, 'Anti-Generic Learning and Rebellious Lawyering' (n 10) 153.

[24] Richard D Marsico, "Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative Lawyering"? (1995) 1 Clinical Law Review 639.

[25] Susan R Jones, 'Small Business and Community Economic Development: Transnational Lawyering for Social Change and Economic Justice' (1997) 4 *Clinical Law Review* 225.

We prepared our rebellious lawyering platform based on a few assumptions:[26]

1. Law is always an equal yardstick applied to the unequal in society.
2. Essentially, the law is the will of the economically dominant class in society.
3. Prevailing legal education must give way to anti-generic learning as much as traditional lawyering must be replaced by a new form of pro-poor (people) lawyering.
4. Communities must be organised to push for pro-poor laws, and, similarly, lawyer-ing should also be pro-poor.

Our ideas were considered to be 'too radical', and we were treated as anti-government, anti-Islamic and pro-Indian! However, with the active support of a few poor-friendly teachers and students, we formed the Law Review - a centre for legal research - and started what soon came to be known as Protidiner Ain (Street Law).[27] It was basically a legal literacy programme conducted by young undergraduate law students in different secondary schools, slums, garments industries, etc. The success of this programme, though immensely inspiring, at the same time taught us that we must have a new breed of lawyers who will be pro-poor, who will be friends of the justice-seekers, who will leave no stone unturned to ensure access of the poor to justice'.[28]

6. HRSS and CLR as components of 'rebellious lawyering'

This understanding prompted us to design a programme entitled Human Rights Summer School (HRSS).[29] Being outside of the regular education structure, the transformative potentials of HRSS might be limited. However, HRSS alumni have already joined the various sectors of public services including the judiciary, legal aid offices, NGOs, UN agencies, etc., and their involvement in community building through projects and through judicial activism reinforces the saying that a better few is always better'. The ultimate goal of the HRSS is to produce a new breed of lawyers who will be ever prepared to not only do 'lawyering for the poor' but, more importantly, do 'lawyering with the poor'. Life taught us that however public-spirited a lawyer might be, in lawyering within the traditional set-up where s/he enjoys an elevated position compared to the client, where s/he is always accompanied by the 3 Ps of the profession, in the long run, the lawyer ends up with all the benefits and the clients are doomed to continue to live their old lives in indignity. Therefore, I thought, the problem lies with the kind of lawyering we encourage for our

[26] Rahman, 'Socially Relevant Legal Education' (n 8) 34.

[27] For an elaborate discussion on Protidiner Ain, see ibid. 2-5. For more focused discussion on Street Law in Bangladesh, see Arpeeta Shams Mizan, 'Domestic Violence in Bangladesh: Breaking the Knowledge Barrier through *Protidiner Ain*' in David McQuoid-Mason (ed), *Street Law and Public Legal Education: A Collection of Best Practices from around the World in Honour of Ed O'Brien* (JUTA 2019)164.

[28] Rahman, 'Socially Relevant Legal Education' (n 8) 34-35.

[29] A clinical residential human rights training school, HRSS was formed under the auspices of Empowerment through Law of the Common People (ELCOP), a voluntary, non-profitable, apolitical, non-governmental human rights education, research, and training organisation dedicated to the common people of Bangladesh. The founders and existing leadership of ELCOP continue to be teachers and students of law dedicated to rebellious lawyering. For a comprehensive discussion of the HRSS see Rahman et al.,*Human Rights and Rebellious Lawyering* (n 12) x-xiii.

human rights lawyers. If the end result needs to be changed, the nature and type of lawyering must be changed first. This realisation led to the construction of a follow-up programme of the HRSS - the Community Law Reform Programme (CLR).

