

"International law requires states to ban hate speech"

Toby Mendel, Executive Director of the Centre for Law and Democracy (CLD), talks to Nahela Nowshin about internet regulation, privacy and freedom of expression. CLD is a Canada-based international human rights NGO that provides legal and capacity building expertise regarding foundational rights for democracy, including the right to information and the rights to assembly and association.

The Daily Star (TDS): How do you regulate the internet without impinging on people's right to freedom of expression?

Toby Mendel (TM): It's important to distinguish two different kinds of internet regulation. The first is what I would call structural regulation: regulation of the internet as a medium of expression, like States impose licensing requirements on broadcasters. The second is content regulation, or limitations on what may be disseminated over the internet, which we also see imposed on every other form of expression, such as writing a book, publishing a newspaper, etc.

When it comes to structural regulation, international standards suggest that the internet should be subject to only the most light-touch regulation. The more intrusive kinds of regulation that are considered to be legitimate for broadcasters, for example, should not be imposed on the internet. Many countries impose some kind of regulation in terms of licensing providers of access to the internet (such as telecoms and cable companies). These entities either use the airwaves or distribute via physical cables and in both cases this justifies some sort of regulation. But going beyond that is not considered to be legitimate.

When it comes to content regulation, the default rule is that legitimate restrictions that apply to offline expression can also be applied to online expression, e.g. child pornography is a crime both offline and online. There are, however, a couple of areas where special regimes are needed to protect freedom of expression on the internet. For example, if you publish something alleged to be defamatory, the traditional rule is that everyone involved in the dissemination of the publication is responsible for it.

Better practice, however, is to insulate internet intermediaries from liability because otherwise they will simply take material down as soon as someone complains, without considering whether it really is illegal. On the other hand, some countries have recognised the need for special content restrictions for some kinds of internet activities, such as spamming, cyber bullying and hacking into others' computers.

TDS: All over the world, national security is being used as justification for invasion of privacy (e.g. PRISM in the US, SORM in Russia). What are the global



Toby Mendel

implications of this for people's right to free speech?

TM: The implications are very serious. Everybody has legitimate concerns about agencies engaging in expansive surveillance, whether they are being watched, or whether they are concerned that false or mistaken information is being collected about them. This is a serious threat to people's right to privacy.

What's being gathered is meta-data about communications. So these agencies do not normally listen to actual conversations and instead monitor the identities and locations of the people in the conversation, the duration of calls, etc.

TDS: Do you think it's problematic that people may be less aware of the rights they have than the ones they do not have in the online space?

TM: The media, along with NGOs and civil society, has a huge responsibility to publicise the Right to Information Act (RTIA), which empowers citizens to monitor the work of government officials and public authorities. The overall use of the RTIA has been very low in

contrast to India and many other countries. Demand side is important for the successful implementation of such laws. Without demand, officials are unlikely to go to great lengths to provide information.

TDS: Legal and industry experts in Bangladesh have voiced concerns about the draft of the Cyber Security Act which would allow arrest of suspects without warrants for committing "cyber terrorism." Experts are saying this is another way to further control social networks and the blogosphere.

TM: I haven't seen a copy of the draft in English. But certainly, arrest without warrant is problematic and very difficult to justify under international law. In most countries, there's a need for very limited, dedicated legal provisions restricting what is legal online as well, as I mentioned, for ensuring that things which are crimes offline, like offences of terrorism, also apply in the online space. The ICT Act already goes too far in terms of restricting content so it doesn't sound like the draft of the Cyber Security Act is necessary.

TDS: Where do you draw the line between free speech and hate speech?

TM: International law has a clear definition of hate speech which is found in Article 20, paragraph 2 of the International Covenant on Civil and Political Rights. Bangladesh has ratified this so she is legally bound to respect it. International law requires states to ban hate speech, defined as advocacy of hatred that incites hostility, violence or discrimination against a group based on race, religion, nationality, and so on.

