

Law and Our Rights

Right to Information: A Key to Integration

by M Amir-UI Islam

ACCESS to information is a key issue in the concept of our Republic. Our Republic is: "a democracy in which fundamental human rights, freedom and respect for the dignity and worth of the human person shall be guaranteed and which effective participation by the people through their elected representatives in administration at all levels shall be ensured." In order for the people to effectively participate through their elected representatives, it is necessary that they be aware of the facts and information relating to the affairs of the Republic.

They should have adequate information not only about the candidates whom they are going to vote for, but must also have knowledge about the agenda and the performance of the government, the political parties, the legislators, and the government leaders. In order for false propaganda and false innuendo not to dominate the judgement of the people so that the people may form their own independent judgment it is important that people should be provided with accurate information about the matters which concern them. Such access to information is a precondition to the working of a democracy. This right to information is more pertinent in a country like ours where a big chunk of the population is illiterate and uneducated. There may, however, be a preconceived notion that people who are not educated do not have the appetite for information. Such a notion is not only incorrect, but is also dangerously misleading.

Firstly, the role of information is not only to increase the volume of data and statistics but is also to cater to the needs of different people from all walks of life. Therefore, the role of information is also to create awareness and concern about public issues and thus increase further appetite for more information. In this context, the planning and mechanism for obtaining information and catering for the people's need is a skill and an art which should receive immediate attention in the media world. In our Constitution, freedom of the press along with the freedom of speech and expression is guaranteed, and so is the freedom of thought and conscience as well as the freedom of speech and

the press. These rights are interdependent and as concept they are also interconnected. All of these rights are linked with the right to information. Without the free flow of information and exchange of opinion there cannot be the formation of any free and honest opinion. Without such opinion there cannot be the public sharing nor would there be any participation of people in the policy making area. Even a newborn baby has a number of rights, such as the right to food, to clothing, to shelter, to healthy and friendly environment so on and so forth. But all these rights cannot be devoid of nor can be isolated from the first birth cry that it makes, which is the genesis of the right to expression. As the child grows his manner of expression develops into better articulation. With age and maturity it gets even more sophisticated. The concept can be applied in respect to the freedom of expression in its individual, social and political dimension. In articulating this right, the skill and the mechanism is also developed with practice in a particular society. Such practice is of utmost importance. The media policy ought to be able to include a methodology as to how the media can be used as an instrument for the empowerment of people, because only the media can play the role in meeting the need of a society for articulating the views, the concern, the care and the aspiration of the people. It is in this process the people can be well integrated in a system, as society and a polity.

Access to Information and The Role of Media

Access to information is a primary concern. In a country where a majority is illiterate, and reading population is not sizeable, it is very important for the electronic media to play the pioneering role more effectively. As we have a neutral caretaker government during elections, similarly, the media must also have a panel of experts on various subjects, and a panel of questioners. Through various question and answer sessions the people must be able to get the relevant answers to relevant issues. Like in the parliament, people may also have alternative way to access information through question hour on TV & radios. These question answer sessions can

also have ministers and party leaders on the panel to answer questions. They can participate along with the experts. Such exercise could be a continuous process throughout the whole five-year term and during the entire tenure of any particular government. During the election campaigning the question answer session can be edited

Journalists and the media therefore play the role of an investigator, a prosecutor and of a judge. In doing so it must also act as a strong lawyer for the defence in case the immediate target of a particular news or views likely to affect, may have something to say on the topic however strong or feeble, acceptable or not to the writer-publisher or even the reader but it must be given due weight and the same must find it's place along with the other side of the story.

