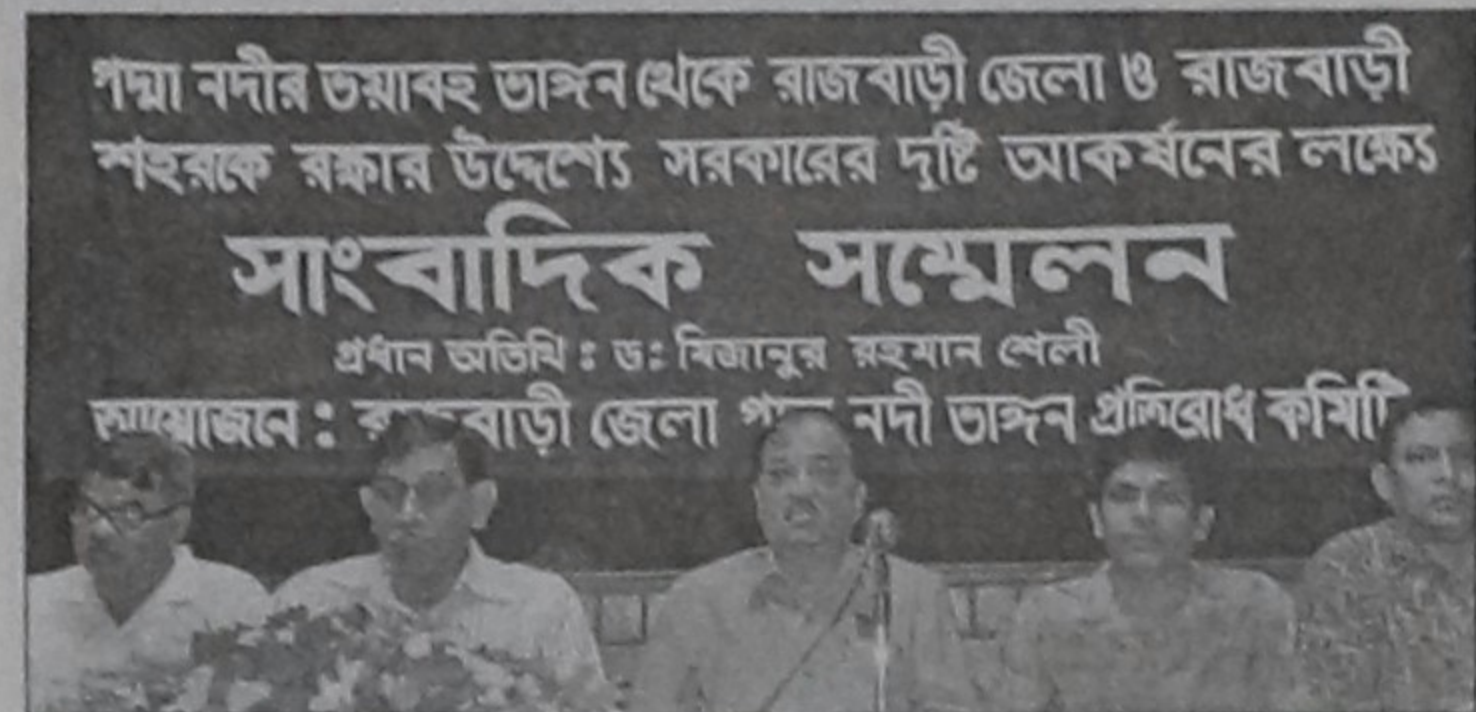


LAW event

Rights of IDPs ignored



Internally displaced person (IDP) has two distinctive features. The population movement is coerced or involuntary, and the movement occurs within national borders. These core elements are reflected in the most widely used definition of internally displaced persons as, "persons or groups of persons, as a result of or in order to avoid natural or human-made disasters, the effects of armed conflict, situations of generalised violence, violations of human rights, who have been forced or obliged to flee or to leave their homes or places of habitual residence and have not crossed an internationally recognised state border."

The definition of internally displaced persons is not a legal definition but simply a descriptive one. The rights and guarantees to which IDPs are entitled stem from the fact that they are human beings and citizens or habitual residents of a particular state.