Drawing the line between hate speech and free speech is difficult and it depends on the circumstances. Context is very important. In a situation where there's already a lot of hatred and discrimination against a certain group, hostile speech can have a much greater impact than in a context characterised by more tolerance. But it is important to note that hatred, as understood by international law, is a very strong emotion. It doesn't include a mere general dislike or prejudice; it's when a particular group is so strongly disliked that others do not want it in society and it cannot develop equally along with others.

CAR PARKS OVER HERITAGE SITES!



UPASHANA SALAM

WHEN part of an age-old heritage site is wrecked, for whatever reason, you expect individuals and groups to be up in arms, protesting against the destruction of a symbol that was supposed to have been

left untouched by modern trappings and trimmings. The archaeological body would probably top this list; after all, archaeologists are responsible for the "study of the ancient and recent human past". They are the ones who literally dig up the past, and thus, are held responsible for the preservation of monuments that remind humans of the history of their culture.

You'd, therefore, relate to our shock when we learnt that the government's Archaeological Department has ordered the demolition of a massive ancient wall surrounding Lalbagh Fort – a structure built 400 years ago, and is as old as our capital city itself. The reason? The department thought that a car park that will cost Tk 30 lakhs to construct, was more important than preserving part of a building that is priceless in terms of its historical value. What's the significance of this structure, anyway? Why should we be bothered if a heritage site is damaged when it's being done to meet the whims of some people? A car parking space HAS TO BE of more value than a four century old monument, because a parking space is what people will remember Bangladesh for, that's going to be our legacy, an indispensable part of our culture.

We should now be used to insensitive, illogical comments from authoritative bodies.



I mean, if the environment minister can say that it's not possible to protect four hundred tigers as it's difficult to even ensure the protection of human beings, why should we be surprised when the Director General of the Archaeological Department says that this 'amendment' will not "adversely affect the main design of the fort?"

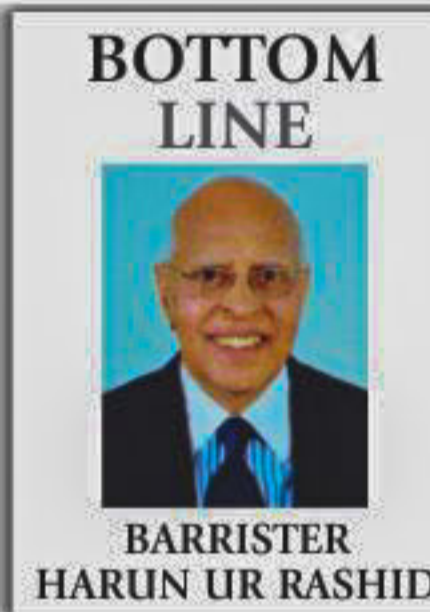
Anyone with an iota of an idea about historic sites will be able to tell you that destroying any part of a centuries-old structure will definitely "adversely affect" its design. The construction of the fort is being compromised; how in the world will that not affect the fort's main design?

The government has often pleaded inadequate funds when restoration work is requested on historic sites. We wonder how it's possible for them to fund the Tk 30 lakh parking space (let's not even ponder over the necessity of such a space) when it's so difficult to sponsor preservation work of heritage sites. Well, what do you expect in a country where cabbage patches are cultivated in an ancient archaeological site like Mahasthangar (TDS, February 16, 2011)?

Thankfully, the High Court has issued a stay order on the construction of the parking space in Lalbagh Fort. While we can rejoice the fact that there's at least one concerned, far-thinking, sensible authoritative body in our country, the fact still remains that such blatant disregard for history and heritage seems to have become an integral part of our national psyche. Unless we, as a nation, change our attitude toward our history, our heritage, we cannot expect any better from anyone else. We need to determine whether cabbage patches, car spaces or power plants are what we'll leave behind for the future of our country. It's up to us to decide what we want the world to remember us by.

The writer is a journalist at *The Daily Star*.

