

Moot Court Practice in Bangladesh: Challenges and Prospects

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Abstract: Law is a significant instrument of removing and mitigating all sorts of unrest, evil deed and anarchism circumstance from the society. Learning law and acquiring legal knowledge is a demand of the society as law touches every person for knowing ones rights and duties but in reality learning law and acquiring legal skill is mere a requirement of legal professionals. Law students and lawyers and other stakeholders have immense contribution to the society for ensuring justice. Unless and until they do not have any applied knowledge on law, they cannot bring proper relief to the party. A law student, lawyer and other stake holders' should have analytical skill to evaluate different social aspects. So, to attain the full objective of law our existing legal education fails in some cases. Existing legal education is mainly focused on the development of theoretical knowledge. Legal education system in a country should be planned in such a way that the highest benefit of law is possibly attainable. It is admitted that since in Bangladesh there are many hindrance in this regard, government and other responsible authorities must come forward to safeguard the hindrance. Mooting or moot court practice in clinical legal education is the best mechanism to overcome prevailing situation and also a footstep furthering a society of justice.

1. Introduction

Law is the regulation. It is an arrangement of rules that a country or a nation identifies it compulsory for its citizens. It regulates and controls the behaviour of the citizens. Law is required by the imposition of penalty and punishment. Different stakeholders like, judges, magistrates, lawyers are directly and professionally concerned to law. Among them the lawyers get special credit as they resolve the day to day problems. They are devoted for common people, families and businessman to support them carrying relief. Lawyers assist the judges to take the perfect verdict, assist common people to maintain their different rights and safeguard access to justice for all. A law student must achieve some qualities and develops himself by academic and applied knowledge of law. But most of the law schools in Bangladesh are not so planned in such a way so that law student can get practical knowledge of law. Moreover, some of the law students especially the students of private universities even do not get academic knowledge. Most of the law students have no knowledge of what will have to be done by them in the courts practically after ending the program. Learning some sections of various laws should not be the goal and work of a law student. They must acquire very practical knowledge. It is stated that practice makes a man perfect. Proper legal education and moot court can give a law student appropriate academic and practical understanding (Importance of Legal Education through Moot Court, (n.d.)) In a Law school a law student must acquire court oriented knowledge and skill. The students must be given in a team work a theoretical case in their hands and they must study, setting arguments, make briefs and appear before Judges to argue the case. Thus the students will acquire the law than to read. Mooting in clinical legal education brings practicable developments to learn the law. Mooting helps a student in understanding the value of teamwork also. Mooting and moot court practice are the most important things that aid one in ones careers and ones future development

as well. Mooting is one thing that trains a lot of conducts and discipline that are requirements by many of the law institutes (Chhabra, 2018).

2. Definition of Keywords of the Study

2.1 Legal Education

An action that encounter the necessities of regulations and that upholds or improves the capability of lawyers with respect to the practice of law is legal education. It means training obtained by lawyers already admitted to practice that maintains or enhances their competence as lawyers. It is documented that education is significant to lawyers. Legal education sometime means law teachers training, advanced specialized professional courses for lawyers, education program, research on professional legal education and standardization, seminar and workshop, Legal Research and any other assignment that may enhance legal education system in a country. **Legal education** is the preparation for the practice of law (Alford, (n.d.)) Legal education is a human science which provides beyond techniques, skills and capabilities the basic viewpoints, philosophies, evaluations, and instrumentalities all talked to the formation and maintenance of a fair society (Ravi, (n.d.)). Legal education is the education of persons who aim to become legal professionals or those who simply aim to use their law degree to some end, either connected to law or business. It includes degrees in law, which may be studied at either undergraduate or graduate level depending on the country, vocational courses which potential lawyers are required to pass in some countries before they may enter practice (Definitions for legal education, (n.d.)) Legal Education is the education of law that delivers legal knowledge and skills necessary for legal profession. It also affords a greater extent of knowledge for academic and professional furtherance. Legal education is an instrument or a method to understand law and its practice. Legal education has diversity of programs, comprising the followings: **i)** Under graduate or graduate degree; **ii)** Post graduate problem or Doctoral degree; and **iii)** Special degree or certificate for special area.