The "Guiding Principles on Internal Displacement", although not legally binding, are the main instrument specifically dealing with IDPs. They restate and compile human rights and humanitarian law relevant to internally displaced persons. Below is an overview of international human rights and humanitarian law standards that are applicable to IDPs.

The conditions of danger and deprivation that characterise situations of internal displacement can take a tremendous toll: the highest mortality and malnutrition rates recorded in humanitarian emergencies this past decade have involved internally displaced persons. Uprooted from their homes, separated from their community support networks and often from their families, and thorn of their resource base, IDPs suddenly find themselves stripped of the most basic sources of security and survival. Compounding their plight, displacement exposes its victims to additional vulnerabilities and risks.

Primary responsibility for assisting and protecting IDPs rest with their own governments. Should governments prove unable or unwilling to discharge this responsibility, however, governments are expected to invite or at least accept international assistance for ensuring the welfare and security of IDPs.

In Bangladesh river erosion also causes displacement of several people every year, who are gathered in urban areas, especially in Dhaka. These displaced people have some special needs precisely because of their displacement. This is true whether they are in camps, have merged into urban slums, or are hiding to avoid identification. The purpose of paying specific attention to the plight of IDPs as such is not to confer on them a privileged status, but to ensure that their unique needs are addressed, along with those of other groups.

Recently in a press conference in Dhaka Press Club at May 10, 2008, organised by Rajbari District Padma River Erosion Prevention Committee, speakers urged for the different livelihood options for the people of Rajbari and asked Government to take necessary steps to control the mighty Padma. Brig. Gen. (ret'd) Md. Azizul Haque convenor of the Committee in a keynote informed the sufferings of these IDPs. It is one of the biggest rivers in Bangladesh, which often floods many areas. Like many cities Rajbari has also been built on a river, this river. History says that, Padma is changing its path and localities are changing accordingly. At the same time livelihood options are interrupted. The sub-division office of Railway is shifted to another place as river Padma grabs most of the area and people who are linked with the railway-centred trades and activities become jobless. This also incites displacement of people and people are forced to change their place for existence.

-Law Desk.

RIGHTS monitor

Burma: Donor states must monitor aid

Countries delivering relief aid to Burma should insist on monitoring to ensure aid reaches the cyclone victims most in need and to prevent the military government from seizing it, Human Rights Watch said in a press release. Simply dropping aid off at Rangoon airport under the control of the abusive and ill-equipped Burmese military will not necessarily help victims of the cyclone. Some supplies have already been diverted, Human Rights Watch said, adding that humanitarian aid deliveries need to be independently monitored to ensure that assistance is given to those most in need.

Following the massive devastation caused by Cyclone Nargis on May 2-3, the ruling State Peace and Development Council (SPDC) has severely limited the deployment of foreign aid workers and prohibited those within the country from accessing the worst-affected areas of the Irrawaddy Delta. Aid flights to Burma have increased in the past few days, bringing assistance from United Nations agencies, nongovernmental humanitarian organizations, and foreign governments, although this is just a fraction of what is needed. Airlifts of supplies from Pakistan, Thailand, and agencies such as the UN World Food Programme have been prominently covered in the state-controlled media apparently being handed to military personnel for distribution.

Footage from CNN showed a US aid plane being unloaded by Burmese wearing T-shirts with a "USDA" logo, that belongs to Burma's Union Solidarity Development Association (USDA). USDA is a mass-based governmental organization deeply implicated in political repression and human rights abuses in Burma. In the past, the government has often tried to impose cooperation with the USDA on international humanitarian agencies operating in the country. Human Rights Watch has long expressed concern about the USDA's involvement in human rights abuses. During the September 2007 mass protests in Rangoon, USDA militia groups, and their connected militia, the Swan Arr Shin ("Masters of Force"), were used widely to detain, beat, and intimidate peaceful protesters. UN agencies have refused to work with the USDA on past developmental projects because of their involvement in such abuses and repression.

United Nations officials have publicly expressed concern that the current delivery of aid allowed by the government is insufficient for the scale of the problem. However, the government has not only continued to delay unnecessarily the issuance of visas to UN and foreign aid workers, but has prevented or sharply curtailed those present inside Burma from accessing the worst-affected Irrawaddy Delta areas.