Why does Bangladesh need the Ganges Barrage?



BOTTOM LINE

BARRISTER HARUN UR RASHID

THE construction of the Farakka Barrage by India at 18 km from the Bangladesh border is an ill-conceived project. The then Irrigation Engineer of West

Bengal, Kapil Banerjee, opposed it for diverting huge quantities of water from the Ganges to flush the silt of the Hooghly River to save the Kolkata port. He eventually lost his job.

Later, Indian water experts, attending a seminar in Kathmandu in 2004, held that Kapil Banerjee was right because it caused devastating effects on the flow of the Ganges in Bangladesh but also badly affected crops in the vast areas of West Bengal. Recently, Direndranath Sambhhu, MP of the Indian Parliament, reportedly confirmed the damage done to West Bengal due to the Farakka Barrage.

With huge quantity of water from Farakka Barrage being diverted, the Gorai River in Bangladesh is now covered with silts at the Kumarkhali Railway bridge.

This is because the flow of the river towards Bangladesh drops suddenly in October, leading to silting up the off-take of Gorai River. According to water experts, 123 rivers in Bangladesh have died around the area.

To offset the adverse effects of the Farakka Barage, in 1963, an American

consultancy firm Tippetts Abbett McCarthy Stratton (TAMS) proposed constructing the Ganges Barrage at a location 3 km downstream of the Gorai River in Bangladesh.

In 1981, the proposed site was reportedly changed to a location 4 km downstream of Pakshey Railway Bridge (Hardinge). In 1986, considering possible backwater affecting the Indian territory, the site was shifted to a further down stream

For the construction of the Ganges Barrage, water experts say that India's support is required. During the visit of the Indian Prime Minister, Prime Minister Hasina invited India's cooperation in jointly developing the Ganges Barrage on the river Padma in Bangladesh. Prime Minister Modi conveyed that he would have the matter examined by the concerned agencies in India. The response from the Indian Prime

If the Ganges Barrage is built, it is estimated that an additional 2.6 million tonnes of food grains would be produced and 240,000 tonnes of fish would be available. Furthermore, the Ganges Barrage would have provided more water to the river near the Rooppur Nuclear Plant, being constructed in Pabna with Russian assistance.

near Habashpur, Rajbari. In 2001, the site was changed and was selected for the Ganges Barrage near Thakurbari of Kushtia after a study on the Padma Dependant Area.

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Minister, many in Bangladesh contend, means that the Ganges Barrage may not be able to see its fruition in the near future because the examination of the Indian agencies (it would have been preferable to include Bangladesh agencies in the examination) has no time-limit by which it would be concluded.

This being the case, water experts believe that India failed to appreciate the urgency of the construction of the Ganges Barrage because Bangladesh needs to

rejuvenate dying rivers in the area. Bangladesh suffers a loss of Tk. 30,000 crore annually because of India's unilateral withdrawal of water upstream, according to an estimate by some environmentalists and river water experts in Bangladesh. Due to insufficient water flow from India, Bangladesh is facing severe losses in crop production, fisheries, aquatics, as well as the intrusion of salinity and degradation of environment and forests over the years.

Meanwhile, it has been reported that India plans to build 16 new dams on the Ganges River between Varanasi and Hooghly. The 16 proposed dams reportedly would convert the Ganges "into 16 huge ponds". Such dams would further deplete water downstream to Bangladesh and may turn the riverine country into a veritable wasteland.

Bangladesh has decided to push for a fair and comprehensive solution to the sharing of water, not only of the Teesta but of all the 54 common rivers with India. Prime Minister Sheikh Hasina told Indian PM Modi that Bangladesh expected India to settle the water sharing issues of all common rivers in a spirit of accommodation and fairness.

Prime Minister Modi poetically described in a speech in Dhaka that birds, air and water flow uninterrupted as they do not recognise borders. Let his idea turn into reality in water sharing of all trans-boundary rivers to further strengthen the bonds of our bilateral relationship.