2.2 Clinical Legal Education

Clinical legal education is the process of learning law through doing where applied sitting gets more significance than theory. As legal profession is practice oriented, in this way students of law get qualified themselves to find the answer of enormous questions about their studies and profession. Clinical legal education is an essential feature of legal teaching methodology that mainly includes applied legal training through moot-court, mock-trial, participation of the students in unusual dispute resolution system mass legal awareness programs etc. (Mahdi, n.d.). The students are indulged into the dominion of legal studies by getting chances and skills of chamber practice with the lawyers in court proceedings. Clinical legal education is a mechanism to learn law. According to the Griffith Law School, Australia, 'Clinical legal education means to include the students to take the duty for legal and related work in association'. Professor Dr. Mizanur Rahman, pioneer of clinical legal education in Bangladesh has opined that clinical legal education provides the students' the understanding about the lawyering process and skills of advocacy, the sense of societal responsibility in professional work, the limits of legal system. Clinical legal education grows other lawyering skills counting exposition to alternative dispute resolution and to improve a sense of professional integrities. Clinical legal education inspires young people to support the necessities of their community. It aids future lawyers in the spirit of public facility within their own community. Clinical legal education is a learning environment where students ascertain, explore and apply theoretical knowledge in the legal arena.

2.3 Mooting or Moot Court

Moot is a shadow court. A law student gets the perception of real-life lawyering know-how. In this regard, a mooter is a lawyer in the making (Sheikh, 2021). Mooting is a method of an oral proceeding very comparable to that of a proceeding in court practiced mainly in institutes and law schools. Thomas & Craddock, (2013) have defined mooting as demonstration mainly on advocacy. In mooting the knowledge of a law student is tested to see that how competent a student is in placing an argument based on law (Faisal, 2021). In mooting an exact court picture is made where the students perform like the advocates on behalf of the plaintiff and defendant on the basis of evidences and fundamental queries of law. Here the students debate with each other to prove their point in front of the judge who in the end provides his verdict in the same regard and also announces the winner on the basis of the best performance. Also, the judge can raise question on facts or law on any of the legal concepts to

examine the ability and quick adaptability to the situation of the student while presenting their arguments. Moot Court basically means a duplication of a real court where legal proceedings and trials take place and thus it is also known as a mock court or moot court. Moot court is a way a student is groomed as a proper lawyer. It is one of the contemporary approaches of giving applied knowledge to the students by placing them in a theoretical situation similar to that of a real court. Moot court now is one of the major and effective bases from where people get the education and absorb all the potentials and skill that a lawyer requires.

In earlier mootings was not practised as a subject by the school of law but now due to the scope and requirements of lawyers around the globe, mootings or moot court gets most concern as a subject. In recent days mootings is a necessary part of certain law courses in almost the entire world famous law schools though many law schools run this activity voluntarily. But mootings at a law has a affirmative impact on the upcoming career of a law student (Rayhan, 2017). Mooting is very important as an integral part of education for a student who is going to become a lawyer in the near future. It will help him and make his work easy and present in a real courtroom. It is the nearby practice; a student can get a picture of courtroom by studying in a university or college. Mooting is a workout which aids a law student teaches all the conducts and knows all the policies and procedures that are followed in a court so as to make him for his future. For maintaining the same objectives, moot court competitions are organized around the world so that different students across the globe can come in close contact with each other and understand each and every aspect of the idea of mootings. For achieving the required skill and knowledge the participants are to face different stages of mootings. These are as follows: a) Moot problem: In this stage, the participants get a fact or dispute based on fiction; b) Written memorial: In this stage, the participants are to make set of pleadings on behalf of all parties to the dispute. The parties are to prepare pleadings from prosecution side as well as defence side; and c) Oral pleadings: In this stage, the participants are to present argument. The judges evaluate body language and communication skill of the participants and finally the judges take the following decisions: (a) Winner team based on merits which side should succeed legally; (b) Best Team (Overall); and (c) Best Presenter (Individual).

