

Right to privacy and modern media

MD. NASIR SHIKDER

THE law of privacy is recognition of the individual's right to be let alone and to have his personal space untouched. The need for privacy and its due recognition as a fundamental right is a modern phenomenon. It is the product of an increasingly individualistic society in which the core has shifted from society to individual. In an earlier stage of the society, the law came up with the protection of

physical interference with a person and property. As civilisation grown up, the personal, intellectual and spiritual aspects of the human personality attained recognition and the extent of the law expanded to give protection to these needs.

The Black law dictionary define privacy as the right that determines the nonintervention of secret surveillance and the protection of an individual's information. The term may also be defined as the rightful claim of the individual to determine the extent to which he wishes to share himself with others and his control over the time, place and circumstances to communicate with others. It means his right to withdraw or to participate as he thinks fit. The Indian Supreme Court in Sharda v. Dharmpal (2003) defines privacy as the state of being free from intrusion or disturbance in one's private life or affairs.

The exponential growth of the media in Bangladesh, particularly the electronic media in recent years, has brought into

focus of right to privacy of an individual. The media has made it possible to bring the private life of an individual into the public realm, exposing him to the risk of an incursion of his space and his privacy. At a time when information was not so easily accessible to the public, the risk of such an invasion was reflectively remote. In Bangladesh, newspapers were, for many years, the primary source of information to the public. Even then, newspapers had a relatively limited impact given that the vast majority of the population was illiterate. This has changed today with a growth in public consciousness, a rise in literacy and perhaps most importantly, an explosion of visual and electronic media which have facilitated

an unprecedented information revolution. It is no longer the film star alone who is in the public eye. Politicians, business personal, media personal, professionals and socialists actively square the media to venture themselves and to advance their agenda.

e.g. freedom of press as enshrined in the constitution, it may sometime violates the

cate the scheme of right to privacy. This proposition was extended by Mr. Justice Subba Rao in Kharak Singh v. State of U.P (AIR 1963) where he contended that- the concept of liberty under the constitution was comprehensive enough to include privacy and that a person's house, where he In the exercise of one fundament right lives with his family in his castle and that nothing is more deleterious to a man's physical happiness and health than calcu-



right to privacy of other. If a person claims that it is his fundament right to keep his personal life out of the public gaze then question arises as to whether the right to privacy is a conclusive fundamental right or not? What should the consequence if it comes into conflict with freedom of press, speech and expression? The constitution of Bangladesh in article 43 expressly declares that every citizen shall have the right to the privacy of his correspondence and other means of communication. A creative interpretation of article 32 of the constitution may also implicit the idea of right to privacy in the fundamental right to life and liberty. The expressions right to life and liberty may include the right to be let alone which repli-

lated interference with his privacy. Though the media and the press has the right to publish under the constitution but the press has no absolute right to publish anything which is related with person's privacy having no relation with public interest. If the publication of news went beyond the public record and published one's life story without his consent that would tantamount to an invasion of person's right to privacy. A citizen has the right to safeguard his own privacy that of his family, marriage, procreation, parenthood, child bearing education etc and no person has the right to publish anything relating to such matters without the consent of the person concerned. But a person can enjoy this right subject to certain limitations: first- where the matter has become a matter of public record, the right to privacy no longer subsist. Second, public officials are not entitled to claim privacy when the act or conduct in question relates to the discharge of the official duties. So the media while enjoying their constitutional right must also take into account the individual's constitutional right to privacy. Invasion of others fundamental rights by

using their own are neither acceptable nor desirable.

In the age of revolutionised communications and super fast progress of print and electronic media along with aggressive competition among them, put the individual's right to privacy under siege. Where in many other states, there are now a variety of statutes in place e.g. Privacy Act, 1988 and the Data Protection Act, 1988 in the UK that seek to protect this right, the laws of Bangladesh on the subject lag far behind. Recent enactments do make some limited provision for the protection of individual's privacy but these are inadequate. However, the Right to Information Act, 2009 acknowledge the privacy of a person in section 7(h) by authorising the authority not to disclose any such information that may offend the privacy of the personal life of an individual. Initiation taken by the parliament in the recent past is appreciable but we expect some active role from our apex court in this regard which is still far from

the Supreme Court of India in respect of recognising the right to privacy as focus constitutional right.

The right to freedom of press, speech and expression and the right to privacy are two sides of the same coin. One person's right to know and be informed may violate another's right to be left alone. Just as the freedom of press, speech and expression is vital for the dissemination of information on matters of public interest, it is equally important to safeguard the private life of an individual to the extent that it is unrelated to public duties or matters of public interest.

THE WRITER IS A LECTURER, DEPARTMENT OF LAW & JUSTICE, SOUTHEAST UNIVERSITY.



