

Law and Our Rights

Repeal all the Black Laws

The Censorship of the Freedom of Expression

by Abul Hasnat Monjurul Kabir

The new government has pledged to repeal all the black laws. The Daily Star, in its bid to create mass awareness against the existing repressive laws, has planned to publish a series of articles highlighting the anti-people nature of these laws. In the previous issues, we have highlighted the Special Powers Act, the Vested Property Law, the Indemnity Ordinance and Laws restricting freedom of speech and expression. This issue is on the Censorship Laws.

FREEDOM of expression is a human right fundamental to democracy and good government and if it is to be effective and real it must have a generous content. It must accord an accommodation as hospitable to the thought which we hate as that which it assures to the orthodoxes of the day. Right conclusions are more likely to emerge from a multitude of voices than through one voice preaching the official gospel. In its essence freedom of expression embodies the right to know.

The freedom of speech and expression means the right to express one's convictions and opinions freely on any matter orally or by writing, painting or any other mode addressed to the eyes and ears of other people. It includes not only the freedom to express one's ideas through any visible or audible representations made to others, felt also the right to acquire and import from others ideas, thoughts and information about matters of common interest and thus the right to read and be informed. The freedom includes right to paint, sing, dance or to write poetry or literature. It includes the right to exhibit and see cinematographic films as being very important media of expression. So the nature and scope of freedom of speech and expression are comprehensive of freedom to produce and exhibit film.

The cinematograph is a fast developing industry. The role of cinema industry is not limited to a mere mode of enjoyment, rather it reflects the true condition of life. No doubt it is one of the most powerful media that can greatly mould and mobilise public opinion. Article 39 (2) (a) of the Constitution of Bangladesh guarantees freedom of this media though subject to reasonable restrictions in the larger interests of the community. These restrictions are intended to strike a proper balance between the liberty guaranteed and the social interests specified thereunder.

Under Article 39 the freedom of speech and expression is not absolute and is subject to reasonable restrictions which may be imposed by law on specified grounds. In case of motion picture, this great job of materialising the restrictions imposed by various cinematographic laws and rules is performed mostly by the Censor Board.

Censorship of motion pictures is of universal application in varying degrees in various countries. The control through such censorship is thematic and episodic. If the theme of the film is either with or without excision of the offending parts, the certificate is refused. If the excisions can remove its offensiveness,

the film is granted a certificate. But what will happen if the Censor Board acts arbitrarily taking fullest opportunity of the vagueness and various procedural loopholes of statutory laws and delegated legislations? And also what will be the remedy of the filmmakers if such legislations themselves are black laws, contrary to the reasonableness as expressed through the solemn wording of the Constitution? Can the motion picture able to furnish its very object of portraying the true happenings of life where censor has always been applied as an oppressive tool? The present reality and experiences of Bangladesh testifies that things are not on the right track and not happened in a right manner.

**A brief look at the history**  
During the colonial era, in 1918, the British decreed a law called 'The British Cinematograph Act'. The extracts of objects and reasons of the cinematograph Act 1918 as published in the Gazette of India, 1917, part V, page 74 are: 'The Bill is designed to ensure control of cinematograph exhibitions with particular regard to the safety of those attending them and to prevent the presentation to the public of improper and objectionable films. The existing law of the country contains scattered provisions affecting such exhibitions and certain local enactments also bear on the subject; but the rapid growth in the popularity of cinematographs and the increased number of such exhibitions in India have rendered these provisions inadequate for the protection of the public from indecent or otherwise objectionable representations. The bill provides that no exhibition shall be given except in accordance with the conditions of a licence granted by the prescribed authority. The reason behind the promulgation of such Act was to see that no impudent native would dare to picture anything that disturbs the smooth rule of the mighty Raj.'

During the semi-colonial Pak era, following footsteps of their white masters and based on the Act of 1918, the brown sahibs of the Pakistan bureaucracy enacted the Film Censor Regulations in 1963. The present Bangladesh film censor codes are nothing but just the daintier version of the same regulations. The Bangladesh Cinematograph Rules of 1972, the Bangladesh Film Censorship Rules of 1977 and the Film Censor Notifications of 1985 are the illustrations of such replications. Out of these the latter is termed by the film makers as the black law which empowers the Censor Board to not negatively without any just cause on to chop off any amount or number of chunk of celluloid from film both from the visuals and from the sound track.