and summarized and the issues properly identified. The political parties and the leaders could be asked to give their views and opinions as well as their agenda and work plan on the basis of their stands and performance on these matters so identified. They could be examined and cross examined by the media experts, panel members and questioners. Summarized facts and figures and the presentation before the electorates for their verdicts. So the people could have adequate information regarding the party agenda and the performance of the political parties and the government in power and their future programme and action plan. Information about the matters which concern the people is vital and important for the

ganda and innuendo can have misleading effect on the electorates. Religious, local, regional and parochial sentiments may win the day and such verdict of the people will no doubt be a verdict of misdirection to the jury resulting in the miscarriage of the political system. Through the media and the communication mechanism, the election can be linked with the national life and the daily life of the people and their problems and issues which involve the people every day. In this process, the election needs to be integrated into our national life. Election has not been made the culmination of the choice the people make as a part of a continuous process all through the five years term. But this comes more as a sudden

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transparency as well as for accountability of the government and the political leaders.

Information: A Key to Integration

Information is the key issue, and access to information is the gateway for reaching to power. The people have to be made aware of what is happening in regard to matters which concern their life and living. Election procedures are made to look efficient but their enforcement as well as object procedures could remain unfulfilled. False propaganda and misleading in-

one shot choice once in five years (if people are lucky) and thereafter people are forgotten as an appendix to the system for rest of the term. At best the government and legislators become patron for their supporters and constituents seeking to establish a patron client relationship with the electorates. If people are not treated as a judge and a participant in the system of governance and in decision making on a day to day basis through the parliament and the media, people do not actually know which way to turn during the poll day. Then they are likely to be easily misled.

There are of course regula-

leged defamation. There are also instances when journalists, editors and writers have been arrested under Special Powers Act and prosecuted for allegedly hurting religious belief and sentiment. Bail has also been refused in most of these cases. All of these actions against the writers and journalists have adverse effect on the freedom of the press, the freedom of conscience and on the freedom of expression. Till the repeal of the relevant sections of Special Powers Act, this black law was used for proscribing the publication of newspapers. This black law was in effect till 1991. Even in recent

time publication of Lajja and Nari have been banned. These are the instances of application of the repressive laws restricting the freedom of the press and publication. The test of reasonable restriction is yet to be determined by the Supreme Court. Similarly the laws under the colonial era also need to be reviewed in order to make them

compatible to the concept of freedom of expression guaranteed as Fundamental Rights under our Constitution. Besides the question of restriction and the role of the law, there are also policy areas of the government which follow discriminatory practice in picking and choosing newspaper which receive doles and patronage in various forms. Such practice also has a very adverse effect on the freedom of the press and newspapers. Governments often use the carrot and the stick policy to cajole the press.

Like the life and liberty, people's right to reputation is also very valuable and the respect for life, liberty and reputation is very important in a society. The media can easily destroy the reputation of an in-

dividual or a party or a group. In projecting the image of a country and its people the media can play an important role. It, therefore, needs to be careful and respectful to the reputations of the people and of an individual. Character assassination is no less harmful, and fatal than the physical assassination at times. In the name of right to information, intrusion into someone's private life or to pursue a scandal, in other words, yellow journalism can not be a justifiable exercise of press freedom. Such abuse of press freedom no doubt needs to be evaluated vis a vis the right of an individual to his/her pri-

vacy is also guaranteed under our Constitution. Thus the Right to Privacy and the right to reputation go hand in hand. The social value and the culture in the West, for instance, do not resent free publication of gossip or scandal of private life of the members of the royalty or a celebrity in public life. This, no doubt, may create immense interest among the readers to an extent almost justifying such publication. In the Eastern culture, on the other hand, it will not be such a welcome reading. Private life of people, therefore, may not become the subject of information business as much as it thrives in the West as an industry quite easily. Yet, media has of course the capacity to create an appetite for such private scandal. Hence, opinion or even choosing the media also needs to make a value judgment and exercise its own choice and discretion in playing its role. It should also practice a self censorship, a restraint, a moderation and a balance in projecting a news or formulating an issue or in ventilating an opinion and even choosing the subject or a topic for publication. Media makes the choice whether an issue or a topic is a matter of public concern or interest. Does it help in resolving the conflicts and concern of the public and the society? Does it help people to gather information, forming objective opinion etc. It is continuously deciding the issue as to whether a particular subject ought or ought not to be subject matter of public concern and if it is what importance it should deserve and how the same be treated.

