

Upholding right to freedom of expression through Internet

ARAFAT HOSEN KHAN

IN Bangladesh, like in many countries of the world, the Internet has fast become one of the key instruments for the exercise of the right to freedom of expression. It combines within one medium the means to receive as well as express and disseminate information, ideas and opinions, be it in the form of writing or multimedia.

Freedom of expression and privacy are fundamental human rights guaranteed in our constitution. More than ever, technological advances, particularly the Internet, make it easier for people to publish and respond to news, information and opinions. It is now the common view shared by many legal intellectuals around the world that the governments should cooperate to improve respect for international human rights principles and to fashion regulations that take account of the Internet's global scope.

There are few countries like Bangladesh which have adopted laws to control Internet's content. From the human rights perspective, any regulation of Internet ought to balance between privacy and freedom of expression. The privacy issues at stake so far have been (i) how to ensure the privacy of personal data and (ii) how to balance the privacy of communication against law enforcement's need for interception and access to online communications. The content issues have been (i) how to control illegal content and (ii) how to control legal but potentially harmful content without unduly infringing on the right to freedom of expression.

In Bangladesh, the laws relating to the operation and blocking of websites/putting restriction on internet access are contained, inter alia, in the ICT Act 2006, the relevant provisions of which are as follows:

- Section 46 of the Act provides powers for the government to block any website on the grounds of sovereignty, integrity, security of the state, public order and safety and 'the prevention of incitement of any offence under the Act.'
- Section 57 establishes several offences under the Act including among others acts whereby any person who 'sees, hears or reads any website or electronic communication and is thereby encouraged to become immoral or dishonest,' or 'any harm is caused to the image of the country or of any person.'

Section 46 of the Information and Communications Technology Act, 2006 (Act 39 of 2006), purports to grant wide and unfettered powers to the government to direct any law enforcing agency by issuance of an order with written reasons to restrict imparting of information through any computer resource if in their opinion such prevention is necessary and reasonable on a wide array of grounds, including sovereignty, integrity and security of the state, maintaining friendly relation with other states, public order and security and to prevent incitement of any offence under the Act.

Section 57 of the ICT Act 2006 is framed in vague and uncertain terms and purports to penalise the intentional publication or circulation of any information which is false, obscene or of such nature that in a given context any person reading, hearing or viewing the same may be caused to suffer a moral lapse or become dishonest, or which results in defamation, or causes or is likely to cause deterioration of public order, or hurt the image of the state or any person, or hurts or is likely to hurt religious sentiments, or creates any incitement to violence against any person or association.

Section 46 read with Section 57 of the ICT Act confers upon the Bangladesh Telecommunications Regulatory

Commission (BTRC), respondent no. 3, a wholly unfettered discretion to restrict and prevent access to websites and to penalise the dissemination or communication of information through websites, based solely on his/her subjective satisfaction, which is arbitrary and capricious, and violative of the fundamental rights guaranteed under Articles 38, 39 and 43 of the Constitution of Bangladesh.

On May 29, 2010, the social networking website 'Facebook' (www.facebook.com) was blocked wholesale by the Bangladesh Telecommunication Regulatory Commission (BTRC) on the basis that some "unethical" pictures of Prime Minister of Bangladesh Sheikh Hasina had been uploaded on Facebook by someone.

Thereafter, a writ petition (No. 4719 of 2010) was filed on June 6, 2010, challenging the ban then imposed on access to Facebook, and also challenging the constitutionality of Sections 46 and 57 of the ICT Act. As Facebook access was restored at 11pm on the day before the writ was filed, the petitioners did not pursue the issue of the ban in the hearing. They, however, continued their challenge to the ICT Act provisions, comparing it to similar, but far less draconian, legislation from other countries. They asked the Court to strike down these provisions as being unconstitutional, focusing on it being a breach of the fundamental right to freedom of expression.



Article 19 of the Constitution guarantees the right to freedom of expression. It clearly provides that while this right may be restricted, any such restriction must be 'reasonable,' 'prescribed by law' and further have a nexus/connection to specific constitutionally permissible grounds (for example, that it does not amount to defamation or incitement to an offence).

Analysing the challenged sections, the petitioners pointed out that these provisions are vague and uncertain in their terms, and incapable of definition; they provide the government with arbitrary powers as there is no objective standard or guideline to ascertain when these offences have been committed; they are unreasonable and there is no objective basis or guideline for determining when these provisions would apply; the penalties prescribed are disproportionate to the offence; they violate fundamental rights to freedom of expression, freedom of association, the right to be treated in accordance with law, guaranteed under Articles 39, 38 and 31 of the Constitution, and Article 19 of the International Covenant on Civil and Political Rights.

