

## LAW opinion

# New challenges Media trapped in security and terrorism quagmire

A.H. MONJURUL KABIR

THE public's overwhelming dependence on the Western, particularly American media establishment for news and information presents several challenges to the ideal of a reasoned deliberative democracy. History, from the First World War to the last Iraq War (2003), suggests that media coverage will increasingly turn hegemonic, driving out alternative considerations or information in deference to a prevailing majority perspective that mirrors closely official U.S. government sources (Reuters has stuck to a distinctive approach for decades. "As part of a policy to avoid the use of emotive words," the global news service says, "we do not use terms like 'terrorist' and 'freedom fighter' unless they are in a direct quote or are otherwise attributable to a third party. We do not characterise the subjects of news stories but instead report their actions, identity and background so that readers can make their own decisions based on the facts." Since mid-September, the Reuters management has taken a lot of heat for maintaining this policy -- and for reiterating it in an internal memo, which included the observation that "one man's terrorist is another man's freedom fighter." In a clarifying statement, released on Oct. 2, 2001, the top execs at Reuters explained: "Our policy is to avoid the use of emotional terms and not make value judgements concerning the facts we attempt to report accurately and fairly." Reuters reports from 160 countries and the "terrorist" label are highly contentious in quite a few of them. Behind the scenes, many governments have pressured Reuters to flatly describe their enemies as terrorists in news dispatches.)

Several forces will be at work. First, many journalists are prone to certain cultural or national assumptions and a bias in their reporting that is often magnified in times of national security crisis. Second, in instances of military action, the media are highly dependent, and sometimes exclusively dependent, on official government sources for the release of information. Third, political leaders from both parties are likely to unite solidly and uniformly behind the perspective and the policy choices of the President, meaning that voices of dissent or minority perspectives on courses of actions or the nature of the events will be scarce or difficult to find.

It is the role of the public authorities to combat terrorism, but not that of the media, whose only role was to present and disseminate information on terrorism, putting it into perspective for the benefit of the public. In the face of the excesses sometimes observed in the race for audience ratings, the media, and particularly public service broadcasters, have a special responsibility not to add to the fears and insecurity terrorist acts can trigger or to contribute inadvertently to the goals the terrorists were out to achieve.

While terrorists seek publicity and therefore attempt to use the media in their communication strategy, they actually fear information. It is up to the media, therefore, to act responsibly and not only present information but also help to explain it and even denounce acts of terrorism. This responsibility does not make the media's task any easier, considering that they sometimes had difficulty gaining access to information, for example, or were manipulated, even by the authorities, and in some cases, they had to make do with only one source of information. The responsibility of the media goes beyond simply reporting acts of terrorism. It is also their role to explain the possible causes of terrorism and to help foster mutual understanding and tolerance.

Media often lend themselves to the political use of human rights issues. The war against terrorism proves that once again. Many newspapers in South Asia have used the term 'terrorism' to substantiate different political agenda. The arbitrariness of the governments often receives media support in the wake

ultra-nationalistic attitudes.

Privatisation of human rights brings in newer challenges. The non-state actors also appear to be powerful player in governance discourse. They also show their strength as potential violator of human rights. Media has not yet sensitised enough to cover this aspect substantially.

Accuracy in and sensitivity of human rights reporting is still a great trouble. Lack of human rights sensitive reporters and writers adds fuel to the difficulty. Integrating human rights law with human rights coverage and reporting is also not an easy task. The ongoing anti-terrorism campaign aggravates the situation even further.

### Striking a balance

It is widely recognised that human rights abuses, or infringements of civil liberties and of the rule of law are less likely to recur if there is a high level of public or international awareness of such practices, derived from exposure in press or other media campaigns. The independence of the judiciary is more readily preserved where cases of executive interference are brought to light by the media. Regional and national organisations should keep a watchful eye on any steps the governments of member States might take to strengthen their stockpiles of legal measures for dealing with terrorism, to make sure they did not question the fundamental freedoms enshrined in the international human rights regime, particularly freedom of expression and information.

All these responsibilities mean, possibly, introducing self-regulatory measures such as codes of conduct where they do not already exist, or reviewing their content and how well they work when they did exist, to ensure that they provided effective answers to the ethical problems involved in covering terrorism. Media adopts special self-regulatory measures concerning terrorism, but many expressed reservations about this idea and also about co-regulatory measures taken in conjunction with the state. However, the importance of developing training for journalists and encouraging a policy of diversity in the media, not only through the production and dissemination of programmes or other content conducive to mutual understanding and tolerance between majority and minority groups in today's multicultural societies, but also by encouraging the recruitment of editorial staff from minority groups.