Journalists and the media therefore play the role of an investigator, a prosecutor and of a judge. In doing so it must also act as a strong lawyer for the defence in case the immediate target of a particular news or views likely to affect, may have something to say on the topic however strong or feeble, acceptable or not to the writer-publisher or even the reader but it must be given due weight and the same must find it's place along with the other side of the story.

Need for identifying major national problems demands the formulation of right policy for the media. Unless the main issues concerned with the life of the people and their priorities find place in the main agenda for action, the people's interest will always be lost in deciding

policy and its implementation. It could never be possible in that case to make the people effective participant in the affairs of the Republic without making the people and particularly the concern of the disadvantaged people as the main issue. It is important to initiate, therefore, a national debate so that information could be collected on those issues which could then be fed into the mainstream of the information media. People must be made the judge in deciding issues and their opinions must be counted in all matters. This may need guiding and even educating and training the public mind thus developing a system and an objective method in formation of opinion. This process need to be followed without trying to impose a preconceived bias or a notion. The media thus becomes an educator and a very powerful element in public life. Information and media and the value related matters have two way process but it needs a multidimensional approach. This can only be developed by sharing information and having exchange of opinion and views on all matters which concern the public life. In doing so, people also will be able to develop awareness along with the respect and tolerance for the opinions and views of other people. Our society, in the past suffered authoritarian rule under various autocratic regimes in one form or another. Most people connected with power are used to opinionated and authoritarian views. They are used to talking rather than listening and while talking they talk down upon the people from the above. There has not been enough ventilation of free opinion in our society nor enough listening from the bottom strata of the society. Transparency itself has a correcting effect. It is like a mirror before the society where people can see themselves and it works like self correcting mechanism. The transparent culture needs to be integrated into our society. All of these together will help create an environment in which people can work up a democracy which is meaningful for everyone.

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The Definition of Rape and Some Important Issues

by Khaleda Khatoun



To Resist is Our Constitutional Obligation

THE rapid spread of rape, police rape, gang rape and other sexual assaults on women is mostly explained by the biological argument that men's sexuality is basically aggressive and based on irresistible drives and that of woman is basically passive and masochistic." (Maria Mica, Patriarchy and Accumulation on a World Scale, 1986). This was written in the context of India. The situation in Bangladesh, however is not very different. Similar arguments are used in Bangladesh to justify the violent act of rape.

In the last few years incidents of rape and other sexual offences have increased alarmingly. The documentation unit of Ain O Salish Kendra has compiled reports from daily papers which show that 217 women and minor girls were raped in 1995. In 1996 it increased to 262 and in 1997, from January to June 365 women and girl children were raped. Media statistics underestimate criminal incidents. Many victims do not report rape to the police. Women are reluctant to talk about rape by husband or boyfriend. Rape is committed and in many cases the accused went either scot free or received acquittal order from the court in absence of proper evidence. And this was not a failure on the part of the complainant but usually due to the inadequacies in the rape law and the attitudinal problem of the investigation officer, lawyers and the judges.

Popular perceptions about rape do not reflect the reality. It is commonly assumed that rape is committed in lonely places, outside the protective enclosure of the home, in dark streets or in desolate fields, where the victims screams will go unheard. But facts reveal that rape is committed in the home, in the fields, in public and in institutions. It is also assumed that potential victims of rape are young girls, but victims have included a 3-year-old girl and a 60-year-old woman. There is a belief that a rapist is a sick pervert, but evidence reveals that he can also be a friend, lover, or a close relative. In a society which accepts men's violence against women as the norm, we are all vulnerable to rape irrespective of age, social status, or economic background. All of us face a hidden threat and all of us are potential rape victims. The fear of rape, then paradoxically defines and invades the space in which we are led to believe we are safe. In reality, we are not safe anywhere in a society which represses us, in which our rights, need and desires are neglected and rendered invisible.