Internationally recognized humanitarian principles, such as the International Red Cross "Code of Conduct" for disaster relief set out widely accepted guidelines for the delivery of humanitarian assistance. Aid is to be given impartially, calculated on the basis of need alone, without adverse distinction of any kind. Having unimpeded access to affected populations is fundamental. Those providing assistance are expected to ensure appropriate monitoring of aid distributions and to regularly conduct assessments of the impact of disaster assistance. The "Code of Conduct" also sets out recommendations for governments of disaster-affected countries. These include the need for host governments to permit proffered assistance and to facilitate rapid access to disaster victims. Governments should waive requirements for visas or ensure they are rapidly granted. Relief supplies and equipment should be allowed free and unrestricted passage and should not be subject to usual import licenses or taxes. The Burmese government has stalled on issuing visas to aid workers waiting in Thailand and other countries.

Human Rights Watch welcomes the comments from UN Secretary-General Ban Ki-moon when he registered his "deep concern, and immense frustration, at the unacceptably slow response to this grave humanitarian crisis." Ban called "in the most strenuous terms, on the Government of Myanmar to put its people's lives first." Human Rights Watch calls on all UN agencies and international agencies to remain resolute in pressing the SPDC to allow international aid workers and monitor aid distribution.

Source: Human Rights Watch.

LAW interview

Right to information benefits all

Interview of Dr. Nazrul Islam on freedom of expression

As one of the central human rights, freedom of expression is capable of touching every other right of human beings. This is even truer under the current political milieu. In the following interview Professor Dr. Nazrul Islam, teacher of Law Faculty, University of Dhaka, touches the core issues of freedom of expression pertinent to present situation. We urge readers to share their thoughts in this regard.

Law Desk (LD): What does freedom of expression mean and how is it placed in our legal system?

Dr. Nazrul Islam (NI): Freedom of expression means everyone must have the right to express his/her opinion on any given issue. Freedom of expression has been defined in Article 39 of the Constitution of the Peoples' Republic of Bangladesh as freedom of thought, freedom of conscience and freedom of press. But this right is not unlimited or unrestrained in any country. Likewise, in our constitution freedom of expression is made subject to reasonable restrictions.

LD: What is the current status of this right in our country?

NI: I think, in our country freedom of expression or freedom of press has been seriously curtailed by a number of laws. Only a small group of people in our country enjoys this right. Among various reasons first comes the lack of appropriate forum. Most of the people have no idea how to express their opinion. They don't find any media or forum to express their opinion. Secondly, they don't have enough information even to form their opinion. So, they are being denied of enjoyment of this right. And, thirdly, we have scores of so-called black laws or very restrictive laws, which substantially curtail the freedom of expression.

The Special Powers Act or some Penal Code provisions on religious offences or on defamation are good examples of this kind of laws that are responsible for such curtailment.

LD: Does emergency affect freedom of expression, if so, to what extent?

NI: Emergency seriously affects freedom of expression. Constitution specifically states about the suspension of some of the fundamental rights during emergency. In the context of present situation we can say that our Government, in theory, has allowed press or civil society to express their opinion. But practically the government is defiling freedom of expression in that they are impeding the exercise of freedom of expression by press, other medias, members of civil society or whoever is found to be vocal in law or human rights issues. They are also instructing how to express opinion on certain issues.

LD: Few days back we have seen that the present Government had imposed lots of restrictions in the name of national security on press. How much that action is consistent with the right to freedom of expression?

NI: Actually nation's security is the one of the most vague issues, and it largely depends on how the Government defines that. I am not very aware of those restrictions, but if there were any such thing, that should be judged vis-à-vis the criteria of public interest.

LD: How freedom of expression, access to information and empowerment of people are interrelated with each other?

NI: These are very much interrelated because if we don't have any information, i.e. about government tender or any other transaction, it would be difficult on our part to express informed opinion. So freedom of expression is the foundation for effective expression of your opinion. Except for freedom of information this right cannot be enjoyed to its fullest by any citizen.

Next, the empowerment of people; unless we have the right information or scope to express opinion, nobody can demand their right. Even they won't be able to hold the Government accountable or ask for transparency. So unless and until we have freedom of expression and flow of sufficient information, we cannot effectively find ourselves empowered enough to participate in the activities of the government in any form whatsoever. Similarly our personal or community problems would remain unexpressed.

LD: Should there be any limit to access to information especially in a country like ours?