The main objective of the CLR is to use and apply the potentials of law students to organise the poor and marginalised communities in a manner that they can protect and promote their rights themselves.[30] The rationale for CLR may be found in the following assessment by an author:

> Traditional practice hurts poor people by isolating them from each other, and fails to meet their need for a lawyer by completely misunderstanding that need. Poor people have few individual legal problems in the traditional sense: their problems are the product of poverty, and are common to all poor people. The lawyer for poor individuals is likely, whether he wins cases or not, to leave his client precisely where he found them, except that they will have developed a dependency on his skills to smooth out the roughest spot in their lives.[31]

Human rights, dignity, and worth of individuals and all such lofty expressions become hollow if we fail to ensure that every individual citizen has access to justice and access to the law - just law, justly administered. For the poor and the subordinated, the law is worth little more than the paper it is written on. Traditional law and lawyering have failed miserably to provide desirable answers.

We, therefore, desperately need a new type of lawyers and lawyering- an advocate who is ready to sacrifice the comforts of everyday life to guarantee the dignity of millions of poor compatriots, prepared to work with the poor to organise the community, train community leaders and provide them with the skills to confront their adversaries. Only such an approach will spearhead the change in the profession we are aspiring for. It is only with these new lawyers, who have decided to make a departure from the past, that the law will cease to be a mere social science, will become a 'humanising discipline' and lawyers will better resemble real huma beings with a heart and a soul. Our present efforts are directed to creating and training this group of new lawyers whom we fondly call 'rebellious lawyers' since they have decisively revolted against the inherent injustices of law and traditional lawyering.

Our interactions with the poor and the downtrodden taught us another important lesson - a conclusion drawn by a reputed legal educator almost half a century ago. We understood that

> [ploverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve the poor must put his skills to the task of helping poor people organise themselves.[32]

Therefore, we concluded, what is necessary is a kind of progressive lawyering that will enable a community or a group to gain control of the forces which affect their lives. In other words, social justice, to become a reality, must be preconditioned by empowerment of the poor and the disadvantaged people. Thus organizing the poor becomes the fundamental task of rebellious

[30] Rahman, 'Clinical Legal Education in Bangladesh' (n 11) 1.

[31] Stephen Wexler, 'Practicing Law for the Poor People' (1970) 79 Yale Law Journal 1053.

[32] Ibid.; emphasis mine.

lawyers. Thus, for a rebellious lawyer, litigation as a means of problem solving is displaced to the corner, and aptitude and skills for organising vulnerable communities take the front seat. We believe that rebellious lawyering must involve:

1. Legal and non-legal approaches to problems
2. Knowing how to work with others at fighting social and political subordination
3. Understanding how to be a part of coalitions, how to build them, for greater interests than litigation
4. Nurturing sensibilities and skills compatible with a collective fight for social change
5. Doing the work, i.e., lawyering from within, close to the ground.[33]

A close examination of the qualities and tasks of rebellious lawyers reveals that they must be endowed with exceptionally high aptitude in organising, sensitising, and training of marginalised groups and capable of forming coalitions with poor-friendly groups, organisations, clusters, etc. We tried to attain these objectives through our CLR programme.

7. CLR as justice education

Community Law Reform teaches students how black letter law relates to real-life situations and experiences. This in turn sharpens the analytical skills of learning. Researchers in CLR are introduced to socio-legal and anthropological research methods, by spending an extended amount of time living with the community members, and thus through this training they begin challenging the 'appropriateness' and 'legitimacy' of the black letter laws in the context of deprivation, discrimination, and subordination of these marginalised communities. A research-oriented programme coupled with a training component, CLR is conducted by a group of student researchers selected from among the participants of HRSS[34]. to observe the life of the marginalised people from a human rights perspective. The CLR programme is a platform through which the concept of anti-generic lawyering has been accentuated in the field of pedagogy. In other words, CLR has been the first step towards implementing a unique methodology of research which we opted to call 'anti-generic research. It involves an empathetic approach in analysing the problems of the poor and the marginalised.[35]

Socially relevant legal education cannot be otherwise. Prof. Menon too believed in the formulation of

[33] Mizanur Rahman, 'Social Justice Mission of Legal Education and Rebellious Lawyering' in Mizanur Rahman (ed), *Human Rights and Domestic Implementation Mechanism* (ELCOP 2006) 57.

