"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH • dslawdesk@yahoo.co.uk

RIGHTS MONITOR

Curbing freedom of expression

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CONTROVERSIES evolving around the newly formulated National Broadcast Policy 2014 have become the issue of rejection and justification both from media outlets and government side. Being one of the highly contentious policies adopted by government, this policy is facing a widespread criticism by media stakeholders, rights groups and political parties. Undoubtedly, the policy has a practical implication in the area of 'freedom of thought and conscience, and of speech' guaranteed under Article 39 of the Constitution of the People's Republic of Bangladesh and other international human rights instruments such as the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR).

In several occasions, Minister of Information claimed that during the drafting of this policy a number of civil-society and human rights entities such as The Association of Television Channel Owners (ATCO), Transparency International Bangladesh (TIB), Article 19 etc. worked on and favored the policy at its current condition. However, TIB at a recent press conference vehemently expressed the concern and criticised several provisions of the policy alleging that the policy has been projected to control the e-media through curbing its freedom of expression. (The Daily Star: August 15, 2014). Such a contradictory position of Ministry of Information and TIB or other organizations needs to be clarified for ensuring accountability and betterment of democratic norms and practices. Even the claim of the Minister of Information to treat the policy as the guiding principles for enacting future broadcast law is seriously questionable and also a threat for the whole broadcast industry. Why? Let's explore these perspectives here.

As we know, while drafting the Constitution of Bangladesh in 1972 only the 'freedom of press' was categorically ensured in Article 39. However, in a digitalised world today, the popularity of broadcast and e-media has got momentum appreciation for ensuring easy and speedy flow of information and knowledge to the people. Given this situation, there is no specific mention of freedom of broadcast or e-media in the Constitution. However, it would not be wrong to propose that the liberty of broadcast media is implicit in the 'freedom of thought and conscience, and of speech' clause in the Constitution. Till now, the broadcast media mainly television channels and radio stations have been running their business obtaining conditional license from the government.

The simple but legally important question is whether the policy is infringing the freedom of broadcast media that is implicit in Article 39 of the Constitution. Until a law or policy intends to curb the freedom of broadcast media on the ground of telecasting any anti-state and anti-public interest statement, such law or policy cannot fall in the reservation clause under Article 39(2). Relying on *Brij Bhushan and another* v *State of Delhi* (1950) AIR (SC) 576, it is reasonable to assert that the liberty of broadcast media consists in laying no 'previous restriction' upon broadcasting. Obviously, every free man has an undoubted right to say or telecast what sentiments he or she pleases before the public; to forbid this is to destroy the freedom of the media absolutely and illegally.

Article 25 of the Constitution provides for promotion of international peace, security and solidarity between Bangladesh and 'other states'; while the policy itself classifies the term 'other states' into two other terms, namely the 'foreign state' and 'friendly foreign states'. Such a classification is not at par with constitutional provision. In international law, a state can intend to or not to maintain any sort of international relations with any foreign states; but it is presumed that each state has friendly relations with other states. States today have the utmost responsibility to promote international brotherhood in a globalised world through ensuring fundamental human rights such as freedom of expression and others.

However, the policy makes a space for doubting that it could be used against broadcast media and this media would face the hurdle of restriction in airing the true story of unfair practices exercised against Bangladesh by the 'friendly foreign countries'. Inhumane incidents like border killing or constructing less eco-friendly plants/ projects would not be televised then. It is clear that the policy has extra-sensitivity about reporting on friendly states. Such a forewarning validates the popular public perception about its overt reliance on our powerful neighbor.

The policy has undermined the status of indigenous community by terming them 'ethnic minority', and even the policy specifically mandates for flourishing only the mainstream Bangalee culture, history and tradition. The policy has an apparent tendency to stay away from nourishing indigenous culture and tradition.

This Broadcast policy is completely silent about the local DVD television channels based business which mostly telecast pirated Hollywood and Bollywood movies and entertainment programs. These channels are partly responsible for cultural intrusion and also contravene the intellectual property rights of film-makers or program producers in most cases.

The provision that the Ministry of Information will make final decisions on stuffs to be aired until a broadcast law and commission are formed has raised enormous concerns. Speaking in favor of rights and liberty, the policy is neither expected to be a witch-hunt against freedom of media nor to be a campaign to curtail the democratic rights of citizens. Much debate is going on about privacy of individual on the one hand and the national security on the other. An authority like the Broadcast Commission must be set up and it would draw the line between what is acceptable in a civilised society and what is not with regard to broadcast industry. Instead of establishing a commission the government unfortunately came up with this policy after bestowing the Ministry of Information with the power to control broadcast media. In the absence of a clear explanation from the Ministry on what it would particularly do with regard to broadcast industry, the fear that the government or any special quarter might misuse it being able to take action against any media outlet, on various pretexts is reasonable.

To sum up, we remember once Nelson Mandela quoted, "a critical, independent and investigative media is the lifeblood of any democracy". We do not need to be sage to understand that the media control can lead to catastrophic consequences to any democratic stewardship. Through the formulation of this policy the government has regressively acted upon media and denied the fact that without debate, without criticism, no administration and no country can succeed – and no republic can survive at all.