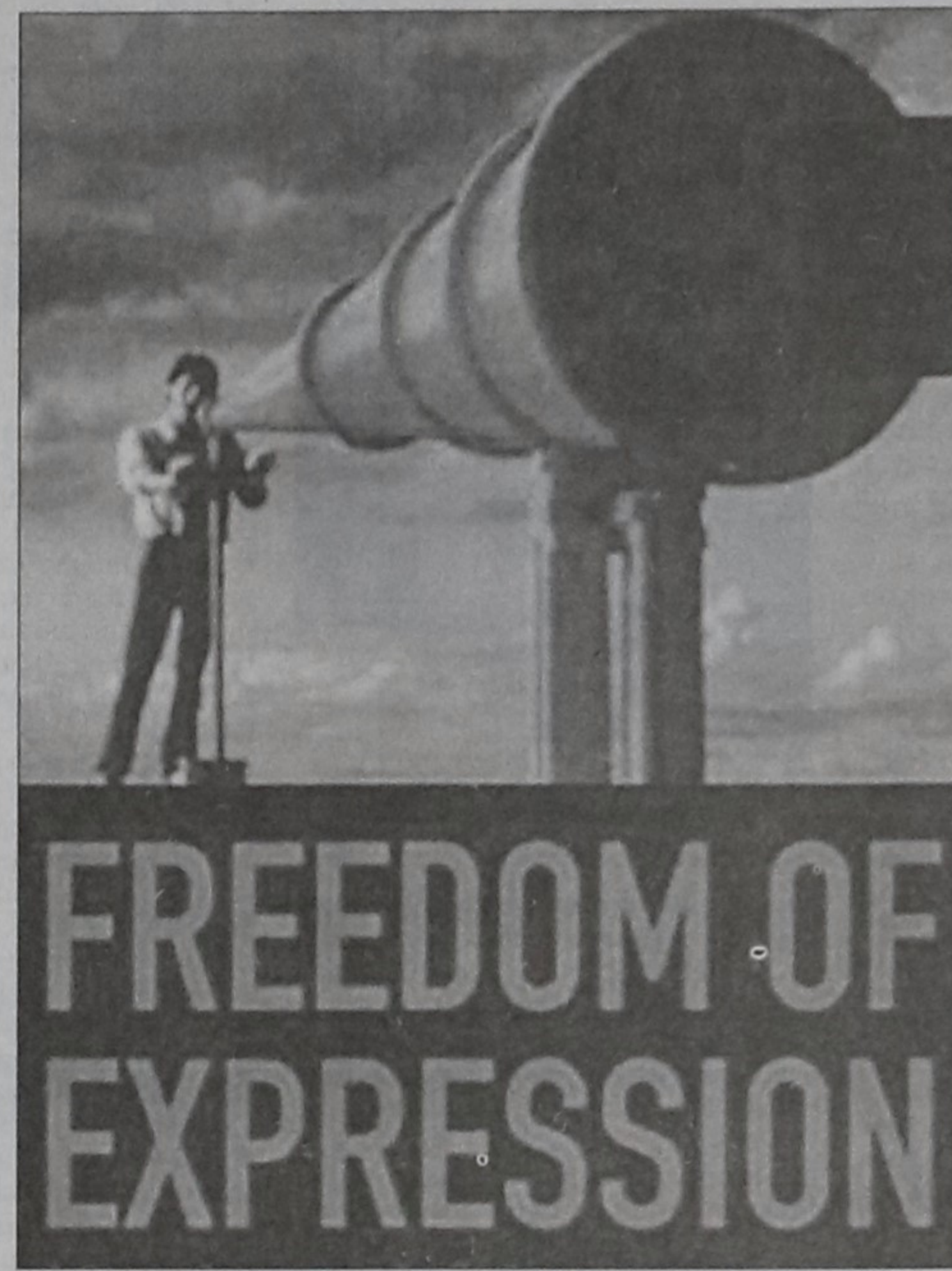
NI: Actually, access to information is subject to reasonable restrictions in every country. Given this, there must be some restrictions. But before such imposition can take place the law should be very aptly drafted, i.e. India has allowed access to information subject to public interest. That means not a single right is overriding, not a single right is exclusive in nature. But the number of such restriction and the ground on which these would be imposed should be limited.

