HUMAN RIGHTS *advocacy*

Human rights for all, even criminals

BARRISTER HARUN UR RASHID

IN 1945, the Charter of the UN (Articles 1, 55 and 56 of the Charter) and in 1948 the Universal Declaration of Human Rights affirmed certain fundamental human rights for individuals. Article 1 of the Declaration lays down the core element of human rights as follows:

"All human beings are born free and equal indignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Fundamental rights are those that are inalienable and cannot be denied to any person by their governments. Some of these rights are: right to life, prohibition of torture, inhuman and degrading treatment, freedom of religion, thought and conscience. They are fundamental because they cannot be diluted in any situation and are related to the dignity and worth of human beings.

It is noted that fundamental rights are applicable to all individuals including criminals.

We must remember criminals are not born. They are made or victim of certain circumstances relating their background of life.

The criminals should not be looked down upon by community, rather the community and governments should ensure that they are rehabilitated in society as good and productive citizens.

Causes of crimes

The basic reason of criminal behaviour has been the subject of study of many criminologists and psychiatrists over the years. Criminal behaviour often arises due to extreme poverty or psychological disorders. Often criminals are children of broken homes or orphans, neglected in society.

Some social scientists believe the following causes of crime:

(a) Crime is not a normal behaviour and most of them need support or psychic help.

(b) Judicial punishment must be balanced by remedies, and not by retribution

There is another set of criminals that are patronized by some affluent elements of society for their own purposes. They are "professional criminals" in the sense that their profession is crime and they do it because they are protected from the law-enforcing agencies and are rewarded. They constitute a separate group and largely owe to their origin to the criminalisation of politics.

Rehabilitation of criminals

Criminals should be viewed from perspective of rehabilitation and correction of their anti-social behaviour. In most advanced societies, prisons have been designated as correction centres. Long-term imprisonment and other measures which result in isolating an offender from the community are not considered effective in his/her rehabilitation because often such isolation may aggravate the situation.

Chief Justice Burger of the US Supreme Court once said : " I have long believed and said that when society places a person behind walls and bars, it has a moral obligation to take reasonable steps to try to work with that person and render him or her better equipped to return to a useful life as a member of society."

The imprisonment can only be effective if correction centres (prisons) uses educational, moral, religious and psychological assistance to the criminals. Criminals should be made aware that they are causing disservice to community by their anti-social behavour. Correction centres should also investigate the root causes of criminal behaviour of a person. Is it due to socio-economic deprivation or psychological?

Torture should not be conducted to any individual to extract confessions. The UN Torture Convention of 1984 bans such conduct and the perpetrators of torture are punishable because it is an international crime.

The suspected criminals enjoy the right of presumption of innocence. They are innocent unless they are found guilty by the courts. It could be that DNA (deoxyribonucleic acid) testing of the samples recovered from the crime scene or victims with the blood samples in case of murder taken from suspects may acquit alleged criminals. In the US many criminals serving long sentence of imprisonment have been found not guilty of crimes for which they were convicted and imprisoned.

Rights of criminals

Alleged criminals have two sets of rights: (a) substantive and (b) procedural. The substantive rights include fundamental rights under the Constitution and the judiciary must interpret them in the widest amplitude permissible, having regard to the principles of law in this field.

Procedural rights include a right that law-enforcing agencies should deal with them with civility. Criminals or suspected criminals must not be physically abused at their hands while they are in custody of the law-enforcing agencies. Procedural rights include also easy access to the lawyers and courts and visitation by their relatives in prisons.

Where the rights of a prisoner are violated the writ jurisdiction of the High Court can be invoked. The judiciary has a monitoring responsibility to ensure that prisoners are treated according to the rules and regulations by the corrective (prison) administration. A prisoner has a constant companionthe court armed with weapon " habeas corpus". Implicit in the power of the court to ensure that health and mental well being are looked after in the correction centres (prisons).

Another question is that when criminals are imprisoned, who does take care of their families? It is an issue of extreme importance to both to the members of family and to society. It is often overlooked that government or the society has a responsibility to take care of them. Unless they are looked after, they may in future be involved in anti-social behaviour.

Concluding remark

Criminals are not by mere reason of their conviction are to be deprived of their fundamental rights as guaranteed by the Constitution and international human rights instruments.

Oscar Wilde's following poem about prison life holds good even today:

"How vilest deeds like poison weeds
Bloom well in prison-air;
It is only what is good in Man
That wastes and withers there."