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LAW LETTER

Justice not for all?

According to the Constitution of the People's Republic of Bangladesh, every citizen has the right to trial (Article 35), right to protection of law (Article 31) and they are equally treated before law (Article 27). This right is granted by our constitution as well as internationally recognised documents. In order to enforce such rights the constitution gives exclusive jurisdiction to the higher judiciary (High Court Division of the Supreme Court of Bangladesh).

Our judicial systems are divided in two ways, one is higher judiciary and another is lower judiciary. Lower judiciary is decentralised to the whole part of state but higher judiciary is none. There is no doubt, higher judiciary permanently was in capital or is in capital and will be in capital and it was settled by Supreme Court judgment through Anwar Hossain V Bangladesh case, 1989.

We know one of the most essential stages of complete justice is right to appeal. Simply, appeal is the rehearing of the case. An appellate court is a court that hears cases on appeal from another court depending on the particular legal rules that apply to each circumstance. Party to a case who is unhappy with the result might be able to challenge that result in an appellate court on specific grounds. These grounds include errors of law, facts, or procedure. The decision of a lower court is usually rendered by a single judge, while in an appellate court several judges hear the case and bring their view to bear on the same problem. The decision is usually available in printed from and indicates the basis for the courts conclusions. These judgments are often cited as precedents in future cases.

If any party wants to challenge any decisions of the original court of case, he must appeal to the higher court. Our general existing laws deal appeal from Session court or District judge court to the High Court Division of the Supreme Court of Bangladesh. In some special cases appeal from the Joint Session Judge and Joint District Judge shall place in front of High Court Division of the Supreme Court of Bangladesh.

Today, we see the scope of trial or appeal is for that person who is based in capital or who is financially solvent. Mostly it is limited for those who are living outside the capital and who has not enough money. If a poor, rural or helpless people want to challenge and file appeal to the High Court Division of the Supreme Court, he undoubtedly faces numerous problem like monitory expenses, transport, communication and residence problems etc and sometimes it is impossible for them to do the arrangements. As such they always deprived from the access to justice or complete justice.

However, our constitution guaranteed equality before law, right to protection of law and protection in respect of trial. In reality we see it is not for all and the provisions are totally meaningless. Moreover, article 100 of the constitution provided that the permanent seat of the Supreme Court shall be in capital but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the president think proper. The scheme of the constitution in providing for session outside the capital is like the benches of the High Court Division may sit temporarily in any place outside the capital if it is found necessary or convenient by the Chief Justice in the interest of the administration of justice without thereby affecting the jurisdiction of the court conferred by the constitution.

Now, decentralisation of the High Court Division of the Supreme Court of Bangladesh is not possible as by 8th amendment it is declared illegal by the Supreme Court. Still the scope exists temporarily when it is necessary for the administration of justice. Through arranging sessions of the High Court Division to any particular rural area for a particular period can ensure complete justice or access to justice for the poor, rural and helpless peoples. Otherwise they always will be deprived from complete justice or access to justice and the novel objects behind our liberation will be destroyed.

So it is the demand of time as well as demand of poor, rural and helpless peoples to temporarily decentralise the High Court Division of the Supreme Court of Bangladesh and ensure complete justice or access to justice.

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LAW NEWS

World Humanitarian Day

THE theme for the 2014 World Humanitarian Day is 'The world needs more…' This theme is one of a kind with a vision to turn the world into aid by encouraging more people around the world to work for humanitarian aid.

If one needs to know, International humanitarian law, is commonly known as the law of war or the law of armed conflict is a major part of public international law and comprises the rules in times of armed conflict, seek to protect people who are not or are no longer taking part in the conflict, and to restrict the methods and means of warfare employed.

In December 2008, the sixty-third session of the UN General Assembly decided to designate 19 August as World Humanitarian Day. World Humanitarian Day honours and recognises those, who have lost their lives in humanitarian service and those, who continue to bring assistance and relief to millions. The Day also seeks opportunity to encourage people to work for humanitarian cause around the world. By observing humanitarian day, it draws attention to humanitarian needs worldwide and the importance of international cooperation in meeting these needs.

The humanitarian aid workers provide ease and comfort to the civilians of the conflicting areas in various ways. They can be from any part of the world. Mostly these humanitarian workers work in their own locality. They reflect all cultures, ideologies and backgrounds and they are united by their commitment to humanitarianism. They strive to provide life-saving assistance and long term rehabilitation to disaster-affected communities, regardless of where they are in the world and without discrimination based on nationality, social group, religion, sex, race or any other factor.

Humanitarian aid workers should be respected, and be able to access those in need in order to provide vital assistance. According to Secretary-General Ban Ki-moon "Humanitarian workers and their families are hit hardest by these crimes. But they are also felt by millions of others. [..] Let us honour the fallen by protecting those who carry on their work – and supporting humanitarian relief operations worldwide."