[34] For more on HRSS, see Sharin Shajahan Naomi, 'Who Is Human Rights Summer School?' in Mizanur Rahman (ed), *Human Rights and Sovereignty over Natural Resources* (ELCOP 2010) xiv-xxi.

[35] Arpeeta Shams Mizan and Muhammad Rezaur Rahman, 'Quest for Anti-Generic Research: Introducing Community Law Reform' (unpublished working paper, 2018) 3-4

> a new breed of lawyers or legal service providers who are capable to identify the dynamics of injustice and unrest in society, forge new tools and techniques for preventing and remedying injustice not just to particular clients but to communities in general. The lawyer then becomes a social engineer constructing a justice delivery system which is sustainable in developing and underdeveloped economies, thereby reinforcing faith in rule of law. [36]

Prof. Schukoske reiterates Dr Menon's observation that

rural and tribal people [read 'poor and the marginalised'] have survival needs generally handled by administrative agencies and public service providers, while conventional lawyers are focused on disputes handled by courts. The mismatch between the training of most lawyers and the skills and attitudes needed to serve the rural and tribal communities [read 'poor and the marginalised'] in seeking to meet basic needs results in 'denial of justice to a large section of the Indian [read Bangladeshi] humanity living in rural and tribal areas of the country who turn to militancy and organised violence to get basic needs fulfilled'. [37]

As such, the ways and means through which legal education is imparted require to be revisited. This need was felt by legal educators worldwide. The following is a reflection of this felt necessity:

> the legal profession's role is to serve the needs of the whole of society, not solely to practice law for clients of means, and clinical education can sensitise students through exposure to realities at the grassroots. The legal profession has the responsibility to diversify modes of practice to meet the needs of the whole of society, and law schools, law teachers, and law students must design their curricula and experiences towards that aim.[38]

We decided to effect changes in the way legal education is imparted in Bangladesh by way of introducing CLR. In the initial phase, CLR researchers are recruited from among the participants of the immediately preceding HRSS who have demonstrated honest intentions to engage in lawyering with the poor during their interactions with the vulnerable, poor, and marginalised people on the Community Visit Day at the HRSS.[39] These student-researchers are then asked to review the existing literature on the particular community chosen for the study. At this stage, experts on the community/topic are invited to share their knowledge and experiences with the

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[36] NR Madhava Menon, Keynote Address (7th Global Alliance for Justice Education Worldwide Conference, Delhi, 10-14 December 2013) 9, cited in Jane Ellen Schukoske, 'Dr. N. R. Madhava Menon on Inclusion and Equity for Rural and Tribal India' (2020) 7(1) Asian Journal of Legal Education 17, 21.

[37] Ibid.

[38] Ibid.20. Schukoske refers to Frank S Bloch and Iqbal S Ishar, 'Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*' (1990) 12 Michigan Journal of International Law 92.*

[39] One full day is dedicated to the community visit at the HRSS. Vulnerable marginalised communities are identified and students are assigned with concrete issues dealing with subordination and disempowerment of the target groups. For the vast majority of students, as in evident from our experience of the last 20 years, this becomes the very first interaction with the poverty, helplessness, and subordination of the poor people.

student-researchers. This enables the students to prepare themselves adequately for deeper exploration of the problems of the community under examination. They are also exposed to different types of research methodologies. By this time, the students will have had a fairly good idea of the overall human rights situation of the target community and feel mentally prepared to 'live the life' of the target community. Accompanied by two teachers/supervisors, a group of twelve student researchers leaves the school/university for the site where the community is resident/located. This is the place they will stay for the next three months (with interruptions as and when deemed necessary); they will be living alongside the community, with the community, close to the ground. This enables the students to 'understand' the life of the community- not only 'see' but also 'feel' their sufferings, pains, and deprivations. These students dissect the lives of the community members as 'insiders' and not as 'onlookers from a distance', i.e., outsiders. This constitutes a unique feature of CLR research - very close interaction with the stakeholders allowing them to share the thoughts and concerns of the community members. This is what we call 'looking beyond what you see!'

