

VIEWPOINT

ICT Act 2006

“There is no guideline limiting the actions that they can take”

SARA HOSSAIN

WE challenged this legislation as being unconstitutional back in 2010. There was a petition that was filed by three of my colleagues who challenged the blocking of Facebook in 2010.

It's not just the section 57; we have to look at section 46 of the same law which allows blocking of websites based on the same kind wide, vague language—anything that is hurtful to religious sentiments, anything that hurts an image of a person or the state. And the basis of our challenge was that such wide and vague language without any specific criteria means that the authorities can act arbitrarily.

It has been almost ten years now since this law came to being in 2006 and we have seen it repeatedly being used in a very arbitrary way. Not only are websites blocked from time to time but individuals are facing prosecution for a variety of kind of speech which may be considered quite acceptable in any democratic society. For example, speech that is critical about senior leaders of the government is normally acceptable as political commentary in any democratic society. But here there are individuals who are facing threat of imprisonment because of their comments. Bloggers who are supposedly making comments that are hurtful to religious sentiments are also facing threat of arrest under this law.

The law itself does not provide any safeguards. For

example, if you are going to see digital content from someone's email or Facebook page, how does this law allow you to establish that you have legitimately taken that content from that person? If you look at similar laws in India, they provide restrictions. It means that you can actually ensure if something was taken from your own material and not planted there later.

This law was made under the BNP rule in October 2006, and then, very unfortunately, amendments were made, by the Awami League government in 2013 where they increased the powers given to the police to arrest

anyone on suspicion and made the offence non-bailable. The amendments made the law even more abusive than it was before.

At this point it is very welcome that a former law minister himself has said something about the way this law is being used, for example, to deny bail to Probir Sikdar. He made the point that denying bail to a person with disabilities is wrong. But I think there is a broader point denying bail where there is no risk of them tampering with evidence, no risk of them escaping, there is no issue of them being a danger to the public.

So I think at this point it is crucial to look at sections 46 and 57. When the government has made a commitment toward a digital Bangladesh, having sections 46 and 57 in the law, and the way they are being operated currently, will have a chilling effect not only on the freedom of expression, but also on the development and economic growth of Bangladesh.

The commentator is Advocate, Supreme Court of Bangladesh.



“It is a black law and we should rethink it”

FAHMIDUL HAQ

UNDER this law, if anyone complains that his or her image is tarnished by someone's speech or writings, the police will take actions against the latter and it will be a non-bailable offence. The punishment was 10 years' imprisonment, now it has been made 14 years. The amount of the fine has also gone up.

People are expressing their thoughts on social, political and personal matters. It is a right that is protected by Article 39 of the Constitution. But with this law in existence, there is always a chance of this constitutional right being abused and misused. We have seen it in the case of Probir Sikdar.

I want to say it is a black law and I think we should rethink it. With the rise of social media, the very nature of communication has changed. People all over the world now have an opportunity to express their views, ideas and opinions. This opportunity did not exist before—the expressions and communications were one-way and in the hands of experts, journalists and broadcasters. People just don't receive information anymore. Citizens are now doing their own research and expressing their views on social media. It may not be very professional but it is getting importance in the society. People are communi-

cating with each other on important issues.

Governments are becoming afraid. They are afraid that people will be united and raise their voices. We are seeing it in different places in the world—people are taking to the streets. As a result, we see different kinds of laws in different countries to control online interactions. It seems that the laws are motivated less by the willingness to stop cyber crimes and more by the threat they feel from people's freedom to

express themselves. But we have to think: are we actually violating people's constitutional rights in the name of combating cyber crimes?

Therefore, we must rewrite Section 57. Things will have to be well-defined. Legal experts are saying that there are a lot of vague terms in this section of the law. How do you define the image of a person and the state?

Now, one can argue that people are still writing and expressing their thoughts and opinions. But the fact is there is a sense of fear among them. On the other hand, bloggers are being killed. And people are not getting enough support from the government.

This kind of laws can only push us further into a more unpredictable situation.

The commentator is Associate Professor, Department of Mass Communication and Journalism, University of Dhaka.