The constitutional sub-Article (2) of Article 39 contains the word 'reasonable' which is absent in Sec 3 of the Act (the Cinematograph Act, 1918). So the provisions of the Act are more powerful than that of the Constitution! The Film Societies Act of 1978 has put fetters on film societies and as a result, many such societies have all but disappeared when the government is pleased!

In the preamble of the government instructions for Examining and Certifying Films (General Principle) (No SRO 478-L/85, 16th November, 1985 known as Film Censor Notification of 1985) it is stated: 'the government is pleased to issue the following instructions for the purpose of examining and certifying films for public exhibition... The government issued about 45 restrictions with satisfaction and pleasure (i) which is enough to destroy the creativity and willingness of filmmaking of any potential filmmaker. The restrictions are vague, self-contradictory, tyrannical, indefinite and arbitrary. Through these restrictions, the taste of reasonableness can not be tested. They can not exist in any democracy any they must go.

Some of them may be replicated, but with more precise definition, with more sophisticated and democratic vigour, with more definite and consistent approach, with more democratic and reasonable feelings. The present content and state of the notification can be applicable for subhuman but not for humans possessing a little bit artistic sense. The readers can understand the situation if they go through the restrictions.

In the light of the broad principles, a film shall be regarded as unsuitable for public exhibition if it has the feature given below:  
\* Brings into contempt Bangladesh or its people, its tradition, culture, customs and dress.  
\* Tends to undermine the integrity or solidarity of Bangladesh as an independent state.

\* Violates any instruction issued by the government from time to time in the interest of preservation of law and order and of the security aspects of the country.  
\* Portrays sedition, anarchy or violence with political motive.  
\* Reveals military or other officials secrets likely to affect security of the state.  
\* Leads to breach of law and order or create sympathy for violation of laws.

Ridicules or brings into contempt the defence forces, police force or any other force responsible for maintenance of law and order in the country.  
\* Gives a general impression of pre-eminence of violence and lawlessness in the country and shows forces of law absent or inactive.  
\* Has an inadequate story intended to cover up sequences predominantly consisting of lawlessness, violence, crimes or spying likely to affect adversely the average audience.  
\* Contains propagandism in favour of a foreign state on any point of dispute between it and Bangladesh or against a friendly foreign state which is likely to impair good relations between it and Bangladesh.  
\* Distorts historical facts particularly maligning Bangladesh and its ideals and heroes.  
\* Ridicules religious persuasions so as to afford its believers.  
\* Exploits religion to denounce or uphold controversial social issues.  
\* Causes hatred or strife among religious sects, castes or creeds.  
\* Condone or extenuates acts of immorality.  
\* Enlists sympathy on admiration for vicious or immoral life.  
\* Contains dialogue songs or speeches of indecent interpretation.  
\* Indecently portrays national institutions, traditions, customs of culture. (This covers kissing, hugging and embracing).  
\* Maliciously ridicules public officers engaged in the prevention or detection of crime or punishment of criminals on entrusted with the dispensation of justice.  
\* Upholds traffic in women, children liquor, drugs and smuggling of any kind.  
\* Plagiarism in any form the production of foreign or Bangladesh films.

**The Role of Censor Board**  
Censor has always been an oppressive tool in the hands of the ruling cliques. During the era of the Greek City states, the clout the censor enjoyed was only next to the dreaded dictator and no less loathed. It is understandable that no ruling government will love to forsake such an effective weapon of control, specially about cinema for its cogency to stir emotion among millions of people.

The Censor Board of Bangladesh play an unforeseen role in this regard. Firstly it continuously violates the so called restrictions for the well being of the nation by allowing films for public exhibition which contradicts and contrary to the tradition, culture, customs, dress etc of Bangladesh. The Dhaka commercial films based on the story of the films of Bullywood (even of Tallygon) and inconsistent with our national tradition, heritage, dress, history etc is in no way the reflection of the life and living of the countrymen. Though plagiarism in any form from any foreign or under production foreign or Bangladesh films is prohibited, the Censor Board just over looks the said provision for the greater interest of the national Obscenity devoid of any artistic sense has become a fundamental ingredient of Dhaka commercial films and the Censor Board mysteriously encourages such trend.

