

PROPOSED DIGITAL SECURITY LAW

Gives law enforcers greater scope to abuse power



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A Latin proverb says "Experience is the best teacher." In view of famous British historian James Anthony Froude: "Experience teaches slowly, and at the cost of mistakes." However, our policy of learning is different. Experience seems to have taught us little. This seems to have been reflected again in offering the police arbitrary powers in the proposed digital security law to take action against alleged offences committed using digital devices.

Adequate safeguards are considered prerequisites to prevent abuse of wide arbitrary powers. It is understood that powers should be exercised in a just, fair and reasonable manner. Safeguards play a role in preventing the exercise of powers in an unreasonable, capricious manner. But the proposed digital security law provides law enforcement agencies with wide arbitrary and discretionary powers without any safeguards against possible abuse. Therefore, the apprehension of abuse of power remains in the proposed digital security law.

According to section 43 of the proposed law, police can arrest any person on suspicion that he has committed offences or is committing offences. They can also search any digital device on suspicion that evidence of offences which were either committed or are being committed may be erased or tampered or changed if there is delay in taking action. If they deem fit, they can confiscate any digital device allegedly being used for committing the offence. Exercise of the arbitrary powers under section 43 depends entirely on the "belief" of law enforcement agencies.

Law enforcement agencies have also been given the power under section 8 of the proposed law to ask the BTRC to block or remove any content from digital devices if they consider such content as a threat to national security, economy, security, public order and religious sentiments. The BTRC, Bangladesh Telecommunication Regulatory Commission, must act upon the request of law enforcement agencies.

Police have for long used, wide arbitrary powers in the exercise of the draconian section 54 of the Code of Criminal Procedure to arrest anybody on

mere suspicion. Similarly, police have been given wide discretionary powers in the proposed digital security law.

A landmark judgement by the Supreme Court in 2016 put a cap on the arbitrary use of discretionary powers by police under sections 54 and 167 of the Code of Criminal Procedure, 1898 dealing with arrest on suspicion and subsequent remand. Amidst allegation of widespread abuse of power, the SC set some guidelines on enforcement of the provisions as it ruled that the sections were inconsistent with fundamental rights guaranteed by the constitution.

In face of a wave of criticism for

for a Facebook post over the death of a goat. The journalist was accused of "tarnishing image" of the state minister for fisheries and livestock who gave the goat to a poor man in his parliamentary constituency.

Two years before the shocking incident over the death of the goat, Probrir Sikder, another journalist, who did not have a leg, was arrested in connection with a case filed against him under section 57 under the charge of tarnishing the image of a minister. He was handcuffed while he was taken to court in violation of Police Regulation and sent to jail—his bail prayer was