First-hand experiences of the lives of the poor equip the student-researchers with invaluable materials and information to juxtapose those vis-à-vis prevalent ideas (thoughts and concerns) about the poor and vulnerable communities, both as a group and as individual members belonging to that particular community.[40] The CLR researchers try to see the bigger picture of marginalisation and the rights situation of the marginalised within the existing top-down governance structure.

After the field visit, the CLR researchers analyse and filter their data, corroborate it with the other subgroups of co-researchers,[41] and if confronted with doubts with regard to certain findings, or if they feel that certain facts need to be re-examined, they make follow-up visits to the community to address such issues. Doubts and questions may be manifold. The following statement from the horse's mouth provides an illustration of the complex CLR methodology:

[D]own they go the rural path, crisp with the first-morning dew. But as the sun crosses the sky, the young researchers are a bit disappointed! Well, most villagers seem to be happy with their

[40] A wide variety of issues and communities were covered by CLR studies. The latter include: Mizanur Rahman and Tanim Hussain Shawon (eds), *Tying the Knot: Community Law Reform & Confidence Building in the Chittagong Hill Tracts* (HRSS and CLR 2001); Mizanur Rahman (ed), *In Search of a Withering Community: The Santals of Bangladesh* (ELCOP 2002); Mizanur Rahman (ed), *A Community in Transition: The Biharis in Bangladesh* (ELCOP 2003); Mizanur Rahman (ed), *Combating the Khasi Uprooting: Humanity Cries* (ELCOP 2004); Mizanur Rahman (ed), *The Garos: Struggling to Survive in the Valley of Death* (ELCOP 2006); Mizanur Rahman (ed), *Agony of Development: A Study in Pauperization of Displaced Communities* (ELCOP 2007); Mizanur Rahman (ed), *Life on a Swing: Human Rights of the Riverbank Erosion Induced Displacees* (ELCOP 2009); Md Rahmat Ullah et al. (eds), *In the Shadow of Death: The Tantees of Bangladesh* (2012); Md Rahmat Ullah et al. (eds), *Story of the Tea Workers: Subsistence against Hegemony* (ELCOP 2014); Md Rahmat Ullah et al. (eds), *The Harijans of Bangladesh: Living with the Injustice of Untouchability* (ELCOP 2016); Mizanur Rahman et al. (eds), *Economic Development versus Human Rights Abuse: Shrimp Culture in the South* (ELCOP and UNDP 2019).

[41] During their stay with the community, the researchers are required to make presentations on their day's findings at the regular nightly sessions beginning from midnight and continuing sometimes till very early in the morning. Such presentations are held in the presence of supervisors and community leaders to ensure accuracy of facts and figures and proper ventilation of the sentiments of the community. Researchers work in groups of three or four persons and presentations are made group-wise.

conditions! 'Well, what to do? Maybe this is one of the happiest villages in Bangladesh' inferred by the researchers. However, the final dice was cast during the evaluation session when they reiterated the same contention that despite the derogation of human rights, malcontent was not found. The supervisors vehemently asked: 'Are you sure? Have you seen him thoroughly? His skinny body, his torn garb, the holes on his tin roof, the broken tube-well outside his doorstep?' The researchers were at a loss - how can anyone realize the problems seeing through another's eyes?[42]

Post-research evaluations are one of the most vital features of CLR. The mode of preparing the researchers is very rigorous. Unlike other research, the CLR review is not done from merely an academic perspective: the main evaluation does not consist of jurisprudential analysis or richness of reference or scarcity of data quantity, and this evaluation is not a review per se. Evaluation by the research supervisors, at times accompanied by community leaders, is a harsh criticism: the level is set very high and the researchers are moulded to reach that level by the end of the process. This is not peer review; rather this is a completely interpretative evaluation where the researchers are continuously, vehemently, and relentlessly rectified until their interpretations are distilled with the perceptions of the target groups/community.[43]

One might ask how this CLR methodology is different from other socio-legal or anthropological studies. If CLR research stopped at what has been described above, then it probably cannot claim any innovation in research methodology. But CLR research is endowed with another specific attribute, a technical (training) component. While the researchers gather and accumulate relevant information on the target community, they also keep themselves busy in identifying the 'potential community leaders' - persons from among the community members who are deemed to be suitable to be trained to represent the community in its hour of need. In so doing, the researchers ensure the agency of the community members by prioritising their (com- munity's) opinions. Thus, the researchers set about the difficult task of building the first blocks of organising the community - the true work of the rebellious lawyers.