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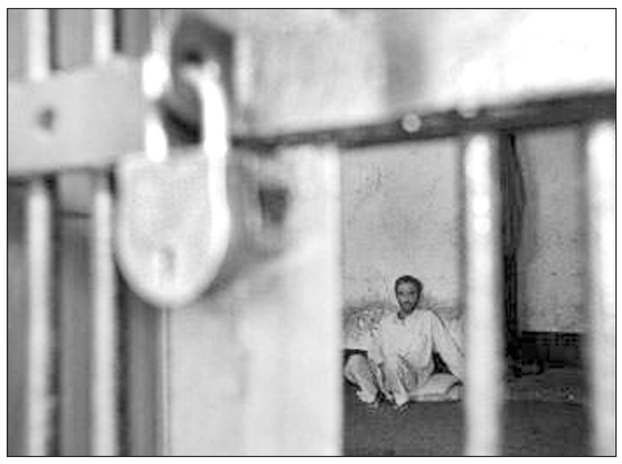


FACT*file*

Freedom of speech carries responsibilities for all

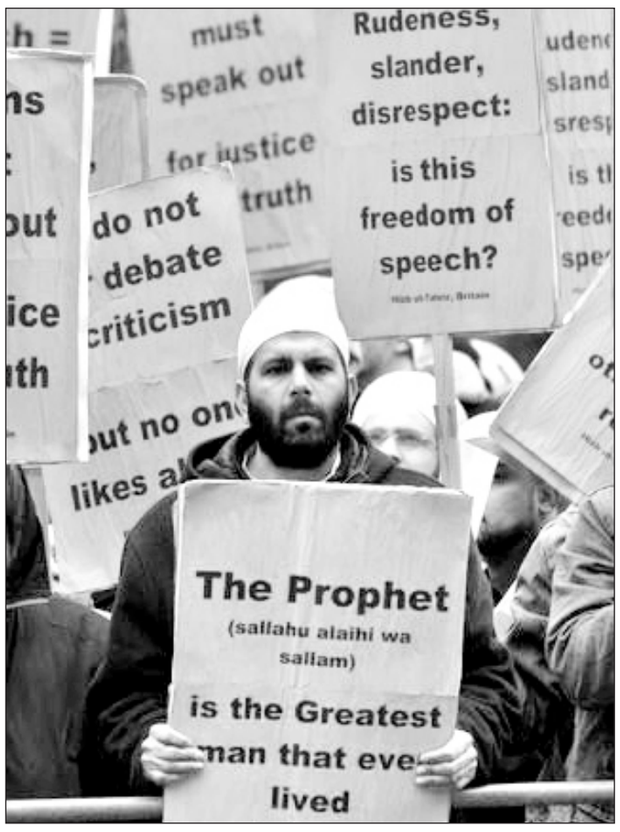
Events of recent weeks have highlighted the difficult question of what should be the legitimate scope of freedom of expression in culturally diverse societies. While different societies have drawn the boundaries of free speech in different ways, the cartoon controversy shows how, in today's increasingly global media space, the impact of actions in one country can be felt way beyond its borders. Today, more than ever, societies are faced with the challenge of asserting universal human rights principles in an area where there has traditionally been a tendency to defer to the domestic laws of a particular state and the values they enshrine.

Set against the backdrop of the rising climate of intolerance and suspicion between religious and other communities in many parts of the world, including in Europe, two conflicting sets of principles are being advanced in this controversy. Newspaper editors have justified the publication of cartoons that many Muslims have regarded as insulting, arguing that freedom of artistic expression and critique of opinions and beliefs are essential in a pluralist and democratic society. On the other hand, Muslims in numerous countries have found the cartoons to be deeply offensive to their religious beliefs and an abuse of freedom of speech. In a number of cases, protests against the cartoons have degenerated into acts of physical violence, while public statements by some protestors and community leaders have been seen as fanning the flames of hostility and violence.

The right to freedom of opinion and expression should be one of the cornerstones of any society. This right includes "the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers" (Universal Declaration of Human Rights, Article 19). For more than forty years, Amnesty International (AI) has defended this right against attempts by governments across the globe to stifle religious dissent, political opposition and artistic creativity.

However, the right to freedom of expression is not absolute -- neither for the creators of material nor their critics. It carries responsibilities and it may, therefore, be subject to restrictions in the name of safeguarding the rights of others. In particular, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence cannot be considered legitimate exercise of freedom of expression. Under international standards, such "hate speech" should be prohibited by law.