A girl named Naima, 13, was raped by a 48-year-old man named Salam, the father of her friend. He has a wife and two children. When his wife was out his daughter invited Naima to come and spend the night with

her. At night, he forced intercourse with her and threatened her not to talk about it. After raping her he offered to marry her if she agreed to have further intercourse. On this pretext he used to rape her for at least 5 months. When her brother and the community came to know about the incident, her brother brought her to Ain O Salish Kendra for legal help. By then she was a few weeks pregnant. She, with her family decided on an abortion, but it was too late and she gave birth to a dead baby. Salam was arrested and put in jail but his lawyer obtained his release on bail. Now he threatens Naima and her family.

The case has been under trial for four years because the Assistant Public Prosecutor submits time petition whenever there is a date for hearing. Another reason is that the investigation officer has been transferred to another police station and a new officer has yet to be posted. It is common to legitimize rape by offer of marriage in order to keep the 'honor' of the victim and the family. In this case Naima's parent did not want her to be married with the rapist.

In another under trial case a victim was gang raped by four men. Employed as a domestic maid she had sexual intercourse with the son sometimes willingly, under false promise of marriage and sometimes by force. Other maids in their house were also used by him. She obviously felt insecure and left the house. In the street she was kidnapped and gang raped by four men. The witnesses have been cross examined. Again the trial is taking long as the public prosecutor is applying for more time to collect evidence, and due to overwork.

Investigation into rape cases have not been done satisfactorily and the police investigation officer often takes the side of an influential rapist. This happens particularly in cases where police and police officers are alleged accused. We have seen this in Sima Chowdhury and Yasmin Akhter's case. In the criminal justice system of Bangladesh rape trials are held in the Session Courts and in Special Courts, i.e. district criminal courts. The legal system is prejudiced, from the police to the various court officials. The Public Prosecutor (PP) is employed by the State to present evidence in favour of the rape victim. The most crucial issue here is the judge's demand of proof of resistance from the victim. The belief underlying this demand is that a good woman would fight back to prevent someone from raping her and as a result she must have some wound or injury on her body. Otherwise she may be accused of secretly wanting to be raped or of enjoying it. Rape trial often try to establish that most rape victims provoke rape.

Did the 3-year-old girl child provoke a man's desire to have sexual intercourse with her?

The definition of rape is to force sexual intercourse on a woman against her will and without her consent. Lawyers and women rights activists have considered this definition as narrow and limited, as it has not been very helpful rendering justice. The legal definition of rape in section 375 of the Penal Code states that, "a man is said to commit rape who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions: (1) against her will (2) without her consent (3) with her consent, when her consent has been obtained by putting her in fear of death, or of hurt (4) with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married and (5) with or without her consent when she is under 14 years of age.

Explanation: penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception—sexual intercourse by a man with his own wife not being under thirteen years of age (Women and Children Repression Act, 1995 has made it 16 years), is not rape.

The definition of rape clearly

states that penetration is sufficient proof of rape. The term 'without consent' is also difficult to prove as the act can occur under circumstances in which the victim, from the shock of attack, cannot resist rape.

Rape is an extremely violent act and is degrading to a woman. At the same time it makes a woman ashamed and frightened and she is unable to respond to or immediate need to report to a doctor or police station. The rapist sometimes uses a lot of force and in such a situation, bodily wound is the only primary evidence. So, if mark of penetration, bodily wound, resistance and lack of consent is absent, the rape is not established; consent involves three different aspects: (1) proof of resistance (2) past sexual conduct and (3) corroboration. It was decided in a case that absence of any injury on her back or buttocks or to her private part indicate that she was a consenting party. (Sardara V State of Haryana, 1980, Punj, LR 18 DLR 91).