Many advocates for striking a balance between newer methods of war against terrorism and recognised human rights. It is hardly possible to balance when talking about human rights violations. Pro-active media personnel have to be squarely on the side of the victims; respect for human rights should be something that transcends political affiliation. However, in exceptional cases, media could be encouraged to adopt and apply rational and objective self-regulatory measures, paying special attention to their effective implementation, while bearing in mind the considerable differences of situation from one country to another.

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## COURcorridor

# Reporting on 'bail' requires rethinking

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SUBJECT of my immediate concern is the news routinely appearing in various newspapers showing bail granted to the accused. Over the years bail reportedly granted to the professional offenders known as 'mastans', 'terrorists', 'top terrorists', rapists and others wanted in series of cases are the headlines of different newspaper. The headlines, as they have appeared in the recent past in only one native daily, Pratham Alo are as follows:

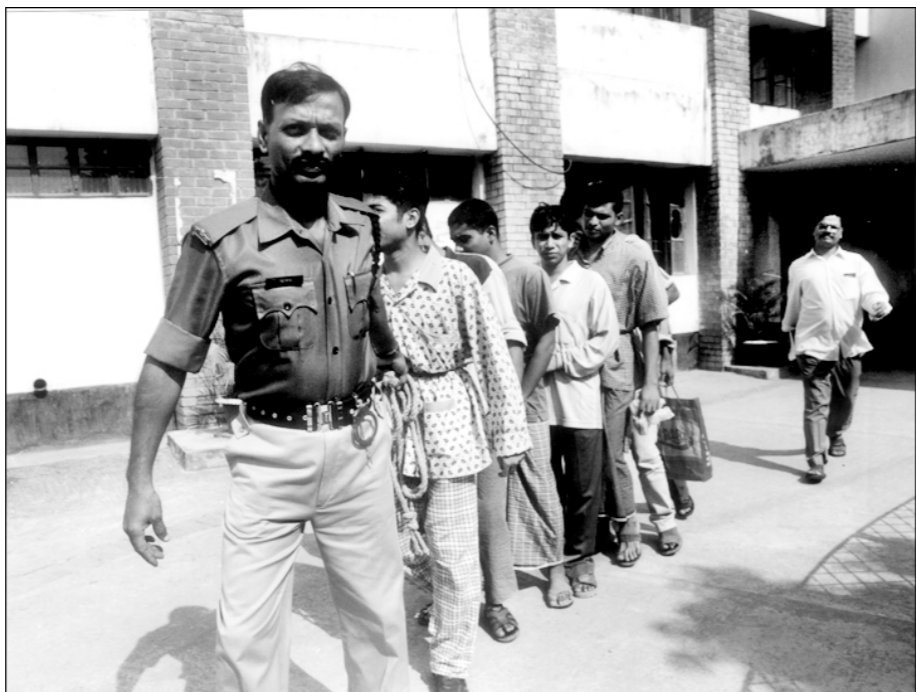
1. Three talked about murders in Chittagong: Direction to investigate: two of the accused are granted bail, four more witnesses are declared hostile (28/1/2003). The contents of the news show inter alia, that the accused who were granted bail are two top terrorists, namely, Sazzad Ali Khan and Five Star Jashim. Both of them are charge-sheeted and listed terrorists. The news goes further to add that the factum of speedy-bail granted to the accused arrested in non-bailable offences has created a sense of despair in the local legal community and claimed by reference to an unnamed lawyer that this will create negative impact in the society and the witnesses will suffer in terms of courage to adduce evidence in the case.

2. Police too worried at the release of top-terror Morshed in Chittagong (19/4/2003). The news goes to show, inter alia, that Morshed, already convicted for life, is wanted in twenty cases and the top terror as per list maintained by Chittagong police is released from jail by an order of the High Court. His release has created sensation in the police and swept the people of the local area with the sense of insecurity.

3. Questions after release in Mohuri murder case: Would Nasir, accused in 36 cases, never be convicted (10/2/2003)? This news piece reveals that the name of Nasir appears in 35 cases excluding the Mohuri murder case. Out of which he was granted bail in 15 cases and acquitted in 14 cases.

4. Rapist grated bail: victim splashed with acid in the court premises (30/5/2003). A glance on the headlines will give an apparent impression that it is court which releases the criminals on bail or otherwise in its own responsibility. It can hold back that the offenders should it so wish. None of the news-pieces is indicative of the limitations of the court imposed by law. Rather the stories narrated in the body of the news relating to Morshed and

Nasir are simply alarming. Therefore, with publication of every single piece of news court sustains injury in the public estimation. I don't say all the reports correctly represent the facts. Irrespective of their objectivity and correctness the headlines on the face of them are inherently provocative of doubt in judicial fair-play and virtually adds to the already shaken public confidence on the judiciary. Courts are vested with power to grant bail in reasonable circumstances. If, by reference to the records of the case and the documents submitted therewith, it can be shown to the satisfaction of



the court that there is no prima facie case against the accused or there is reason to believe that the accused is not guilty of the offence or there is fair chance of acquittal, court is rather obligated to grant bail because it is the mandate of law given in consonance with liberty of citizens.