LD: Does the enforcement of this right carry any impact on the development of our country?

NI: Development is adversely affected by corruption. So in order to prevent corruption we must have access to information. India, by their several organizational activities, showed considerable success in unearthing corruption incidents and it has huge impact on its local development. There is no doubt that enforcement of this right will curb the corruption and in turn

LD: What's your observation on freedom of expression in other countries?

NI: I have observed three major traits; in advanced countries information laws are significantly effective in terms of implementation, as those Governments are firmly committed to implement those



laws. The second category laws are very theoretical but practically not implemented e.g. South Africa, because Governments have not demonstrated sufficient intention or commitment to implement those laws. Third category laws are bad in themselves. Best examples are provided by Pakistan, Romania, and Zimbabwe. Their governments impose restrictions on demand of information. In some extreme cases the person demanding information has to pay the price by being punished. It suggests that having laws on right to information is not synonymous of ensuring freedom of expression. We must have good law and at the same time implementation of the same is to be assured so that freedom of expression finds its true expression.

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-Law Desk.

REVIEWING the views

Role of media in giving meaning to Freedom of Expression

DELARA HOSSAIN

THE propagation of technology may ensure greater coverage but in no way guarantees objective or balanced reporting. Access to decision-making process and persons responsible for the same is getting more and more difficult for journalists. And more often than not these journalists pay a heavy price to get to the source of information. The media tells the

real story to the entire world; the story becomes part of the history. To make the news more worthy they have to stick to professional ethics and accountable to their conscience. It is a reward for them when somebody shares some information with the entire world despite risk factors involved.

Media both print and electronic, has the power to shape public opinion because news is about people and events relate to people. Therefore, they have the

power to speak against injustice. They draw attention of people whenever there is a conflict or violence. Without media it is totally impossible to find out the human stories related to violence. Reporting about conflict may help the victims of injustice overcome their ordeal. Media reminds us of the victims of forgotten conflicts, untold violence. They humanize the figures and numbers that can touch human minds and make them aware of the innocent people who suffer in such conflicts.

Many countries have created obstructions to restrict the flow of media products, notably Pakistan, to some extent India, and some times in our country too. South Asian governments should facilitate the free movement of media persons and media products across borders. The caretaker government has committed to do so on several occasions but yet little has been done in terms of implementation. By the help of media, ordinary people are now conscious enough to ask government about their official dealings. Besides media, modern technology helps news to transcend frontiers. Media can play the role of catalyst in fuelling change, reducing antagonism and generating opinion at the people's level. Albeit, some times activities of the media both print and electronic lead to violence due to false and misleading reporting.

It has always been strongly believed that all conflicts arise

from the mindset. In changing that mindset media plays a tremendous role. Usually individual voice cannot reach long distance. People, by and large, are good; they do not allow wrong things to happen. Media provides them with information and mobilizes them to cure injustice. Media emphasizes on ensuring that no injustice anywhere goes unnoticed.

Let us take the example of our own country. In our liberation period media played a stupendous role to motivate and to influence our people from every walk of life. Freedom fighters entirely depended on the media during that time. Nowadays, reporting of the electronic and print medias is providing us with news even from war zones and the most precarious situations of political unrest. So, security of the journalists is more essential than ever so that they can keep us updated. Restriction on access to news can only be imposed for the sake of nation's security, in the strictest sense of the term.

We should realise that until and unless media is liberated from every unreasonable restriction, the right to freedom of expression would remain a hollow rhetoric. Since our constitution has recognized this right in Article 39, it is an obligation of the Government to facilitate the exercise of this right without interference.

The writer is student, School of Law, BRAC University.

LAW week

EC to collect records of war criminals' trial

Chief Election Commissioner (CEC) ATM Shamsul Huda said the commission would collect records of war criminals' trials under the now defunct Collaborators Act, in a bid to permanently disqualify war criminals from contesting in any election.

In its electoral reform proposals, the Election Commission (EC) said an individual would be permanently barred from contesting in parliamentary elections if that person was convicted of war crimes by any national or international tribunal. The same provision is likely to be proposed for local government elections too.

Besides, according to a Supreme Court order, a contesting candidate will have to submit an affidavit of personal information of eight categories including one for criminal cases filed against that person, and the verdicts in those. -The Daily Star, May 12, 2008.