3. Advantages of Mooting in Clinical Legal Education

Mooting in clinical legal education has a number of theoretical and practical significance. Mooting helps in the overall development of an individual as a good and proficient lawyer and participating in moot court competition regularly makes a student familiar with the proceedings that take place generally in real courtrooms. Different advantages of mootings in clinical legal education are as follows:

1. Mooting makes the participant understand the law in the context of different social determinants.
2. Mooting makes the student as well as the participants familiar with legal concept and legal institutions. Students also become equitant with the process of making law or settling disputes and regulating legal profession structure of government and court extra.
3. Actually, in moot court practice required skill and legal knowledge are fully boosted and enhanced. Domestic moot court competitions incline to emphasis on municipal law such as criminal law or contract law, regional and international moot competitions incline to emphasis on subjects such as public international law, international human rights law, international humanitarian law, international criminal law, international trade law, international maritime law, international commercial arbitration, and foreign direct investment arbitration (Khuda, 2017). A participant of a mootings gets legal knowledge over the diversified laws.
4. Moot court practice aids a law student to shape his self-confidence and self-reliance in communication among public. A mooter does not feel shy to raise any question or to answer any question confidently.
5. A Mooter gets very practical knowledge that is not available in a law book or he does not have easy access to that sources.
6. Mooting makes a participant more competent for a team work because the participant gets acquaintance with the group work. Normally a mootings team consist of of 3 students with one as the researcher and the other two as the speakers presenting their arguments on either

side. This teaches the students to perform well when they are together in as a team. It also teaches how to synchronize with each other.

7. Very important feature of mooting is that it helps a law student to connect with so many people crosswise the world in the process of mooting. Students of has opportunity to participate different domestic and international moot court competition.
8. Mooting trains us how to frame and present arguments. It makes a mooter better reader, a better writer and a better thinker (Billah, 2020).
9. Mooting is very helpful for those students who are looking forward to becoming future lawyers.
10. A law student gets researching skill through participating in the moot court competitions (SAKIN, 2018). Mooting also helps participant in preparing a good moot court memorial on the basis of which the other team would raise oppositions and question. Mooting also helps in improving skills as to how to adjust to hasty circumstances and how to challenge a situation.

4. Background of Mooting or Moot Court

The history of moot court practice reveals its first existence in the year of 997. The eminent Jurists Maitland and Pollock first exposed mooting in Danish law as a requirement and it is the first documented practice of the word moot in a legal system (Rahman, R 2007). The mooting was also common at the Inns of Court (group of four institutions of considerable antiquity that have historically been responsible for legal education) and Inns of Chancery (group of buildings and legal institutions in London initially attached to the Inns of Court and used as offices for the clerks of chancery) in 14th century in England. Following four century in 18th in England there were 4 greater Inns of Court having approximately 200 students and 10 lesser Inns of Chancery having approximately 100 students. One of the British renowned academics, Robert Alasdair Pearce discovered and indicated the practice of mooting in the Inns of Court and Chancery in England in the late 14th century with a provision that the participants of mooting after eight years study were recognized as a complete Barrister. There the students learned not only law but history, scripture, music, and dancing, and several historians placed the Inns of Court as universities for the study of law on the same footing as Oxford and Cambridge Universities. When formal legal education began in the United States in the late 18th and early 19th centuries, the practices followed were similar to those of the Inns of Court, with lectures by professors followed by moot court exercises. This modified English system sustained until the case method was announced at Harvard Law School in 1870. Harvard law school permitted moot court programs ran by third year students in 1910. Since then, because of the student's satisfaction and pleasure, moot court practice becomes a practical part of the law school syllabus in most of the countries (Rachid, M & Knerr, C. R (2000).