There is hardly any scope, in the present position of law, for the court to look beyond records and withhold bail. Courts view is bound to be dispassionate and free from value judgement. The words 'top-terror', 'mastan', 'godfather' etc. are foreign to the penal clauses and not referred for cognisance or trial. Accused are forwarded to court for the particular offence or offences allegedly committed by them. If there are not sufficient materials

on records to link them up with the offence matter ends so far as the court is concerned.

Instances of bail granted indiscreetly without some or other legal sanctions is rare for the obvious reason that every single order of a court is open to scrutiny by the superior court. But it can not be said that every single bail granted in the lower tier of judiciary is free from extra-judicial influence. That is a different aspect of things. The person affected by the illegal bail-order is left with remedy provided by law. If foul-play is suspected there are agencies to look into and take appropriate measures. Law is not helpless, its arms are long enough to reach the wrong-doer. The point I want to make in the peculiar perspective is that the news-headlines on the face of them are shocking to the community and tend to foster popular prejudice against the judiciary as a whole. Unless the order of bail is challenged by the Government or any private party the same may be presumed to be based on good reasons. Someway or the other the illegal order is bound to come before the superior court and scanned upon hearing both the parties. Thus there is no scope of saying or writing anything that looks as if release of terrorists either by bail or by discharge or acquittal is in the hands of the courts independent of the merit of the case. General people are not supposed to know the limitations of the courts. In our system judges or magistrates can not make public statements justifying their actions. This is possibly not desirable, as we do not want to put our judges into controversy for the greater interest of the institution. Time has changed and the people are now being glowingly exposed to media. They should not be dragged to the point of frustration by saying or writing something incomplete.

Judiciary, is the last resort of the suffering masses and thus being the most sensitive organ of the state, must stand with high scale of public confidence. No news having anti-court slant should be published in the newspapers without detail context. Moreover there should be some mechanism developed for investigation of any such news published in the newspaper. One may argue that there is law of contempt to deal with the problem. As I understand, the contempt law is not as comprehensive as to cover all nor is it meant for dealing with the kind of situation addressed here. It is not expected either that court should come forward to protect itself in all cases leaving aside the heavy work-load it is already saddled with.

'Court-Reporting' is a discipline seen to be emerging over the years in our country. Young lawyers are generally engaged for doing the job. This seems to me to be a very positive approach on the part of the newspapers. If such reporting of the lawyers and the persons experienced in court proceedings are taken it will surely go a long way in protecting the public image of our judiciary.

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## LAW news



# Int. organisations oppose patents on life forms

International organisations called for developing countries and least developed countries (LDCs) to reject patents on life forms when meeting their obligations under Section 27(3)(b) of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The call was made by Action Aid Bangladesh, Consumers International (CI) and SAWTEE.

### Analysing TRIPS provision

Article 27 (3) (b) of the TRIPS Agreement requires member countries to legislate for the protection of new plant varieties. It requires Mandatory patent protection for micro-organisms, non-biological and microbiological processes. However, it allows member countries to exempt from patenting plants and animals, as well as "essentially biological processes for the production of plants and animals". Where patent protection is not mandatory for plant varieties, some other effective sui generis (one of a kind or specific) system of intellectual property rights protection or a combination of patent and sui generis system must be provided. Under the current text, developing countries and LDCs have an option to enact sui generis legislation for the protection of new plant varieties but they have no option but to provide for patent protection for micro-organisms, non-biological and microbiological processes.

Such patents protection for life forms includes seeds, plant tissues, plant genes, plant genetic sequences, and so on. Patents allow holders the exclusive right to exploit their inventions for up to 20 years. In the area of plant genetic resources, this is extremely critical as it allows corporations, which hold these patent rights monopoly control over the seeds of new varieties. Already, seventy four percent (74%) of biotechnology patents are held by six TNCs Monsanto, Dupont, Syngenta, Dow, Aventis and Grupo Pulsar. Between them, these six corporations hold 1011 patents on food crops, including important staples such as maize, rice, sorghum and soybean.

### Corporate control on food

Patenting represents another step towards the corporatisation of the food chain, forcing farmers to purchase both seeds and chemical inputs, and will accelerate the trend towards monoculture, reduce genetic diversity, expand the spread of genetically engineered foods and crops, and strain local ecosystems. Commercial seed accounts for a third of the total value of the seed industry. The other two-thirds are equally shared between farm-saved seed and seed from public institutions. Although more than a third of the value of the seed trade is earned from the OECD countries, African and Asian demand for seed has also been rising.