AI calls on the government officials and those responsible for law enforcement and the administration of justice to be guided by these human rights principles in their handling of the current situation. It also calls on those working in the media to act with sensitivity and responsibility so as not to exacerbate the current situation. This incident highlights the power and reach of the media and AI calls on those in the media to apply greater political judgement, taking into account the potential impact of their output and the range of often competing human rights considerations involved. While AI recognises the right of anyone to peacefully express their opinion, including through peaceful protests, the use and threat of violence is unacceptable. Community leaders must do everything in their power to defuse the current atmosphere of hostility and violence. Culture and religion are of central importance to many people's lives, but they cannot be used as an excuse to abuse human rights.



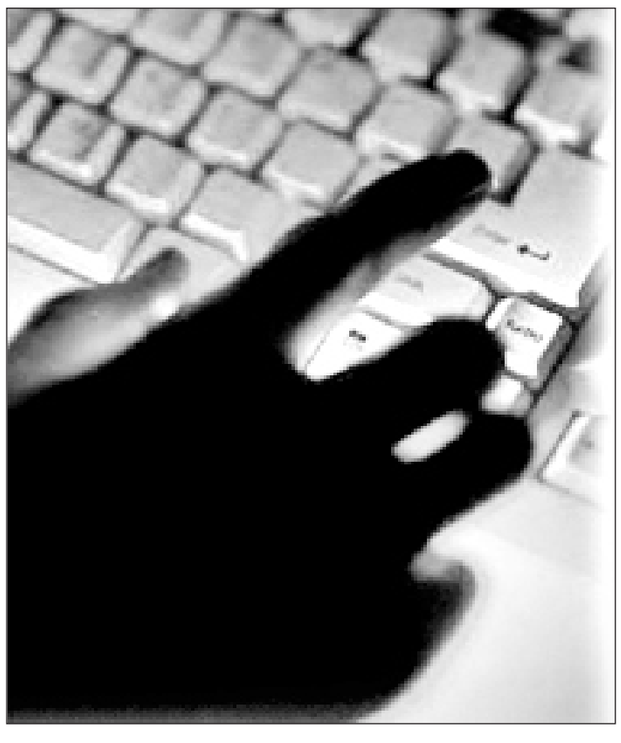
Star LAW *analysis*

Internet exposes a new international space

An analogical study of cyberspace in light of sovereignless character

Sovereign-less character of international space can be a better solution

There exists in international law a type of territory, which is called international space. At present we get three international spaces as such Antarctica, Outer-space, and the High Seas. The significance of international space is that no state will exercise sovereignty over the international space. It is a recognized norm of the international law. Some American cases and state practices reaffirmed the sovereignless character of international spaces. The finding of the case of Smith v. United States [507 U.S. 197, 122 L.Ed. 2d. 548 (1993)]. is typical one in this regard. Antarctica is just one of three vast sovereignless places where the negligence of federal agents causing death or physical injury will remain outside the purview of the sovereign authority of the state. In this case the court side by side opined about the jurisdiction of the outer space that negligence or any other violations in outer space are staying beyond the confines of the sovereignty. The court also observed that the jurisprudential approach towards the high seas disposes its sovereignless nature. The similar view was shown by in subsequent cases. Even the principles enunciated by this case were strictly followed by in many cases. The Hughes Aircraft [29 Fed. Cl. 197, 231 (1993)]. is one of the most glaring cases. In this case the U.S. Court of Federal Claims on the basis of Smith v. United States declaring the non- application of the Federal Tort Claims Act to claims arising in Antarctica held that US patent law did not apply to foreign spacecraft in outer space. The governing international treaties are also similar in their conception and design showing the essence of international customary law in this behalf.