Everyone can be a humanitarian. People affected by disasters are often the first to help their own communities following a disaster. Responding to emergencies is only one aspect of humanitarian work. Humanitarian workers also support communities to rebuild their lives after disasters, to become more resilient to future crises, to advocate for their voices to be heard, and to build lasting and sustainable peace in areas of conflict.

We should admire all the humanitarian workers in this World Humanitarian Day and be aware of the need of having this kind of workers more to end the distress of the people of war and conflicted areas.

COMPILED BY –LAW DESK

LAW ANALYSIS

Expanding the horizon of PIL

ABM IMDADUL HAQUE KHAN

THE activists greeted the positive outcome of the *PAP 20* judgement with much enthusiasm. It opened the gate for public interest litigation (PIL) and removed all doubts and confusions about the validity of PIL cases.

Yet, the first reaction was not a deluge of frivolous cases, petitions, letters or telegrams. It was soon apparent that Mustafa Kamal J. was right when he said that taking up the people's causes at the expense of his own is a rare phenomenon, not a commonplace occurrence. Since the court not flooded with cases, there was no immediate need felt to open PIL cells or declare PIL guidelines like Indian or Pakistani Courts. PIL cases came as a gentle inevitable steam rather than a flood.

The court has embarked on the second phase of the development of PIL. With the help of the wisdom already acquired by the Indian and Pakistani judges, the High Court Division is steadily expanding the horizon of PIL. The judges are applying PIL jurisprudence in new fields taking care that neither the resources of the Court, nor that of the government are stretched in any way. In some of the cases, either the public interest element was not strong enough, or the judges were unwilling to embark on adventures for which they were not yet ready. But generally, PIL petitioners approaching with genuine social action matters are successful.

Certain cases deal with matters relating to the functioning of the democratic process. In *Md Idrisur Rahman* v *Shahiduddin Ahmed* and others, the appointment of the Chief Metropolitan Magistrate without prior consultation with the Supreme Court was challenged in 1994. This case was decided by the High Court Division in 1999 in favour of the petitioner which was later affirmed by the Appellate Division. In *Ziaur Rahman Khan* v *Government of Bangladesh*, a number of political activists and MPs questioned a new provision inserted in three statutes relating to local governments of Rangamati, Khagrachari and Bandarban area. The challenge was partially successful since the Court declared time limit for fresh election. Petitioners failed in *Saiful Islam Dilder* v *Government of Bangladesh and others*, where extradition of Indian tribal leader Anup Chetia was challenged. A very interesting suo motu rule was issued in *The State* v *Md. Zillur Rahman and other*, where the legality of hartal was assessed in the light of offences against public tranquility under sections 141 to 160 of the Penal Code. It was decided that decision to observe hartal by five or more persons amounts to unlawful assembly only when they decide to compel others to do the same. The Court dismissed the petition. In *Dr Ahmed Husain* v *Bangladesh*, the petitioner challenged new provisions for securing duty free cars for parliament members. In *Mrs. Parvin Akhter* v *The Chairman, Rajdhani Unnayan Kartipakkha and others*, petitioners successfully challenged destruction of lake and greenery in the Gulshan Model Town.

In the area of detention, the courts remain vigilant. In *Bilkis Akhter Hossain* v *Bangladesh and others*, along with three other similar petitions, detention of four political leaders was held mala fide, and illegal. For the first time, compensation was awarded to the detenues. Each detenue received an amount of one lakh taka. A similar case where compensation was awarded is *Md Shahanewas* v *Government of Bangladesh*. An innocent person was arrested by an ASI of Police in the name of an absconding criminal. The Court awarded compensation of an amount of twenty thousand taka to be realised from the negligent ASI. In State v Deputy Commissioner Bogura and others, suo motu rule was issued when a newspaper reported unlawful detention in jail. The rule was subsequently discharged.

Genuine social interest matters involving the poor and the downtrodden have been considered in several cases. In the much-publicised case of *Sultana Nahar* v *Bangladesh and others*, eviction of sex-workers from their residences was challenged. Initially, the two justices of the High Court Division arrived at different conclusions. As the case was referred to the third judge, it failed both on the point of standing and on merit. *Dr Mohiuddin Farooque* v *Bangladesh and others*, the Flood Action Plan (FAP 20) case of Tangail was finally heard on merit and the Court gave a number of directions and orders to be complied with by the government. If media coverage and publicity is taken as a guide, one of the most important recent PIL cases is Ain O Salish Kendra (ASK) and others v Government of Bangladesh and others. The petitioners challenged eviction of slum-dwellers in Dhaka without making any alternative arrangement. The Court ordered that the eviction process should proceed phase by phase, giving reasonable time and rehabilitate the slum-dwellers.

Apart from the cases mentioned here, there is considerable number of PIL cases pending before the courts and as such have not been reported. The number and variety of cases indicate the progression of PIL towards maturity. As PIL has become a permanent feature of the Bangladeshi legal system, non-governmental organisations and social action groups are working hard to utilise this new avenue. They are popularising PIL through Seminars, publications etc. and filing well-researched PIL cases. Instead of a litigation-only approach, Bangladeshi activists are already attempting to diverge in order to pursue other types of public interest law activities.

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