Secondly and principally the Censor Board does everything to impose restrictions on films based on out glorious Liberation War of 1971. A close look at the attitude of the Censor Board makes one ponder as if a war of liberation never took place in this land of Bengal. The Censor Board is not interested at all to portray the realistic views of our war of independence.

Their past activities prove such allegation. It all started with 'Agami'. The prize winning short film which our Censor Board had refused to certify. Then followed 'Dhushar Jatra', 'Ekattorer Jishu', 'Smriti 71', and 'Nadir Nam Modhumati'.  
An intrinsic precondition for democracy is transparency of the government administration. It is an inalienable right of the people to know on which grounds a government body takes an administrative measure. The Censor Board's refusal was granted on the arbitrary, unreasonable and rogue restrictions of the Film Censor Notifications of 1985, the wording of which can cover every situation according to the tyrannical and motivated wish and interests of the Censor Board.

**Test of reasonableness and taste of the Censor Board**  
Reformation of the Censor Board (which is done recently after the assumption in power of the new government) is a requisite but not enough at all. The black provisions of the mentioned government notification must go and may be alternated by a set of reasonable and precise principles formulated after consultation with the concerned bodies and specialists so then law itself voluntarily can not make a grand for arbitrariness and unreasonableness. If the standard laid down by law is vague or indefinite, it will be violative of the freedom of speech and expression. The authority censoring films must balance the literary, artistic, sociological and ethical merit of a film with its tendency to deprave and corrupt and must be responsive to social change and must go with the current climate. Even though a law may lay down a definite standard for censorship, it may be violative of the freedom of speech and expression if it lacks procedural safeguards against arbitrary exercise of the power.

In fact most of the laws and provisions of the laws related to cinematograph and censorship are all antic culture laws which were formed by different regimes in the fear that people would voice their dissent against the Junta through a cultural movement. So that test of reasonableness can not be considered at all.

The right to receive information, views and ideas is protected world wide through various international conventions and covenants and constitutions of the countries. The European Court has emphasised that the broad public interest in receiving information and in the quality of political and social debate lies at the heart of freedom of expression. Our constitution through Article 39 also guarantees the same.

If the Censor Board continues to act in the same manner of the past, no doubt another authority will be required in that case to censor the imposition of unreasonable and vested censorship of the Censor Board. Many of the decision of the censor board was cancelled by the Appeal Board which cast serious doubt regarding the necessity of the censor board.

The people of this country have every right to know the truth, the real fact, the true history of their glorious war of independence. Ten or twelve members of the Censor Board can not regulate the taste of the twelve crores of people when the taste of the Censor Board itself is seriously questioned. The Censor Board can not withhold the universal and inalienable right of the people to know their history a fundamental requisite towards freedom of expression guaranteed by their constitution, establishment of which takes 30 lakhs lives.

The Vienna Declaration and Programme of Action condemned gender violence generally and made special mention of 'systematic rape, sexual slavery and forced pregnancy' in armed conflict. The statute of the International Tribunal, created by the United Nations to prosecute war criminals in the former Yugoslavia, included widespread or systematic rape as an indictable offence. There is, however, a fear that the terrible war-time rape of women in former Yugoslavia will disappear into history like the rest. If it does not, and the criminals punished, it will not only act as a welcomed precedent, but also open the flood gates to the possibility of sweeping the dust off the other similar crimes long ignored the world over.

The Act of Rape in Armed Conflict

by Saira Rahman

RAPE is an ancient war weapon which sheds light on the viciousness of the enemy or the conqueror. It is like a stamp of authority and of subjugation. Unfortunately, the subject of rape during war receives short-lived international attention and is usually pushed to the side lines and overshadowed by more pressing topics such as political reform, national policy, strategies, etc. And once all that is dealt with a countries settle down somewhat, compromises are struck and all ill feeling towards 'inevitable crimes' such as rape gather dust in the forgotten corners of world history.