Once the potential community leaders are identified, talked to, and taken into confidence, the student-researchers begin training them with skills and aptitude, and minimum knowledge - legal and non-legal. The main objective of this training is to mould the vision and worldview of the potential community leaders in a manner that they can effectively protect their rights either on their own or by forming larger coalitions with pro-poor institutions, organisations, and individuals beyond their community configuration. Such trainings are held either *in situ* (either alongside CLR

[42] Mizan and Rahman, 'Quest for Anti-Generic Research' (n34) 6.

[43] Ibid. 10.

field research[44] or at a later date), or subsequently in Dhaka after the return of the CLR team at a mutually agreed upon time.[45]

While it was long established in theory that for effective empowerment of a community the struggle for empowerment should be led by the community leaders themselves, it was for the first time in legal education that law students took up the responsibility, as part of their professional obligation to train the community leaders to take up the leadership role. This is, it is humbly submitted, the single most significant contribution of CLR research methodology, giving it an edge over other socio- legal or anthropological methodologies.

Arpeeta Mizan and Rezaur Rahman, both of whom were CLR researchers, note that

> like traditional research, CLR is based on the data collected from the field. CLR notionally departs from traditional research in that the researchers not just depict the facts as they saw or heard but what they felt and realized from a human rights viewpoint as well as from the perception of the community[46]

In their opinion, 'CLR can be reprised as "honest research".[47] Besides training the potential community leaders, CLR prepares lawyers who do not build themselves only for litigations; rather these are lawyers who actively engage in non-litigation situations to become efficient community lawyers – the new breed of lawyers. Thus, CLR researchers are in the first stage of becoming community/developmental lawyers who function as an organised unit until outside assistance can be obtained or until internal capacity comes to the fore.[48] Some authors call this kind of lawyering 'community lawyering', and define it as 'collaboration with community organizers and with people of many occupations and disciplines who have the expertise to share with communities as they address specific problems and plan their future'.[49]

It may as well be argued that CLR studies bring in additional educational value to the existing legal education in Bangladesh. For example, Prof. Jane Schukoske evaluates CLR as a 'social mapping of human rights', something extremely rare in the existing legal education offered in South Asia. To quote her:

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[44] Community leaders were thus trained, for instance, during the CLR research published in Rahman, *The Garos* (n39).

[45] Potential leaders of the Bihari community were thus trained in Dhaka. The CLR research led to the publication of Rahman, *A Community in Transition: The Biharis in Bangladesh* (n39).

[46] Mizan and Rahman, 'Quest for Anti-Generic Research' (n 34) 8

[47] Ibid

[48] Mizanur Rahman, 'Developmental Lawyering: A Wake Up Call' in Mizanur Rahman (ed), *Human Rights and Development* (ELCOP 2002) 186.

[49] Jane Ellen Schukoske, 'Empowerment of Community Members through Grass-Roots Organization: What Roles for the Lawyers?' in Rahman, *Human Rights and Empowerment* (n 10) 103.

Under the legal practice norms in South Asia, in which law professors and students are typically not authorized to practice law, socio-legal study of a human rights problem is an important education tool. Such studies sensitize students and faculty to the ground realities and the relationships between law and contemporary societal needs.... Reflection on the 'law in action' in human rights settings and the formulation of recommendations for reform are critically important abilities to develop in future lawyers.[50]

The CLR researchers get the rare opportunity to immerse themselves in a community and life experience very different from their own." [51]The whole process of CLR sensitises them to the complex issues at stake in empowering the minority communities struggling to maintain their place in the larger society.[52]