The terms 'penetration' and 'without consent' do not cover the other aspects of rape, and consent is more often than not the central issue in a rape trial. The consent requirement is intended to be used to distinguish between legitimate and illegitimate sexual activity. However in case of raping a minor girl, consent or without consent does not make any difference as

a minor is not legally eligible or capable of consent. In Bhupendar Prakash V State, 1985, A I R, the court held that the consent of a 16 year old was wholly irrelevant for determining offence under section 375 of Penal Code of which the appellant was convicted.

Women's campaign for reform of rape law is arousing public awareness because of the large number of rape incidents reported in different parts of Bangladesh. Women have demanded simplifying legal procedures. The Woman and Child Repression Act (special provision) 1995, passed by the Parliament has only increased the punishment.

There has been considerable debate amongst the women's group in India on the definition of rape law. The ad hoc subcommittee constituted by the National Commission on Women, and in its proposed Sexual Assault Draft Bill 1993, consolidated the provisions relating to rape (Section 375, 376 of Indian Penal Code), outraging the modesty of a woman (Section 509 of Indian Penal Code), and assault against a woman with intention to outrage her modesty (Section 354 of Indian Penal Code) as well as sexual abuse of children (suggested new provision) under a chapter entitled 'Sexual Assault'. The Draft Bill replaced rape provision of Section 375 of IPC by Sexual Assault. Sexual assault is defined as penetra-

tion of a man penis, into the vagina, the external genitalia, anus or mouth of another person. It also includes, the introduction by a person of an object or a part of the body into the vagina or anus of another person. The other sexual offences such as, any person for sexual purpose touches directly or indirectly with a part of the body or with an object of the body of another person. And with a sexual purpose utters any word makes any sound or gesture.

The Centre for Feminist Legal Research (CFLR) group criticized on the ad hoc subcommittee's proposed law that the law is directed towards violence, rather than the sexual aspect of the crime. It suggested that the proposed broad definition of sexual assault tends to dilute the seriousness of the offence by including in the same category offences which amount to sexual harassment (uttering word with sexual purpose) rather than assault. The CFLR has proposed that the offences of sexual harassment should be under a separate provision in the Code.

The CFLR has proposed a new legislation (substitute existing section 375) which defines rape as sexual assault, for the purposes of this section sexual assault includes: (a) The introduction (to any extent) by a man of his penis into the vagina, the external genitalia, anus or mouth of another person (b) the introduction (to any extent) by a person of an object or a part of the body, other than the penis, into the vagina or anus of another person (c) Where any person, for the purpose of sexual gratification, touches directly or indirectly, with a part of the body or with an object, any part of the body of another person.

Rape is a violation of a woman's right to sexual autonomy and bodily integrity. The CFLR proposal seeks to eliminate rape from the Penal Code and replace it with sexual assault, aggravated sexual assault, and sexual assault with a weapon, threats to a third party, or causing bodily harm. The new definition focuses attention on the elements of the actual crime rather than the complainant. This legal approach would definitely strengthen the case in favour of the victim. By doing away with terms such as rape and indecent assault, sex discrimination in interpretation and application of the law will be mitigated.

Source: The Bangladesh Penal Code, 1860. Memorandum on Reforms of Laws Relating to Sexual Offences, prepared by Centre for Feminist Legal Research, 1996.

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BB: Soyabean oil

From Page 12
factory's containers as 'pledged commodity' of SB. The Bank said he did not refine the oil for a long time. On suspicion, the SB requested the Bangladesh Standard and Testing Institute (BSTI) to run a quality test of the oil. The BSTI report found that the oil contained large amounts of water in it. BSTI report held Mohammad Ali responsible for the adulteration of oil. But surprisingly, SB did not make any criminal charge against him. Evidences of collusion between Mohammad Ali and some SB officials also became clear by the fact that while Mohammad Ali had Tk 5.44 cr unadjusted loan as advance against merchandise (AAM). The bank sanctioned him another loan of Tk 7.54 cr AMM. The BB has identified this action of the SB as going against the interest of the bank itself. The BB has already directed the head office of the SB to take action against the officials responsible for such flouting of bank rules.