5. Mooting in Clinical Legal Education in Bangladesh

Moot court is one of the essential supplementary activities in many law schools around the world. It is supposed that moot courts have an ancient practice since the late 1700s (ibid). Moot court practice in Bangladesh is a very recent activity. There is a continuous international development in legal education and that's why the significance and inevitability of the mooting are increasingly felt in the law schools and among the law students in Bangladesh. It is frequently criticized that efficient graduates are not created by the law schools in Bangladesh. So there is no alternative to participation in mooting law that may make law students competent enough to face international encounters. The establishment of law clinics for the first time in Bangladesh was initiated in the mid-90s in the University of Dhaka and University of Chittagong with a view to enhancing Bangladeshi student skills by exposing them to legal aid and NGO work (Mahdi, nd.). Bangladesh Legal Aid and Services Trust (BLAST) have initiated two law clinics at the University of Dhaka and University of Rajshahi, those aims at the improvement of qualified skills among the law students. Besides, Jahangirnagar University has included Law Clinic as an essential course that definitely stands as a milestone for other law schools of the country.

It is criticized that Private institution fails to maintain standard and quality of legal education in Bangladesh comparing with different public law school. Even Law clinics or moot court in private universities of Bangladesh is a very new idea. The governing authorities as well as the judiciary has

taken courageous footsteps recently to regenerate the standard of legal education in private universities of Bangladesh, which can be understood from the recent two judgments of the Supreme Court of Bangladesh in the cases of *Professor Syed Ali Naki and others v Bangladesh and others* (decided by the High Court Division on 13 April 2016) and *Bangladesh Bar Council and others v A.K.M. Fazlul Karim and others* (decided by the Appellate Division on 8 February 2017). Now different leading and renowned private universities like BRAC university, East West University, North South University etc. are now organizing and take part in various moot court competitions both in domestic as well as international competition. Department of Law, University of Dhaka, amongst the all leading and renowned law schools public or private in Bangladesh is the oldest and pioneer law school one. This department is constantly receiving recognition both in Bangladesh and abroad by organizing and participating in the highest number of moot court competitions in each year. Due to communication problems and others, public universities located outside Dhaka feel difficulty to participate even in domestic competition. Department of law, University of Dhaka has taken part a good number of moot court competitions like Henry Dunant Moot Court Competition on International Humanitarian Law, Price Media Law Moot Court Competition, ICC/KLRC International Commercial Arbitration Moot Court Competition, Dr. Paras Diwan Memorial International Energy Law Moot Court Competition, Ansal University International Moot Court Competition, NLS - Trilegal International Arbitration Moot Court Competition, 58th Philip C. Jessup International Law Moot Court Competition, the largest and the most prestigious moot court competition in the world etc. Certainly, although it is in a very limited scale and for limited few universities have improved and effected the quality of legal education in the country. However, Bangladesh Judicial Administration Training Institute (JATI) is recent times found so sincere. It organises different training programs for the newly appointed judges as well as for others. It train the Judges of the Subordinate Judiciary, Government Pleaders, Public Prosecutors and Court Support staff, hold national and international conferences, workshops and symposiums targeted at developing the quality of judicial work, conducts analytical research and publishing the same in journals, books etc., publishes periodicals and reports on relevant legal and court issues, advises the government on matters relating to court management and/or judicial system, and runs different activities justifiable (FUNCTIONS, (n.d.). Empowerment through Law of the Common People (ELCOP) a committed institute for development of legal education is performing its responsibility so sincerely. It has established the Human Rights Summer School in 2000, an internationally recognized model, to meet inadequate method for educating and training the law students (Human Rights Summer School, (n.d.). ELCOP organizes a two-week intensive residential training workshop on human rights and advocacy skills and training on trial advocacy through moot court. It has organized different moot court competitions on human and constitutional rights and ensured maximum participation of law schools since its inception. Especially Professor Shah Alam Constitutional Law Virtual Moot Court Competition 2020 and 2021 is mentionable. While the world is facing distress it works relentlessly and committedly. Moreover, Bangladesh Bar Council is also play role in expansion of legal education and trial advocacy. It requires 6 months practical knowledge for a law student to be an advocate and it has also a legal committee. Besides these, some non-government organizations are also contributing to the legal arena of Bangladesh. Other stakeholders such as University Grants Commission also stand the contributory duty of maintaining qualitative legal education in Bangladesh. In light of the necessity or time and context, it is pertinent to initiate clinical legal education in the forms of law clinics in law schools in full swing. Whatever; hopefully the number of organiser is increasing rapidly. In future it's hoped that moot court will get a constant platform in every law school