The writer is former Bangladesh Ambassador to the UN, Geneva.

QUOTABLE Quote

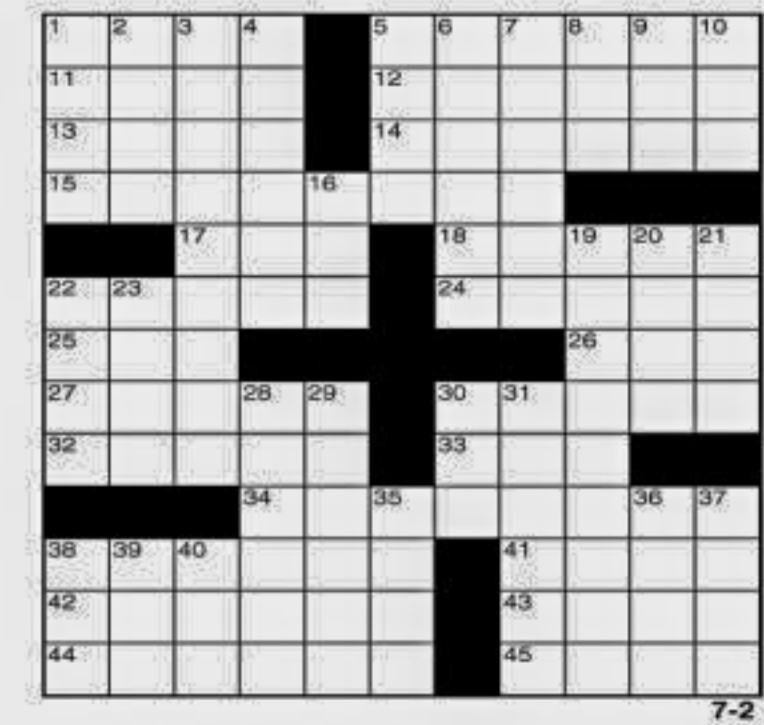


Nina Simone (1933-2003)

You have to learn to get up from the table when love is no longer being served.

CROSSWORD BY THOMAS JOSEPH

- | | |
|---------------------------|--------------------------|
| Across | DOWN |
| 1 River floater | 1 Fool-hardy |
| 5 Didn't participate in | 2 District |
| 11 Singer Guthrie | 3 Arizona city |
| 12 Disinclined | 4 Taste bud setting |
| 13 Son of John and Yoko | 5 Store come-on |
| 14 Looked lewdly | 6 Deflects |
| 15 Horse traders | 7 Prepares to drive |
| 17 Belitigious | 8 Bruins legend |
| 18 Hair clusters | 9 Employ |
| 22 Bound to happen | 10 Seth MacFar-lane film |
| 24 Bowling challenge | 16 Was ahead |
| 25 Lyricist Gershwin | 19 Paving slab |
| 26 Bordeaux buddy | 20 Watch reading |
| 27 Ransack | 21 Mix up |
| 30 Beer type | 22 Yule trees |
| 32 Morley of CBS | 23 Diva's piece |
| 33 Spots on TV | 28 Madagascar mammals |
| 34 Elephants' extinct kin | 29 Wipes out |
| 38 Stir up | 30 Hurried flight |
| 41 Ham's dad | 31 Handsome youth |
| 42 Movie categories | 35 Butte's kin |
| 43 A fan of | 36 Despise |
| 44 Black Sea port | 37 Not barefoot |
| 45 Future flower | 38 In the past |
| | 39 Warning color |
| | 40 Low digit |



Yesterday's answer

C	E	D	E	C	A	S	I	N	G
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F	O	U	N	D	T	A	B		
S	T	A	G	E	S	C	O	R	E
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A	T	O	N	C	E				
N	E	C	T	A	R	A	S	T	A

BEETLE BAILEY by Mort Walker



BABY BLUES by Rick Kirkman & Jerry Scott