Community Law Reform is a pro-poor philosophy driven approach to legal education. Its goals include the imbibing by future lawyers of the spirit of lawyering with the poor, as well as creating leadership within the community to stand up and fight for their rights. The CLR researchers themselves, it is expected, will be comrades in arms of the poor and the marginalised, fighting for their legitimate share of power and rights in the society. They will join the struggle, advise the community leaders as and when deemed necessary by the community leaders themselves, be part of coalitions larger than the community, but never 'usurp' the community leadership role as is common with traditional lawyers. Elsewhere, I had mentioned that 'regnant legal education leads to traditional lawyering which leads to no structural change in the power frame of the society." [53]Community Law Reform is meant to challenge this status quo and contribute to the process of empowerment of the poor, vulnerable, and marginalised communities in the society.

In 2019, we organised the 20th Summer School and completed 11 CLR projects[54]. As we proceed with our experiment for the 21st year, it may not be out of place to look back and make an assessment of CLR research impacts, if any. Such an assessment can also be made from two distinct perspectives: firstly, impact on overall policy making and executive actions promoting the empowerment of the marginalized communities; and secondly, success with forming of 'efficient community leaders'.

With regard to the first perspective, CLR studies can claim to have made positive impacts both locally and nationally. For example, with regard to the riverbank erosion-induced displacees, the recommendations made by the researchers were taken seriously into consideration by the local member of the Parliament leading to budgetary allocation for embankment projects as well as for rehabilitation of the displacees. Similarly, the study on the Tantees, i.e., handloom weavers,

[50] Jane Ellen Schukoske, 'Mapping Human Rights in South Asia' in Mizanur Rahman (ed*), Human Rights and Non-State Actors* (ELCOP 2005) 57.

[51] Ibid.

[52] Ibid.

[53] Mizanur Rahman, 'From Traditional to Rebellious to Developmental Lawyering: Tortuous Journey of Clinical Legal Education in Bangladesh' in Rahman, *Human Rights and Non-State Actors* (n 49) 44.

[54] See n 39 above.

suggested that for better protection of their rights, Bangladesh should take steps for GI (geographical indication) recognition of Jamdani fabrics. The government heeded the recommendation and today Bangladesh is proud to have Jamdani GI registration, acquired in 2016.[55] On another occasion, the CLR team rejoiced when their recommendation with regard to conferring the Biharis with citizenship of Bangladesh was accepted by the High Court Division [56]of the Supreme Court of Bangladesh and today, any person belonging to the Bihari[57] community and born after the 1971 war of liberation is automatically granted Bangladeshi nationality, and therefore entitled to all basic and fundamental rights and privileges recognised by the laws of the land.[58]

As to the second perspective, i.e., forming of solid groups of community leaders, success so far has been cautiously encouraging. The CLR researchers took strides to train community leaders from among the Garos, the Khasis, the Harijans, the Santals, and the Biharis. At the initial stage of leadership training, the community response was hugely inspiring and engaging. And this produced visible and commendable results in community empowerment. For example, the Khasi community leaders organised the community to stage sit-in protests when the government decided to establish an eco-park in their habitat. Despite the fact that the local administration brought the law enforcement personnel to thwart the demonstrations, the community members were so united and committed that the helicopter with the minister for environment and tourism on board could not land and the inauguration of the project could not be held. Demonstrations and protests continued till the project was scrapped by the government.

In a similar manner, the community leaders of the Harijan community were trained in negotiation skills after which they negotiated with the mayor of the City Corporation in Dhaka to construct high-rise residential buildings with modern amenities for the members of the community who hitherto had been living in dilapidated buildings and unhygienic living conditions.[59]

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[55] Jamdani Finally Gets Recognition' The Daily Star (Dhaka, 18 November 2016). https://www.thedailystar.net/frontpage/jamdani-finally-gets-recognition-1316581. Accessed 19 June 2020.

[56] *Abid Khan and Others v. Govt of Bangladesh and Others* (2003) 55 DLR (HCD) 318.