6. Drawbacks and Suggestion

1. There are some real impediments, the off-campus law student faces to explore technology in moot court and want of confidence. These impediments may be overcome by participating regardless of their ability to attend on campus. The students should be trained how to use technology in legal education. The institution will ensure an effective learning environment that the student learns the videoconferencing and electronic document management systems. In the global pandemic situation, many national and international institutes have organized virtual moot court competition. So, the law students need adequate technological communication skills to participate that type competition in future.
2. One of the biggest obstacles faced by law students especially fresher's is language problem. Unfortunately those who are fluent in English are seems to be worried about the hard

English words. Moreover, the students have no easy access to some public domains and other sources that's why there are shortage of reading materials like law books, judgement of a case etc. So, the law materials should be available for the law students and the author should use very lucid words in a law considering the interest of global students.

3. Many law schools have not designed their syllabus properly or have not considered the global aspect. Moreover, law program is designed overlooking the practical importance rather academic. As a result, law students do not get any knowledge of practical value, rules and techniques of courts. Law school should not impose heavy course-load on students rather requiring research work. Law school should update their academic program with the global context and clinical schooling is must.
4. As a statutory body Bangladesh Bar Council has an initiative to train the law graduates under the Continuing Legal Education Programme replaced by Bar Professional Training Course but it is found inoperative. It only requires minimum sixth months pupillage certificate for a law student to an advocate. Now it is the time that bar council changes its position and attitude. The Study has also affirmed with the suggestion given by Shams Arpita Mizan that as Bangladesh Bar Council has authority over law school in Bangladesh, easily it can play a very significant role for the development of legal education in law schools (Mizan, 2016).
5. The domestic or international participants of mootings face an acute housing problem in Bangladesh. Participants are to spend huge amount for comfortable lodging. Moreover, special accommodation for the female participants should be arranged giving a priority. So, the organizing authority may give a special concern to the issue. Government should make the immigration procedure easy for the mooters.
6. Law Commission, People's Republic of Bangladesh has prepared a review of legal education in Bangladesh in 2006. It has mentioned the worsen condition of education in different law college. There is no change in curriculum, no teaching methodology. Sometimes qualities of the faculties are questionable. So, government should take the report seriously and take action to this regard. Moreover, for the expansion of the mootings in legal education, qualified and skilled faculties are indeed. Faculties of the universities and colleges should be properly trained up so that they can teach and supervise the students in a clinical way under their complete supervision.
7. Most of the times private universities get students having very poor academic background. Even many universities and law colleges do not follow proper admission rules and it makes the clinical education more worsen in reality. Government should monitor the matter and institution should arrange admission test for testing students' motivation, aptitude and analytical skills for the study of law.
8. As in Bangladesh there is no monitoring cell to monitor the scenario of legal education, the study has strongly affirmed the review of legal education in Bangladesh in 2006 prepared by Law Commission, People's Republic of Bangladesh regarding the need of formation of a Council of Legal Education for controlling, monitoring and supervising of legal education in Bangladesh. The Council may have collaboration with the Bar Council and the University Grants Commission.

7. Conclusion

Only the proper implementation and interpretation of law can bring justice to the society. Law professionals have a great role in this respect. Proper gathering of legal education, theoretical and practical can make a graduate professional and it can also lead law professionals bringing appropriate remedy for the remedy seeker. To develop our legal education and to encounter the developing challenges of society and legal fields, clinical legal education program should be familiarised as a mandatory course (Taspi, 2020). There is no alternative to gathering proper theoretical and practical knowledge of law. It is globally recognized that mootings is one of the important parts for a law student to get the proficient and perfect knowledge in this field and when they will become lawyers and Judges they will ensure justice in the society. So, the law students and professionals should be properly trained up and groomed. In fine, the stakeholders should understand and realise the contribution of law professionals to the society and take initiatives for the enhancement of quality and standard of legal education in our country.

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