Women's Reserved Seats in Local Govt

In a surprise move the caretaker government has retreated from its earlier pledge of reserving 40 percent seats for women at all tiers of the local government system for three consecutive terms.

It is widely believed that the government has buckled in the wake of violent protests by hardliner Islamist groups against the National Women's Development Policy 2008. The pledge however was made to effectively empower women at all levels of the local government system. Currently there are around 14,500 women representatives elected to reserved seats in over 4,000 union parishads, 6 city corporations, and the municipalities. -The Daily Star, May 12, 2008.

Mirza Abbas gets 8yrs for tax offences

A special court dealing with graft cases sentenced detained former housing and public works minister Mirza Abbas to eight years' imprisonment on charges of dodging tax and furnishing false information in his tax returns.

The Third Special Court of Judge Shahed Nuruddin also fined Abbas Tk 54 lakh, in default of which he would have to serve another year in jail. The court also ordered confiscation of his property worth over Tk 2.24 crore to the state. The former minister was handed down the punishment under two sections of Income Tax Ordinance, 1984. -The Daily Star, May 12, 2008.

SC lawyers to abstain from proceedings for 2 hrs

The Supreme Court Bar Association (SCBA) decided to stay away from moving cases in the Appellate Division for two hours from 9:00am Thursday to protest against a few recent judgments delivered by the apex court. It also decided not to bid farewell to the incumbent chief justice and felicitate his replacement.

The lawyers called for a specific date for holding of a free and fair general election withdrawing the state of emergency in order to establish democracy and rule of law in the country. They also demanded that the government withdraw all false and motivated cases against political leaders and stop misuse of the Emergency Power Rules (EPR). The meeting adopted a resolution expressing disappointment over and surprise at a few judgments of the Appellate Division. -The Daily Star, May 12, 2008.

Law drafted for access to information

The caretaker government has moved to ensure that people get information about functioning of local government bodies as part of efforts to establish accountability and transparency in their activities.

The LGED ministry has drafted laws on different local government bodies incorporating provisions for people's access to information, and punishment for refusal to give information, sources said. The council of advisers to the caretaker government has already finalised two draft ordinances on city corporations and municipalities, which contain provisions allowing citizens to have information on them. -The Daily Star, May 15, 2008.

Khaleida, BNP bigwigs charged with Gatco graft

The Anti-Corruption Commission (ACC) pressed charges against detained BNP Chairperson Khaleida Zia, her younger son Arafat Rahman Koko and 22 others in the Gatco graft case.

The accused are charged with causing a loss of over Tk 14 crore to the public exchequer by striking the container-handling deal with Gatco despite the firm's lack of experience and skills. The charges also include misuse of power and collusion among the accused in violating the tender conditions. ACC investigation found Koko and Simon to have received Tk 2.19 crore from Gatco to help it win the contract. The charges were made under sections 409 and 109 of the Penal Code, Section 15 of the Emergency Power Rules-2007, and Section 5(2) of the Corruption Prevention Act 1947. -The Daily Star, May 14, 2008.

LAW lexicon

Court of original jurisdiction - A court where a matter is initiated and heard in the first instance; a trial court. ***

Court of record - A court in which the proceedings are recorded, transcribed, and maintained as permanent records. ***

Court reporter - A person who transcribes by shorthand or stenographically takes down testimony during court proceedings, a deposition, or other trial-related proceeding. ***

Court rules - Regulations governing practice and procedure in the various courts. ***

Creditor - A person to whom a debt is owed by another. ***

Crime - An act in violation of the penal laws of a state or the United States. A positive or negative act in violation of penal law. ***

Criminal justice system - The network of courts and tribunals which deal with criminal law and its enforcement. ***

Criminal insanity - Lack of mental capacity to do or abstain from doing a particular act; inability to distinguish right from wrong. ***

Criminal summons - An order commanding an accused to appear in court. ***

Cross-claim - A pleading which asserts a claim arising out of the same subject action as the original complaint against a co-party, i.e., one co-defendant cross claims against another co-defendant for contribution for any damages assessed against him. ***

Cross-examination - The questioning of a witness produced by the other side. ***

Cumulative sentences - Sentences for two or more crimes to run consecutively, rather than concurrently. ***

Source: Jurist International.

Corresponding with the Law Desk

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