After hearing the petitioners on July 26, 2010, the High Court directed the Ministry of Information & Communication Technology among others to show cause as to why Sections 46 and 57 of the ICT Act 2006, allowing

for blocking of websites and electronic communications, and providing for prosecution of certain offences, should not be held to be ultra vires (beyond the authority) of the Constitution, and in violation of fundamental rights to freedom of expression and freedom of association.

Recently, the cabinet approved the draft of the ICT (Amendment) Ordinance-2013 proposing to empower law enforcing by transforming the bailable offences to non-bailable, the non-cognisable offences will become cognisable and the highest punishment will go up from 10 years to 14 years imprisonment. As a result, this new amendments will make the law even more draconian and curtail freedom of speech and expression even further.

Any content regulation must not fall below the standards set by international human rights law, and must take into account the special nature of the Internet.

While states can legitimately take action to regulate Internet content, under international human rights law any limitations on expression must remain within the strict parameters set by Article 19(3) of the International Covenant on Civil and Political Rights:

[Restrictions on the right to freedom of expression] shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (order public), or of public health or morals.

This means that any restriction must meet a strict three-part test, as recognised by the Human Rights Committee. Any restriction must (a) be provided by law; (b) be for the purpose of safeguarding one of the legitimate interests listed; and (c) be necessary to achieve this goal.

However, any legislation aimed at regulating Internet content should furthermore recognise that the Internet is not like any other medium. In many cases, it will not be possible to extend general norms to the Internet, or to apply the standards that are normally applied to, for example, broadcasting, to Internet content. The special nature of the Internet will need to be taken into account.

The Internet offers great potential for the exercise of the right to freedom of expression and freedom of information. However, like any tool for expression, it can be used in good and in bad ways. Therefore, attempts to regulate Internet content as well as access to the Internet have tended to focus on restricting the availability of certain content and, in some cases, restricting access to the Internet altogether. While it is acknowledged that freedom of expression is not an absolute right, but that does not mean that the Internet should be used by governments as an excuse for curtailing existing liberties.

Bangladesh has taken no initiative yet to provide policy guidelines for internet governance and monitoring the compliance of internet governance in the country. It is high time for the government to take urgent initiative to work on this. Internet governance requires national guidelines on interoperability issues. However, there is no agency working towards building guidelines for solving interoperability issues.

Although the right to freedom of expression can be restricted, the circumstances under which this may be done have to be narrowly defined. It is necessary that national mechanisms give a clear indication of the extent to which regulation of the Internet is compatible with the international legal guarantee regarding freedom of expression.

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Waiting for Godot

HUMOROUSLY YOURS



NAVEED MAHBUB

CONGRATULATIONS BSF! You are the first to be covered twice in the brief history of 'Humorously Yours.'

But that had to be, as Amiya Ghosh is acquitted due to 'insufficient evidence.' There was no smoking gun -- the smoke had disappeared long before the lifeless Felani was taken off the barbed wires. The closing arguments must have been quick and decisive, lest the jumpy *jawan*, claiming self defense,

shoots the bailiff.

All at BSF are relieved. After all, this thing going on in Syria has been stressful for everybody. Speaking of which, maybe Ghosh's next assignment can be at Bashar's Security Forces (BSF) in Damascus.

So, who is Mr. Ghosh? Is he a trigger happy BSF lad on rotation from the hot border in Kashmir, suffering from PTSD -- Pakistan Traumatic Stress Disorder? Or, is he merely a Grand Theft Auto addict, where he just shoots pedestrians. Machismo? Surely there are other ways to address one's fragile sense of masculinity. Maybe he is the elusive 'last *jawan*', who we hypothesise as being deaf of not hearing the Indian home minister's call to the last *jawan* to not shoot. Well he surely chose to remain deaf to a teenager's heart rending screams for help.

All said and done, Ghosh now joins the elite league of George Zimmerman & OJ Simpson.

Ghosh's commanders might not give him his gun back yet, but will polish and reload it first.

The trial gives the BSF a mild slap on the wrist, if at all. But that's one tough wrist, as proven recently by the very same wrist strangling a Bangladeshi.

To BSF, Felani may just be a stray feline, but to Bangladesh, she's the one and only Felani whose soul will not rest in peace till Ghosh's action is deemed a felony.

There are plenty of other conscientious souls, on both sides of the fence, who are also restless. Social media has named Gulshan Road 142 as Felani Road. So, where is Road 142? Go to the well known Felani Road and you will find Road 142 right on top of it.

But there is a sliver lining. BSF is to undergo a 90 day crash course in Bangla to avoid 'misunderstandings' at the border. Actually, 9 minutes would suffice -- just learn the Bangla of "don't shoot!" For the BSF, it's B2B -- Bullets to Bangla. For the cattle traders, that's like getting the Heimlich maneuver from Hitler.