Military histories rarely refer to rape, and military tribunals rarely indict or sanction it. We have yet to hear of the latest news regarding the rape of women during the Hutu-Tutsi war and the rape of women during the 'ethnic cleansing' operation termed as the 'war in Bosnia'. Rape was ignored by the International Tribunal at Nuremberg and even we, having suffered the rape of an estimated 200,000 women during the war of 1971, have yet to take forceful measures and seek, if not

else, a public (international?) apology from Pakistan. It is, indeed, a gross injustice to the victims of such a crime when their country quietly agrees to accept independence for amnesty.

Possibly, the most publicised act of rape during armed conflict was the rape of women in Bosnia-Herzegovina. Credit for this, however, could be given to the geopolitical location of the site of the crime - Europe. By contrast, the routine rape of women in civil wars in Asian, South American and African nations like Peru, Liberia, Haiti and Myanmar, goes largely unnoticed until women's groups raise their voices and are heard. In 1993, during the 'war in Bosnia', women were regionally and globally organising a movement to put the recognition of women's human rights on the agenda of the World Conference on Human Rights. In this effort, all forms of violence against women was a central issue.

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Rape and other forms of sexual assault have been prohibited under international rules of war. To prevent rape, the Geneva Conventions require separate quarters for women prisoners, as well as supervision and searches by women only. The Conventions characterize rape as a crime against the honour and dignity of women - which is, in itself problematic. A woman's 'honour' is traditionally believed to be here chastity and/or virginity. It is true that this term encompasses more profound concerns, however, it weakens the fact that rape is an act of violence against women and against her body, her mind, her self-esteem and her position and standing in her community. This is true for any act of rape, during war or otherwise. Unfortunately, under the Geneva Convention, rape is not categorised under the list of crimes considered 'grave breaches' and which includes willful killing, torture or inhumane treatment and also willfully causing great suffering or serious injury to body or health. True, these categories are generalized enough to encompass an act of rape, but unless we mention it specifically and explicitly recognise it as a form of torture, the egregiousness of rape will not be fully recognised.

Rape during armed conflict may be for two reasons - for the purpose of genocide and for the purpose of 'booty'. Genocidal rape, or the rape of women as a weapon of war is used to spread political terror, as in the military repression in Haiti, as in Bosnia, as in Peru, to name but a few examples. It is used against women to destabilize a society and part of a calculated effort to terrorise and shame women into fleeing their homes and communities.

The rape of women as 'booty' is a similar tactic. It maintains the morale of soldiers, feeds their hatred and sense of superiority. Examples of women used a booty can be found in the Japanese act of enslaving Korean, Chinese, Indonesian women during the Second World War and keeping them in 'comfort stations'. For similar reasons, the United States military in Vietnam raped poverty-stricken local women and established brothels. Rape of women carried out by the 'enemy' may also be an act of putting an end to a specific race of people. This is what happened in Bosnia and in former East Pakistan. It is also a means to humiliate and weaken the men to which the women belong. During war, the victims of rape are, therefore, merely targets of abuse, and remain faceless, their existence and subjectivity completely denied.

Every act of rape, regardless of the circumstances in which it was committed, is a grave violation of physical and mental integrity and a means of alienating a woman from her own body and shattering her sense of security in the world.

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The Daily Star Entertainment Guide

Table with columns for TV channels (PTV, STAR PLUS, ZEE TV, CHANNEL V, BBC) and their respective program schedules for Sunday 4th August.

Garfield® by Jim Davis

Garfield comic strip panels with dialogue: 'LOOK! I BROUGHT YOU A NICE, JUICY BONE!', 'I'LL LEAVE IT HERE, JUST OUT OF YOUR REACH', 'ENJOY!', 'NO USE CURSING THE DICE... MUST FIND FELIX FIRST - THEN SCARAMANGA', 'BROKE A LEG WHEN I JUMPED, JAMES LIKE THE MAN, YOU YACANT WIN 'EM ALL', 'THREE MORE GOALS - BUT THE BIG ONE!'.

Highlights section for Independence Day Celebrations on STAR Movies, featuring a documentary on Mahatma Gandhi and other films.