Previous international spaces can usher the way for new one

The fundamental document in outer space law is the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space. The treaty was adopted pursuant to a United Nations General Resolution which contains verbatim much of the text of the treaty. The resolution and the treaty explicitly state that States have jurisdiction over objects bearing their registry. Remarkably, this resolution of the General Assembly was unanimous. There is also no doubt that the Outer Space Treaty was based on the Antarctic Treaty. Hearings held before the Senate Committee on Foreign Relations of the USA in 1967 actually include a copy of the Antarctic Treaty. In the hearings, the committee noted that the Outer Space Treaty was specifically based on the Antarctic Treaty. The treaty states that outer space, including the moon, is not subject to claims of sovereignty. Therefore, no territorial jurisdiction is possible. The treaty also provides that all activities shall be in accordance with international law. So it is evident that the previous international space has remarkably influenced the subsequent ones for birth, growth and progressive development in modern perspectives. Such kind of analogical endeavours can be applied for the cyberspace to be recognised as a new international space within the purview of international law. Cyberspace emerged during the 1970s and 1980s as the apparatus of the Internet took root, but it was not until the early 1990s that an explosion in users and uses, including commercial uses, introduced a worldwide virtual community to another international space. The theoretical and conceptual impediment is physicality. These three physical spaces are not like cyberspace, which is a non-physical space. The physical/non-physical distinction is only one of so many distinctions that can be made among these spaces. But what makes them analogous, as international space is not any physical similarity, but their international, sovereignless quality. As a fourth international space, cyberspace should be governed by default rules to be proposed and adopted in future that resemble the rules governing the other three international spaces. It would be better solution vis-a- vis joint sovereign. Because reformation of existing international law will be more easy than facing the conflict of sovereign states regarding many issues.

Concluding remarks

Our brief experience with cyberspace indicates clearly that the computer-with-internet- connection is a space machine, negating physical distance and creating new spaces in which novel relationships and activities can occur. It has created a new environment in our relationship covering almost every directions of our life. Even we have moved quite far from those cultures where activities were guided solely by the rise and fall of the sun every day. Cyberspace is moving us to a place of virtual light, indeed a place that has no night. These new relationships, dynamism and spirit have the potential to touch sovereignty is many levels, particularly the territoriality of sovereignty and territorial monopoly of legal sovereign. The invasion of legal spaces by cyberspace goes beyond the law's physical places and objects. For example, the law describes and defines many issues and concepts in territorial terms. Jurisdiction is an area of law that is directly linked to control over people and spaces etc. The structure and nature shows that cyberspace cannot be controlled properly by the domestic law, as they are, in most cases, outcome of command, and acquiescence of sovereign authority of territorial character.

If the cyberspace is left open to be controlled by all the states, then it will come within the purview of legal system of every state resulting in numerous complications. In that case the recognition and acceptance of it as new international space will absolve lots of debates. International law is not merely a terrestrial phenomenon, but includes all non-sovereign spaces, whether on this earth or beyond it. So existing principles of international law can remarkably contribute to govern the cyberspace with few substantial changes. It is also not deniable that huge procedural changes have to be drawn up due to the cyber -architectural peculiarity.

This is the concluding part of the story.

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MYANMAR
Human rights violations continue

Amnesty International deplores the decision by the Myanmar authorities to prolong the detention without charge or trial of three senior opposition political leaders. The organization renews calls for the immediate and unconditional release of these prisoners of conscience, whose detention has been extended by the maximum period provided for by security legislation. AI remains concerned that the Myanmar authorities continue, in the name of national security, to deny people their fundamental rights solely on the basis of their peaceful political activities.

The Myanmar authorities today extended the house arrest of U Tin Oo, 78, Deputy Chairperson of the National League for Democracy (NLD) by a further year. Senior opposition figures and NLD MPs elect Dr. Than Nyein, 68, and Daw May Win Myint, 56, both imprisoned since 1997, also face a further year in prison without charge or trial, following the authorities' extension of their detention orders in mid January and early February 2006 respectively. These three senior NLD leaders, who are aged or in poor states of health, should never have been deprived of their liberty. U Tin Oo has been detained since a violent attack on NLD members in late May 2003. Medical doctors Dr. Than Nyein, deputy chair of the NLD's Yangon Organisational Committee, and Daw May Win Myint, head of the NLD Women's division, are suffering from ill health. They have already served sentences of seven years imprisonment for trying to arrange a meeting with NLD General Secretary Daw Aung San Suu Kyi, who is currently detained under house arrest without charge or trial under the 1975 State Protection Law. Since the expiry of their prison sentences the authorities have repeatedly imposed further detention orders on them under the 1975 State Protection Law.

AI is concerned that the 1975 State Protection Law used to detain them denies fundamental rights, including the presumption of innocence and the right to a fair trial. It permits the authorities to bypass the legal system, arbitrarily classify anybody a danger to state security and hold them under house arrest or in prison without charge, trial or the right to appeal their detention order. Under the law, the government may impose detention orders of up to one year, renewable for up to five years. It has been used for the prolonged unlawful and arbitrary detention of persons solely on the basis of their peaceful political opinions. It has repeatedly called for an end to the use of state security legislation, including the 1975 State Protection Law, to penalise and imprison peaceful political activities in Myanmar, where more than 1,150 political prisoners are imprisoned.

Source: Amnesty International.