The lawmaker and the lawless

STRAIGHT LINE



MUHAMMAD NURUL HUDA

IT was indeed refreshing and encouraging to find lawmaker Sheikh Fazle Noor Taposh speaking out on extrajudicial killings. He has said, “We will not tolerate killing of our leaders and activists in the name of so-called gunfight and those responsible for the killings will be brought to book”. The law-

maker added, “If anyone gets injured or killed while in custody of any law enforcement agency, then that agency will have to take the responsibility”.

While the young lawyer firmly states that delinquent lawmakers would be subjected to legal actions, concerned citizens perhaps need to know why alleged extra judicial killings by state agencies continue to be a recurrent reality. Sustained efforts to study the malady of extra-judicial killings would reveal that otherwise sensible public leaders have often appreciated the usefulness of such killings by decrying the failure of the criminal justice system to punish inveterate criminals and bring relief to the suffering public.

The dilemma of our socio-political existence is brought home by the reality that while those wishing to see the effective writ of the rule of law are continuously pointing to the untenability of extra-judicial deaths as an acceptable socio-legal response, there is no dearth of supporters of such apparently abominable methods of “punishing” culprits. Random eliciting of opinions by newspapers has shown that a large majority of people entertain the view that the unsatisfactory crime and order situation can gradually be stalled by resorting to extra-judicial killings.

It is time, therefore, to do some serious introspection and find out how we have arrived at such a depressing scenario? The seriousness of the matter is warranted by the fact that if extra-judicial killings succeed in even implicitly acquiring the seal of approval, then there remains no justification to maintain and support a justice system at public expense. The question is how low shall we stoop to offend democratic sensibilities?

Will our present predicament not compel us to examine and find out if the working of various institutions in the criminal justice system have been interfered with and not allowed to carryout their duties? Such premonitions cannot be summarily dismissed in our situation where crime, criminality and criminals could not be dealt with in an objective and professional manner.

It is not too late as yet, if we decide to set our house in order and behave as a civilised society. For that to happen, the concerned

authorities in the corridors of power have to exercise due diligence and act earnestly to uphold the rule of law. That is not a tall order.

The question is, do we want sustained laborious actions under the law to strengthen our democratic foundation or do we need rash desperate actions without the cover of law? The extra-judicial killings, undoubtedly, do not fit in with the first proposition. We need to be absolutely clear about that.

The ultimate punishment in the alleged 'extra-judicial' deaths, about whose credibility many are not convinced, appear as summary response from desperate executives of law enforcement. Let alone the legality of actions leading to such extreme actions, any responsible citizen would like to know if, in our often over-zealous anti-crime operations, we are just

defense of the body extending to causing death is justifiable only upon the plea of necessity, and such necessity only arises in the prevention of forcible and atrocious crimes. The harm caused should be preventive and not punitive.

The person claiming the right of private defense extending to the cause of death must be under a bona fide apprehension or fear that death or grievous hurt would otherwise be the consequence of the assault on him if he does not defend himself.

Extra-judicial deaths, along with the surrounding circumstances, need to be scrutinised in the light of the stipulations above to examine if such deaths actually resulted from acts of self-defense by security personnel.

The fact of the matter is that when investigative skills entailing unbiased efforts emerge con-



Wife and daughter of Sangram, killed in "crossfire" last year, in tears. PHOTO: RASHED SHUMON

treating the symptoms without venturing to study and assess the objective conditions promoting criminality. We do not need sociologists and criminologists to tell us that present day crime is a complex social phenomenon caused by a multiplicity of factors, and determining culpability is an extremely mind-exacting task.

What we need is adequate provision of witness protection and victim support in the criminal justice administration. To make those effective, we need a large injection of governmental funds. Any further delay will only swell the ranks of summary-justice seekers and the admirers of vigilante action. The decapitating adversity of the victims of crime demand main-stream support of the system.

We need to be also aware of the requirement that the right of private defense cannot be unqualified, as that would lead to vendettas resulting in social disorder. Such right of private

sequent upon a strong political direction, there should not be any need to resort to extra-legal measures. In such an atmosphere, information and intelligence would come voluntarily to the benefit of victims of crime. We must, therefore, strive to create an environment where the blight of extra-judicial killings would be blissfully absent.