Al-Baraka Bank

Mohammad Ali has Tk 50.36 cr of defaulting loans with Al-Baraka Bank against his three enterprises—Fatullah Steel Rolling, Ripon Traders, and AB Vegetable Industries Ltd. He had taken the loan against the collateral of Soyabean oil. This oil, once again, has been found to be mostly water in content. Al-Baraka failed to take any action regarding this adulteration of oil. Rather, the BB inspection had found that through collusion with Al-Baraka's officials, Mohammad Ali had managed to take crores of Taka worth of additional loans despite having defaulting loans with the same bank. The inspection had also found that Al-Baraka had not taken any stock report of Mohammad Ali's portfolio and neither did it collect reports from other banks about his loan status. Legal measures are now being taken against Al-Baraka Bank and Mohammad Ali.

IFIC Bank

IFIC Bank had sanctioned Tk 11 cr loan to Mohammad Ali for purchasing shares. This was done in complete violation of banking rules and against the interest of the bank itself. Mohammad Ali had neither mentioned the reason for taking loan nor did he mention any loan amount in his application. The loan was sanctioned before taking necessary collateral or completing documentation for the loan which is a violation of banking rules.

Later, as Mohammad Ali defaulted in repaying his loan, the IFIC Bank advertised in the newspaper for selling of his collateral of Dhaka Vegetable Oil Industries Ltd. At this stage, Ali took initiative to reschedule his loan and submitted a cheque for Tk 2.78 cr as ten per cent downpayment of his loan amount.

But when the bank sent the cheque for encashment, it was dishonoured. Bouncing of cheques is a criminal offence. But IFIC did not take any action against Ali. The BB has already asked the IFIC Bank to explain why it did not take action against Ali.

Rupali Bank

The board of directors of Rupali Bank sanctioned a Tk 2.50 cr loan against Messrs Shan Fashion Export Ltd of Mohammad Ali on May 8, 1995. Mohammad Ali had furnished collateral for the loan which was worth only Tk 6.50 lakh. But the bank's officials had inexplicably evaluated it as worth Tk 1.26 cr, an amount much higher than the real value of the property.

Moreover, the bank's board had approved the loan even before receiving confidential report on the applicant's loan status with other banks and before taking certificates from the bank engineers about the valuation of the asset shown as collateral. This, the BB inspection team said, is a serious irregularity.

AB Bank

Mohammad Ali had taken loans from AB Bank in the name of Fatullah Steel Rolling mills. The amount of defaulted amount is now Tk 1.29 cr. The bank has already filed a case to recover the money.

The collusion of so many bank officials in the elaborate money scam has taken the Bangladesh Bank officials by surprise, and has shocked the officials of the ministry. The role of the bank officials has cast a shadow on the credibility of the whole system, experts feel.

Mohammad Ali's version

Mohammad Ali talked to The Daily Star about the allegations against him. He said all these charges against him are politically motivated. About the adulterated content of soyabean oil found in his factory, he denied the charge.

He said the BSTI report is baseless. But when asked whether he would challenge the report, he said no. He claimed that he is repaying money to banks and mentioned that he had already paid Tk 50 lakh to Al-Baraka where his total defaulting loan amount is Tk 50.36 cr. He also claimed that he had repaid Tk 50 lakh to IFIC some three months ago where his defaulting loan amount is Tk 20.32 cr. He claimed that he is in no way connected with Shan Fashion which has Tk. three crore defaulting outstanding loans. He said he had resigned from its directorship and is in no way responsible for the loan. But the fact remains that he had resigned in 1996 from the board of the company and the loan was taken in 1995 which means that he can not avoid responsibility for the loan.