[57] The term 'Biharis' refers to 250,000-300,000 non-Bengali citizens of the former East Pakistan who remained stranded in camps after the liberation of Bangladesh. Most of these people originated from the north Indian state of Bihar. Today, many Biharis live in Pakistan and India also. Like the majority of the Bengalis, Biharis are generally Sunni Muslims. Pakistan refused to take them while Bangladesh denied them citizenship, pushing the Biharis to live in a situation of statelessness till the issue was resolved by the Supreme Court initially in 2003 see Ibid, and finally in 2008 in *Sadaqat Khan and Others v. Govt of Bangladesh and Others* (2008) 60 DLR (AD).

[58] This has immense implications for the community because since 1971 they had been compelled to live in isolated camps (popularly known as the Geneva camps) in an almost inhuman and undignified environment. After the court decision, they enjoy freedom of movement with other rights. The CLR study depicts the unpalatable conditions of the camp life.

[59] For an understanding of the living conditions of the Harijan community, see the CLR study by Md Rahmat Ullah et al., *The Harijans of Bangladesh* (n 39).

Such instances of community empowerment at the local level or on a particular issue abound. But if one thinks about community empowerment of a permanent nature, I think, the examples would be few and far between, and the reasons for this are what we may call the limitations and challenges of CLR. Let us make an attempt to identify these limitations from two different yet integrated perspectives: firstly, from the perspective of considering CLR as a part of rebellious lawyering, and secondly, from the perspective of treating CLR as an innovative learning tool. An alumnus of the HRSS and a former CLR researcher has thus observed:

The same vagueness is noticed in the case of rebellious lawyering. While one would have imagined that who is a rebellious lawyer would have been clear after three decades of discussion from legal academia and practice, the reality, at least in Bangladeshi context, is the polar opposite. It has been maintained that a lawyer who likes to challenge the system through class action or public interest litigations (PIL), a lawyer who volunteers to work on legal aid cases, who does pro bono litigations are all rebellious lawyers. Whereas strategies like a class action, pro bono litigation, or legal aid work do fall under the fight-the-system category, a rebellious lawyer is different. A rebellious lawyer would not only fight the system but fight it through the community, give up their own agency as a lawyer, and put the community at the front. PILs, writ petitions don't do that. These are strategies that challenge by remaining very much part of the system they are supposedly challenging. The result is a ruling on paper that would never get translated into action, or prevent a further viola tion of right by preserving the status quo, or a pro bono case that would secure a legal remedy determined by the law/lawyer bereft of the client's agency[60].

The same critic writes about the CLR in the following manner:

But while the visible result of CLR as publications has been maintained, there has been no follow-up as to how the student researchers have applied their hard-gained knowledge in their respective roles as legal service providers. There has not been any follow up with the community, policy level officials, or relevant state departments or local government offices as to whether the advocacy for reform has initiated any change.[61]

8. Challenges for CLR

While such a critique is not totally out of place, it certainly does not invalidate the intrinsic educational value of CLR, either as a learning method or as a training tool for rebellious lawyering. Criticisms so far made to the address of these initiatives more convincingly point to the fact that HRSS, CLR, or rebellious lawyering will not usher in desired fundamental changes in regnant legal education or in traditional lawyering until and unless these components are incorporated in the life-streams of the law schools in the country. It cannot be expected that isolated experiments, however innovative, revolutionary, or promising they may be, will make fundamental changes at

[60] Arpeeta Shams Mizan, 'Anti-Generic Learning and Rebellious Lawyering in Bangladesh: Does it Really Work?' in Rahman et al., *Human Rights and Rebellious Lawyering* (n 12) 50-51.

[61] Ibid. 52.

the national level. So far, law schools in Bangladesh have not expressed their readiness to positively respond to demands for anti-generic education and rebellious learning though they are supporting of HRSS, CLR, or Street Law as extracurricular activities of their students. As such, they have so far refrained from participating in the financial stake required for these innovative learning methods and tools. While the students seem to be prepared to sacrifice their long annual holidays to accommodate CLR or any other innovative learning component in the academic calendar, the professors are yet to display the same level of preparedness. And until that happens, anti-generic learning and rebellious lawyering will have to be maintained in the unofficial, unaccredited domain of private initiatives as at present.