No Justice in mass trials for mutineers

THE government of Bangladesh should order a re-trial of 847 military personnel accused of murder, sexual assault, and other atrocities during the 2009 Bangladesh Rifles (BDR) mutiny due to serious violations of fair trial standards, Human Rights Watch said on October 29. Bangladeshi authorities should commission a thorough, independent review of both the BDR trials and verdicts, including the impending verdict which may see the death penalty imposed, and then initiate a more credible inquiry and prosecution process. "Trying hundreds of people en masse in one giant courtroom, where the accused have little or no access to lawyers is an affront to international legal standards," said Brad Adams, Asia director at Human Rights Watch. "The authorities should instead immediately initiate a credible and fair trial to get justice for the mutiny victims and their families.

The violations of fair trials standards include torture and other abuse while in custody in order to extract confessions and statements. At least 47 suspects have died in custody. In addition, BDR suspects have had limited access to lawyers, and to knowledge of the charges and evidence against them. Human Rights Watch has documented these abuses in both a 57-page report in July 2012, as well as in numerous press releases. On February 25 and 26, 2009, members of the Bangladesh Rifles (BDR), since renamed the Bangladesh Border Guards, mutinied against their commanding officers at the central Dhaka headquarters in Pilkhana Barracks. The mutiny, believed to be triggered by longstanding grievances among the BDR's lower ranks, led to the killing of 74 people including 57 army officers. A number of women relatives of the officers suffered sexual assault. While it is crucial that those responsible for the horrifying violence are brought to justice, Human Rights Watch found that the trials in military and civilian courts did not meet international fair trial standards.

The then-newly elected government of Prime Minister Sheikh Hasina negotiated a settlement to end the mutiny. However, after the mutineers surrendered, the authorities responded with mass arrests of more than 6,000 BDR personnel. BDR battalion personnel were tried together, often several hundred at a time.



laws, under which the highest sentence is seven years' imprisonment. However, the authorities prosecuted an additional 847 BDR defendants under Bangladesh's criminal laws, which could result in

death sentences for some of the accused. Family members of detainees and local media raised serious allegations of torture and custodial deaths. Detainees were subjected to beatings, often on the soles of their feet or palms of their hands, and to electric shocks. Some victims described being hung upside down from the ceiling. Many of those who survived the torture suffered long-term physical ailments, including kidney failure and partial paralysis. Although prosecuting counsel told Human Rights Watch that evidence obtained under torture would not be used at trial, defense counsel said these statements were in fact part of the evidence produced in

court against their clients. Instead of probing the allegations of serious violations of human rights and due process, the government has dismissed the concerns. Human Rights Watch calls on the Bangladeshi authorities to establish an independent task force with sufficient expertise, authority, and resources to rigorously investigate and, where appropriate, prosecute all allegations of unlawful deaths, torture, and mistreatment of suspects in the mutiny. "Torture is routinely used in Bangladesh, and if the government continues to ignore credible allegations of torture of BDR mutiny suspects, the culture of impunity in the country's security forces will simply continue," Adams said. "The government champions its supposed zero tolerance for torture, but in fact does nothing to make this

talk reality." Human Rights Watch also calls on the Bangladeshi authorities to undertake a thorough review of the entire mutiny trials processes, including those which have already concluded. The possible use of capital punishment in the upcoming verdict against the 847 accused further heightens existing fair trial concerns, particularly if torture was used to obtain evidence. Human Rights Watch opposes the death penalty in all cases as a fundamentally cruel and irreversible punishment.

SOURCE: HUMAN RIGHTS WATCH.



Domestic Violence Act 2010: Reading between lines

Hussain M F Bari

feel déjà vu while preparing this write up in the sense that back in 2005 I dedicated bit of our love, passion and labour to draft a statue on domestic violence at Ain o Salish Kendra (ASK). It is also heartening to see that Domestic Violence (Prevention and Protection) Act (Act LIV of 2010) that was set in motion on October 5, 2010 appears to be almost reflective of our humble efforts at ASK. A set of rules was also framed in May 2013. In this brief article an attempt has been made to examine the statute and make recommendations to make the law more functional.