More good news. There will be a re-trial, so be it if it's merely for another two years of media coverage. Let's just hope that the law this time will not go by the motto, "As long as you use the gun, it's all good," or that these four words are not used, "In Amiya Ghosh's defense..." or that the jury is not sitting on the fence.

Now, I don't want to jump the gun (yet another pun), but it seems that there is a pattern developing here -- shoot first, ask questions 2 years later.

Time will tell what language courses and a retrial does. Meantime, we wait for Godot while BSF remains BSF -- Born to Shoot Felanis.

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Let sanity prevail

M.N. ELAHEE

AS part of its non-stop campaign against Nobel Laureate Dr. Muhammad Yunus that began three years ago, the government, in its latest move, has decided to take "legal actions" against Dr. Yunus for the alleged crime of tax dodging. Although the NBR did not find any evidence of tax evasion by Dr. Yunus, he is still deemed guilty in the eyes of the government.

The latest charge against Dr. Yunus is that between 2004 and 2011, while still being the head of the Grameen Bank, he accepted prizes and honoraria from foreign sources without Bangladesh government's prior permission. Despite the fact that Dr. Yunus has always declared all his foreign earnings and regularly submitted tax returns, suddenly the cabinet, in its infinite wisdom, realised that Dr. Yunus committed a grave crime by accepting those honoraria as he was a government employee by dint of his position in the Grameen Bank. The Hon'ble finance minister went one step further and blamed the government for not acting against Dr. Yunus earlier.

Based on this logic, Dr. Yunus should not have accepted the Nobel Prize without Bangladesh government's approval. Should we follow this flawed reasoning, the next move of the government should be to ask Dr. Yunus to

return his Nobel Prize, US Presidential Medal of Freedom, and all other awards that he has received from foreign sources.

The hollow claims of the government that Dr. Yunus, as the managing director of a statutory institution, was a government employee are not credible. Grameen Bank was created as a unique NGO and it is still viewed as such by the vast majority people of Bangladesh and the world. The government may twist the truth, amend the law or distort its interpretation, appoint its yes-men to the Board of Grameen Bank, and harass Dr. Yunus as much as it wants, but it cannot convince any impartial observer that Grameen Bank was a government entity and Dr. Yunus was a government employee.

Have our government leaders lost their common sense? Isn't there any sensible person around the prime minister who can tell her that enough is enough? Doesn't the prime minister realise that through her government's absolutely inexplicable actions against Dr. Yunus, she is turning her government into a laughing stock of the world? Is the government so imprudent that it can't comprehend what irreparable harm it is causing to the goodwill toward the country by going after a world renowned person like Dr. Yunus?

We must not forget that until recently people all over the world used to associate Bangladesh with poverty, hunger, child mortality, flood, and cyclone. Difficult though it is to

accept, the truth is there was not much that we could be proud of as a nation until Dr. Yunus won the Nobel Prize. It was Dr. Yunus who earned for the nation genuine admiration of the global community and who placed the country on a higher pedestal. We must not forget that Bangladesh was always at the receiving end of not just aid and assistance, but also of ideas. Thanks to Dr. Yunus that, for the first time in its history, Bangladesh could export an idea to the world - the idea of the micro loan.

Bangladesh may not have recognised the talent of its illustrious son, but the world took note of Dr. Yunus' contribution and gratefully recognised him for what he did for humankind. It is hard to fathom why this recognition of Dr. Yunus is causing such unease among members of our government. Are they envious of Dr. Yunus because he is more well-known internationally than any other Bangladeshi? Are they afraid that Dr. Yunus might again consider floating a new political party? Why this grudge against the only Nobel Laureate that we have?

The first Nobel Laureate of our subcontinent, Rabindranath Tagore, established the Shanti Niketan as per then existing British Indian law. Did that make Shanti Niketan a government institution or Tagore a government servant? To my knowledge, there was a retirement age in India for teachers since the early period of British Raj. Was Tagore ever asked to step down from his position in Shanti

Niketan because he surpassed the retirement age? The answers to these questions is 'no.' Many examples of Nobel Laureates running an institution till the time of their death can be found all over the world. We must accept the fact that when someone wins a Nobel Prize, that person becomes a global citizen. Governments of countries that have produced Nobel Laureates feel immensely proud of them and try to support them in all possible ways -- they don't go after them with such attitude.

If the government really believes that it can destroy Dr. Yunus' image by bringing one baseless charge after another against him, then it really is living in a fool's paradise. By waging its relentless war against Dr. Yunus, the only damage the government is causing is the damage to its own credibility. The sycophants may make the prime minister feel good for her government's actions against Dr. Yunus, but history would never forgive the current government for its position against Dr. Yunus. Let us hope that common sense shall prevail and the government would stop harassing Dr. Yunus. What the government is doing to Dr. Yunus is ethically wrong, morally bankrupt, politically self-defeating, and simply untenable in the long run.