Resource constraints, primarily financial, have been the single largest obstacle in carrying out the CLR researches. Although it was anticipated that every HRSS will be followed by a CLR, as against 20 editions of HRSS we could arrange only 11 CLR studies. Acute shortage of funds led to this undesirable consequence. Even if funds are available, at times it becomes ominously difficult to find a local community institution or an NGO to host the CLR team at the desired location. Since the CLR team maintains gender balance, sometimes security concerns, especially for the female members of the team, loom large as assurances from the local governmental authorities may not extend beyond mere courtesies and lip service. Security concerns cannot be underestimated during one of the CLR field visits,[62] the local community was so antagonised against the transnational coal mining company that the microbus carrying the CLR team was literally attacked by the agitating community members with rods and sticks and the present author who was leading the team as a supervisor had to risk his life, come out of the vehicle with folded hands, and convince the mob these students were conducting research to portray the grievances of the community, earn their confidence, only after which they assured all assistance and two of the community leaders even volunteered to provide the team services as 'local guides' to avoid recurrence of such untoward incidents[63]. For fairness's sake, we must acknowledge that CLR still stands as an isolated attempt bereft of support from the mainstream legal education. As such, Mizan may not be exaggerating when she writes that 'until the method can be opened up for different institutions and avenues to apply it, there will be no experimentation, and no consolidation and modification.'[64]

[62] This CLR research led to the publication of Rahman, *Agony of Development: A Study in Pauperization of Displaced Communities* (n 39).

[63] Generally, the target community is contacted well in advance and its leaders are approached to accommodate the CLR members. At the very outset it is made clear to them that CLR researchers do not represent any mandated NGO, and do not offer any financial or material incentives to the community members; rather as students they explore the dimensions of exploitation through documenting and disseminating their findings to the institutions and agencies concerned. Except the incident mentioned, so far, no CLR team has experienced any unfriendliness from the target communities. Inter alia, CLR implements a semi-ethnographic methodology where the students 'declass' themselves to live as one with the communities, thus ensuring no catalysts from the mainstream top-down legal system influence their finding during the field work.

[64] Mizan, 'Anti-Generic Learning and Rebellious Lawyering in Bangladesh' (n 59) 53.

9. Conclusion

Legal educators have been trying to define and provide models of justice education using manifold approaches. Prominent among these are needs assessment and the problem-solving approach; goal-oriented trial and error approach; and an approach based on one's perception of justice education and structuring a curriculum/institutional framework for the job at hand. The CLR methodology, as discussed above, is not an addition to these existing models but rather stands unique with an inherent revolutionising strength. Not only does CLR question the inadequacies of traditional legal education and generic lawyering, but it produces efficient community organisers to effect deep changes albeit in a quiet manner, from within the existing structure. What CLR offers is a means of dismantling subordination of all kinds to replace it with empowerment tools for the common people.

Surely CLR has its limitations, so it is now for the legal academia and policy makers to appreciate the impact of CLR and rebellious lawyering so as to break the status quo through redesigning legal education towards greater public good. As an HRSS alumnus and currently a feminist legal scholar puts it: 'Participants form a collective identity of the rebellious lawyer... to re-interpret and re-define themselves and the society around them through a firm commitment to work for a better society."[65]

In present-day Bangladesh, when communities which had hitherto been pushed to surrendering to 'destiny' are being so organised that they now believe that they can and must be the makers of their own destiny, when they are beginning to question the legitimacy of their subordinated position and the 'disempowerment', now may be the ripest time for CLR to be integrated into the academia so that not only a select few but all law students receive exposure to rebellious lawyering. It may be truer of Bangladesh to say 'lawyering with the poor is lawyering for justice', because in most law classrooms in this country, the majority of students actually come from these poor communities. It is time we ensured that the four-year legal education stops detaching these students from their roots, that after graduation they aspire to go back to their communities. It is through CLR that they can imbibe the belief and confidence to assume the leadership role in their community's struggle for empowerment and self-determination, as CLR has already shown.

[65] Naomi, '*Who Is Human Rights Summer School?*' (n 33) xvii