Transnational seed companies have been consolidating and acquiring seed companies in developing and least developed countries to increase their market share. Governments in developing countries and LDCs must ensure that the farmers and public sector researchers continue to have access to plant genetic resources for breeding and the success of their efforts remain in the public domain. Privatisation of this knowledge through intellectual property laws will cut off access to further research and development and inhibit the free exchange of seed varieties amongst farmers, disrupting traditional practices that form the basis of on-farm diversity and thus food security for the majority of the world's farmers.

### Threat to the food security

Action Aid believes that patents on seeds and crops are a threat to the food security and livelihoods of small farmers. According to Action Aid, farming is the main livelihood for seventy-five per cent (75%) of the world's population living in rural areas and 1.4 billion farmers save seed from year to year around the world. "We want a more responsive and balanced international trade regime that adequately addresses the food rights of poor people in developing and least developed countries at national and household levels. There should be no patents on seed, food and crops. The three organisations also call on governments of developing and least developed countries to reject the plant breeders' rights model advocated by the International Union for the Protection of New Plant Varieties (UPOV).

UPOV seeks to grant patent type protection for plant varieties. Established by the International Convention for the Protection of New Varieties of Plants, the convention was adopted in Paris in 1961 and was revised in 1972, 1978 and 1991.

Fifty-one countries are members of UPOV. Most are European and American countries; the only Asian members are China, Japan and South Korea. In Africa, only Kenya and South Africa are members. UPOV is more appropriately designed for large-scale industrialised agriculture, where farmers are a small percentage of the population, farming is commercial, seeds are bought from corporate suppliers and products are sold through commodity markets. In developing countries, millions depend on farming for food, employment and economic security. Consumer International (CI) cautioned governments of developing countries from adopting the UPOV model of sui generis plant variety laws and urged them to resist bi-lateral pressure to do so. "The UPOV model restricts the rights of farmers to save, use, sell, and exchange seeds, thereby inhibiting new seed development. Adopting the UPOV model will increase costs to farmers, create a dependency where previously there was none, and force farmers to pay for what was previously free. Eventually consumers will pay the price of higher food bills and reduced choice", said Dr. Sothi Rachagan, Regional Director of CI's Asia Pacific Office.

### Pressure on LDC

Developing countries and LDCs, including Bangladesh, are being pressured to enact UPOV style sui generis legislation and many are caving into the UPOV as well as domestic industry lobby. The EU-Bangladesh Trade and Aid Agreement of 1999 requires Bangladesh to "make every effort" to join UPOV. In addition, bilateral pressure has been applied to achieve TRIPS 'plus' commitments (i.e. beyond what is required under TRIPS) in plant variety protection (PVP) legislation. As a least-developed country (LDC), Bangladesh is not required to implement TRIPS until 2006. Bangladesh is not the only country under pressure to enact UPOV style legislation. The US-Vietnam trade agreement obliges Vietnam to be a member of UPOV. A similar US Trade Agreement with Cambodia obliges it to accede to UPOV. There are at least 23 cases of bilateral or regional treaties between developed and developing countries that are TRIPS plus, affecting 150 countries in the South. SAWTEE rejects patents on life forms and emphasises that legislation recognising farmers' rights must be enacted at local, provincial and federal levels, paying due attention to the vulnerability and threat of marginalisation faced by mountain farmers.

### Call for harmonisation

Countries at low levels of human and technological capacity cannot benefit significantly from TRIPS. The experience of developed countries shows that strong patents follow industrial development, not lead it. All three organisations recommended that governments of developing countries and LDCs conduct studies on the local implications of intellectual property protection on plants and other life forms before commencing to enact legislation. A broad-based consultative process must follow before legislation is eventually enacted. Governments must actively sponsor public sector research and development, including collaboration between scientists and farmers to ensure that local plant genetic resources are identified, conserved and improved. Governments must achieve a balance between providing incentives for the development of new plant varieties and the rights of farmers to save, use, exchange and sell seeds through an appropriate sui generis system. Action Aid Bangladesh, Consumers International and SAWTEE also called for harmonisation of Section 27(3)(b) of TRIPS with global agreements to protect biodiversity i.e. the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture. The three organisations called on governments of developing and least developed countries to: Adopt a sui generis PVP law to protect farmers and community rights; Reject patents on life forms; Call for the review of Section 27(3)(b) of TRIPS to adopt this position; Oppose the UPOV model of PVP law; refrain from becoming a member of UPOV; and ratify the Convention on Biological Diversity and International Treaty on Plant Genetic Resources for Food and Agriculture.

Courtesy: Consumer International, Malaysia.