The rule of law and criminal jurisprudence may appear to be unequivocally in favour of the offenders, the criminals, the law-breakers, the accused persons. That does not automatically give a license to resort to illegal measures because a civilised government must earnestly strive to demonstrate that law-enforcement effectiveness and civil liberties can co-exist in a society governed by the rule of law.

The writer is a columnist of The Daily Star.

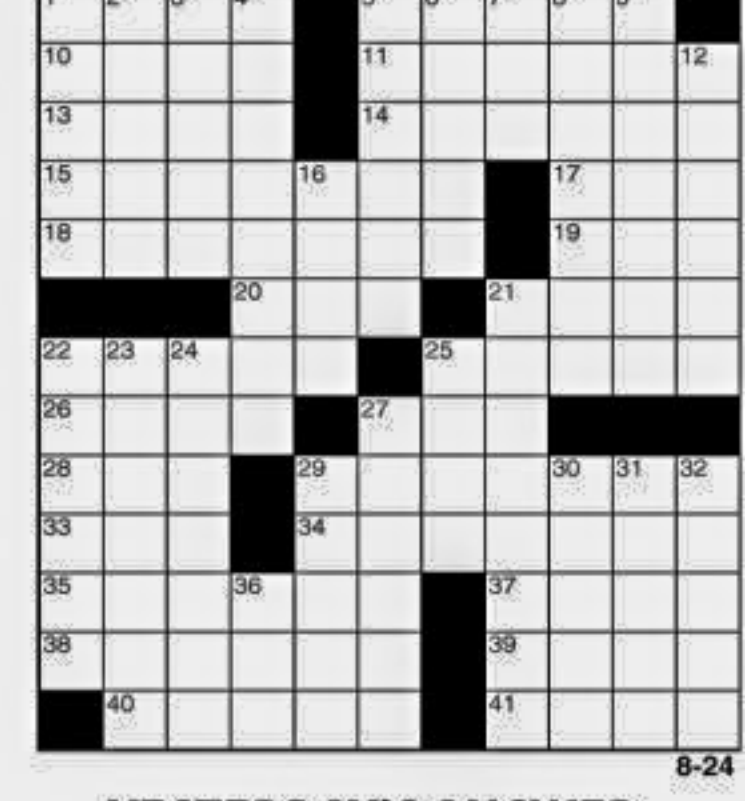
CROSSWORD BY THOMAS JOSEPH

ACROSS

- 1 Bugler's evening call
- 5 Church singers
- 10 Hideous
- 11 Horse restraint
- 13 Close by
- 14 Relaxed
- 15 Qualify
- 17 Director Ang
- 18 More pebble-strewn
- 19 Tax agcy.
- 20 Acquire
- 21 Rescue
- 22 Not so many
- 25 Force units
- 26 Makes mistakes
- 27 Black gunk
- 28 French friend
- 29 Deli order
- 33 Equip
- 34 Carry out
- 35 Car part
- 37 "Exodus" author
- 38 Searched deeply
- 39 Religious group
- 40 Take care of

DOWN

- 1 Melodies
- 2 Operative
- 3 "Republic" writer
- 4 Needles
- 5 Home in the Alps
- 6 Hardly a fan
- 7 Flamenco call
- 8 Rome native
- 9 Set aside
- 12 Della and Pee Wee
- 16 Stadium section
- 21 New York city
- 22 Dreaded
- 23 Royal furs
- 24 Move like a worm
- 25 Copenhagen native
- 27 Best man's wear
- 29 Principle
- 30 More confident
- 31 New York city
- 32 Outdoos
- 36 "--had it!"



YESTERDAY'S ANSWER

T	O	T	A	L	S	P	A	L	E
I	B	E	R	I	A	O	T	I	S
M	A	X	I	N	G	S	H	O	T
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C	O	R	P	C	A	S	I	N	O
A	L	E	E	O	L	I	V	E	R
L	E	E	R	D	E	S	E	R	T

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