Uniqueness of the Act 2010: The present Act provides for exhaustive provisions in dealing with issues relating to domestic violence of which salient features are given below. a)Domestic Violence defined: The Act has provided a

holistic approach in defining domestic violence that covers physical, psychological, sexual and economical aspects of the menace. The Act also elaborates an explanatory lists which fall within the ambit of domestic violence [Section

b)Initiation of proceeding: An aggrieved person or enforcing officer, service officer or any other person (for example, a human rights activist) acting on his behalf may institute a petition in a prescribed form. Upon receiving such petition the Court concerned shall fix a date for hearing on the issue [Article

c)Forum: The disposal and trial proceeding of domestic violence would be held in the Court of Judicial Magistrate or in the Court of Metropolitan Magistrate in metropolitan area [Section 21]. The appellate authority of this proceeding is Chief

Judicial Magistrate or the Chief Metropolitan Magistrate as the case may be. The limitation of preferring an appeal is 30 days from the date of order [Section 28].

d)Enforcement officer: Upazila women affairs officer is the enforcement officer under the scheme of the statute [Section 2(14)]. The duty of Enforcement officer includes among others submitting a report, informing the police station, praying for protection order, keeping the lists of voluntary organisations, sending the victim to the safe custody, hospital and doing such other duties under the direction of the court [Section 6]. Departmental action may be warranted against an enforcement officer if he is found negligent or unwilling in discharging his duties under this

Act [Section 34]. e)Right to stay: Upon a petition the Court may pass an order directing the opposite party not to obstruct the stay right of the victim in the house [Section 15(1). The Act unequivocally states that a victim shall have the right to stay in the joint house because of having his relation there [Section 10].

f)Safe custody: The court may also order for safe custody of the victim under the supervision of the enforcing officer in an appropriate situation [Section 15(2)].

g)Protection order: Upon perusing the petition along with the submitted papers the court may issue 7 (seven) days' show cause notice to the opposite party as to why protection order shall not be passed. Even, in appropriate cases the court may pass ad interim protection order without hearing the opposite party [Section 13].

h)Compensation: In case of domestic violence, the court may award compensation order directing the opposite party to pay the same to the aggrieved person. In awarding such compensation the court shall consider the nature and extent of the violence, cost of medical treatment, immediate and long term effects of violence, effects on current and

The executing officer is to execute the court's order within 3 (three) days [Section 25].

m)Legal aid: Enforcement officer is duty bound to take proper steps for arranging legal aid for the victim within the purview of Legal Aid Act (Act VI of 2000) [Section 6]. The copy of orders of the Court will be provided to the parties and all other concerned free of costs [Section 18].

n)Compoundable offence: The offence under this Act is cognisable, bailable and compoundable [Section 29].

o)Punishment for false prosecution: The Act also provides for upto 2 (two) years imprisonment or fine upto 50000/= (fifty thousand) or both for false prosecution [Section 33].

p)Community engagement for delinquency: Failing to comply with the protection order or any other order of the court in this proceeding is an offence punishable with up to

six months imprisonment or fine of Taka 10000/= (ten thousand) or both. In case of repeated delinquency higher punishment is awarded. However, the Court may direct the delinquent to engage in community activities for particular period in lieu of such sentence [Sections 30 & 31].

There is not a single case pending on domestic violence in the Court of Chief Judicial Magistrate at Kishoregonj. However, it does not mean that no such penal occurrence took place here. It appears that incidents of such issues go unreported to the law enforcing agency. Perhaps fear of further retaliation, high legal costs, illiteracy, mind set to take it as fate, patriarchy, lack of awareness, economic dependence and many other social barriers are responsible for not setting the law in motion

even the offence is committed.

Despite our commitment to equal protection for male and female in our constitution and international human rights treaties like CEDAW, CRC, violence against women is still quite high in our society where domestic violence is widely prevalent in our everyday lives. Being vulnerable in a patriarchal society like ours women face myriad types of violence. Though present statute offers a holistic approach in dealing with the issue, law alone cannot guarantee the dignity and honour to women nor can punishment to the tormentors solely. What is basically needed is a change of mindset. To conclude, given the dimensions of the offence, relief offered in the statute, court atmosphere of the Magistracy and expertise of the family court in addressing almost similar issues, Judge of the Family Court would have the appropriate forum to deal with the issue of domestic violence.



future income of the victim, living style of the victim [Section 16]. It may be pointed out that the concerned Magistrate shall have the unlimited pecuniary power in awarding compensation in appropriate cases [Section

i)Safe custody of children: At any stage of the proceeding the Court may order for safe custody of the children of the aggrieved person to her or any other person acting on her behalf [Section 17].

j)Trial procedure: The Code of Criminal Procedure (V of 1898) is followed in the investigation, trial and proceeding. Summary trial procedure will be followed in disposal of the petition proceeding [Section 22]. With the consent of the parties or in the opinion of the Court the trial proceeding may be held in camera [Section 23].

k)Investigation: The Court may order for on- site investigation of the accusation and for this purpose time limit may be specified [Section 24].

l)Execution of order: The Court may execute its order by the process sever, enforcement officer and the police officer.

THE WRITER IS JOINT DISTRICT AND SESSIONS JUDGE.