The writer, an expatriate Bangladeshi, is a Professor of Business in a US University.

CROSSWORD

By THOMAS JOSEPH

- ACROSS
- 1 Meringue base
 - 5 Summit goals
 - 10 Pick up the tab
 - 12 Koran topic
 - 13 Working closely together
 - 15 Cain's mother
 - 16 "My word"
 - 17 Neckline shape
 - 18 Echoing sound
 - 20 Green, in France
 - 21 Low point
 - 22 Pubs
 - 23 Writer
 - 25 IOU
 - 28 Closes with a bang
 - 31 Camera
 - 32 Judo's cousin
 - 34 Tax agency
 - 35 Gold unit
 - 36 Skin art, for short
 - 37 Embarrassingly imprudent
 - 40 Steak-house order
- DOWN
- 1 Old anesthetic
 - 2 Carved, as an image
 - 3 Swiss city
 - 4 Feeling down
 - 5 Book unit
 - 6 Maximum
 - 7 Like a goat hoof
 - 8 Pub
 - 9 White sale buy
 - 11 River of Iraq
 - 14 Omaha native
 - 19 Fixes copy
 - 20 Parish leader
 - 24 Burglar deterrents
 - 25 Dover sight
 - 26 Valiant
 - 27 Sneaker part
 - 29 Ripen
 - 30 New York's
 - 31 Island
 - 33 Cultural, in combinations
 - 35 Vampire attack
 - 38 Finger count
 - 39 Motor need



Yesterday's answer



AXYDLBAAXR is LONGFELLOW

On letter stands for another. In this sample, A is used for the three L's, X for the two O's etc. Single letters, apostrophes, the length and formation of the words are all hints. Each day the code letters are different.

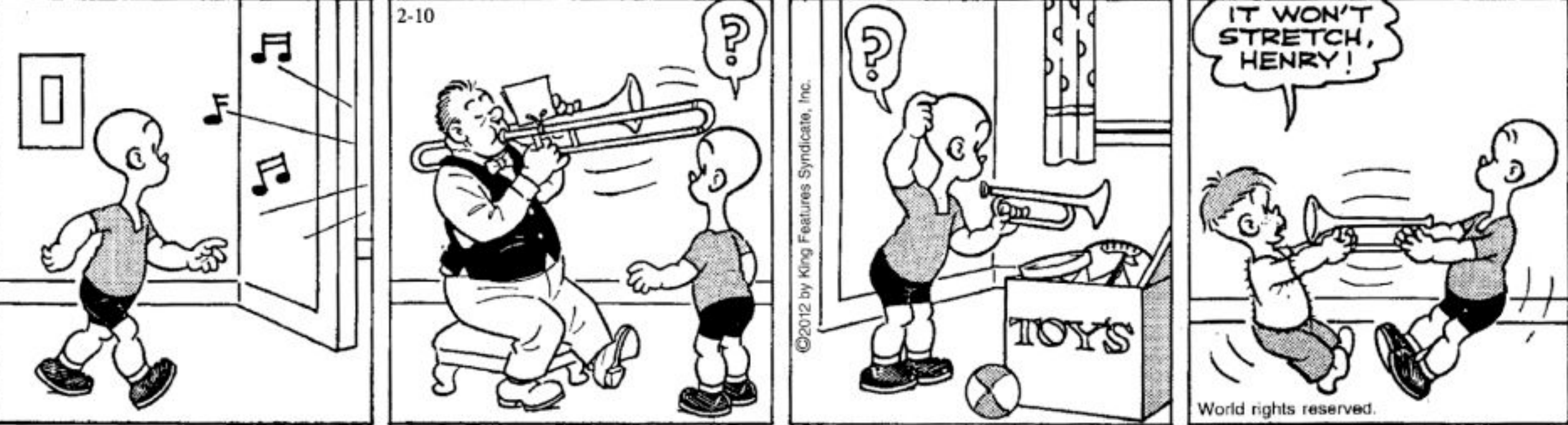
8-26 CRYPTOQUOTE
GSC DBN ED GSQG MCQHGEIHW
FWL AQXUSKCOG EO YSEUS
GSC DHO QOL GSC KFFO
BCCA GSCX LEQXN. — QWIXCL
BXC NKMFXR

Yesterday's Cryptoquote:
MAN IS MOST NEARLY HIMSELF WHEN HE ACHIEVES THE SERIOUSNESS OF A CHILD AT PLAY.
- HERACLITUS

BEETLE BAILY



HENRY



by Mort Walker

by Don Trachte

QUOTABLE Quotes

"Life can only be understood backwards; but it must be lived forwards."

Soren Kierkegaard