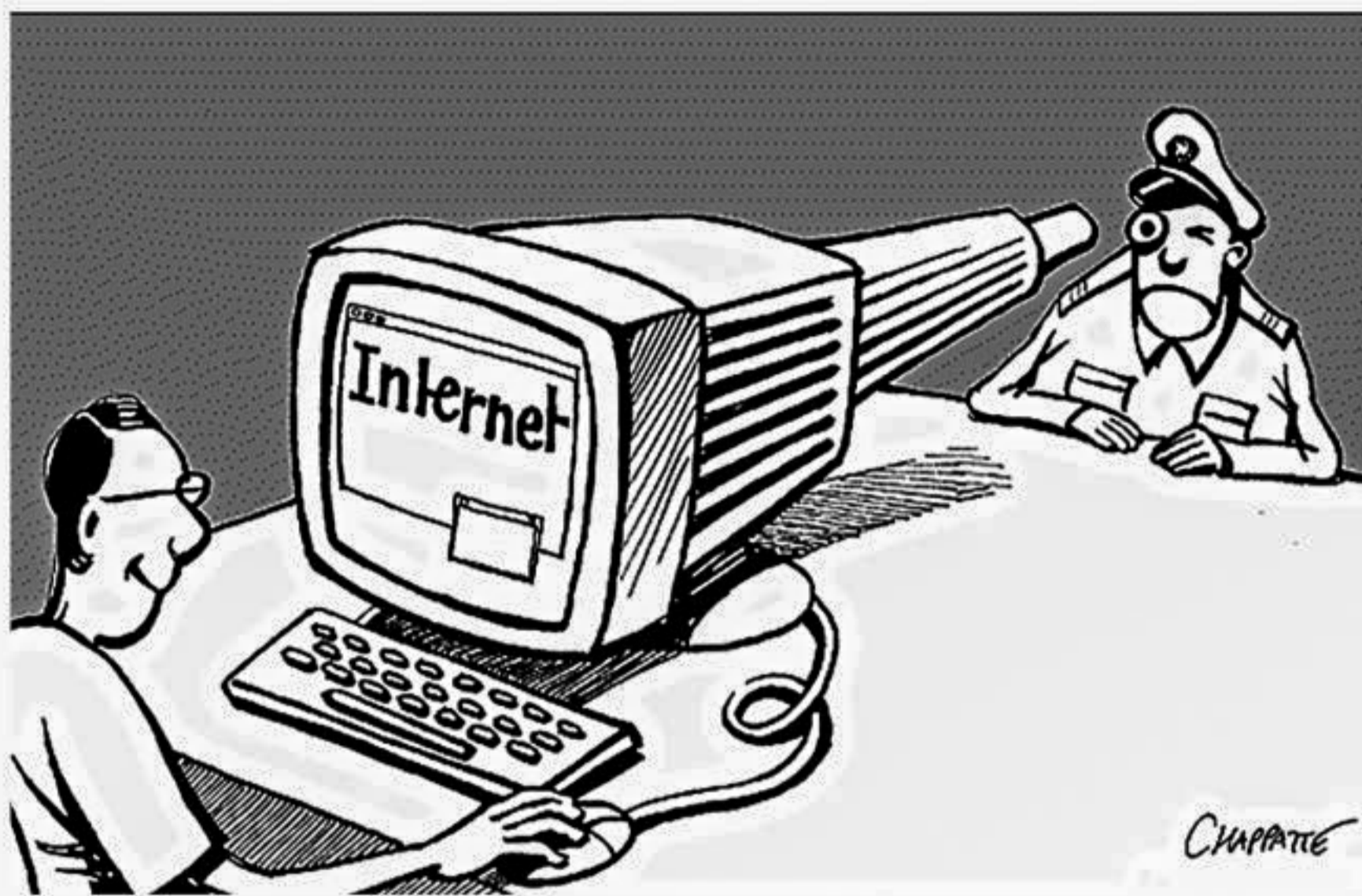
law enforcement agencies. One example may make this point clear. In 2011, the government limited the court's powers to directly issue arrest warrants against journalists, writers and others for writing or saying anything defamatory. An amendment to the Criminal Procedure Code (CrPC) introduced a provision for issuing summons against them. But in 2013, in an amendment to the ICT Act, the government further curtailed the courts' powers. Earlier under the ICT Act of 2006, police had to seek permission from the courts to make any arrest if there was no arrest warrant issued by the courts. But the amendment repealed this provision. After the amendment, police were given the power to arrest anybody after a case was filed under section 57. However, it depends on the discretion of the police whether they will make an arrest immediately after a case is filed on charge of defamation. The change led to a rise in the number of cases under the controversial section and abuse of power by the police.

The digital security law proposed to repeal the controversial section 57 of the ICT law. However, contents of it have been split into a few sections. One of them, section 29 will deal with defamation. In a positive move, this proposed provision on defamation did not allow the law enforcement agency the power to arrest an accused without warrant issued by the court. Police still enjoys such power under section 57. But the law enforcement agency need not worry about losing its arbitrary powers. According to the proposed digital security law it will have even more power than it will lose after the repeal of section 57 in regards to taking action against alleged defamation made using digital devices.

The Indian Supreme Court in March 2015 declared unconstitutional the same provision in the Indian ICT law which had provided the law enforcers with arbitrary and discretionary powers to make arrests. Our Supreme Court in the 2016 verdict on section 54 of the CrPC observed: "Absence of arbitrary power is the first essential of the rule of law upon which our constitutional system is based." Yet the practice of empowering police with arbitrary powers go on unhindered as our policymakers seem to have learnt little from the bitter experiences of the past. It seems we have our own definition of the rule of law.

This is the final instalment of a three-part series on the proposed digital security law.

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random abuse of section 57 of the ICT Act, 2006, the police headquarters on August 2, last year, issued a circular asking police stations across the country to take advice from the legal wing of the police headquarters before registering any case under section 57. The police headquarters instructed police stations to demonstrate utmost caution in recording cases for offences committed under this section. If any suspicion arose about any complaint, the police station concerned would immediately register a general diary and then verify the authenticity of the complaint. Since then the number of cases under section 57 has sharply declined.

The circular itself seems to have appeared as an acknowledgement of widespread abuse of the cyber law and also the discretionary power of police given by the draconian section 57. The move came hot on the heels of the arrest of a Khulna journalist. That incident went beyond the limit of absurdity and abuse of the law as the journalist was sued and sent to jail under section 57

denied.

In both cases, police took action hours after the cases were filed and arrested the journalists and produced them in courts. They were denied bail and sent to jail. Section 57 has been blamed as the root cause for their excesses as the law empowered police with sweeping discretionary powers to decide if they will arrest an accused immediately after a case had been filed. In face of widespread criticism of the way the arrests had been carried out, both journalists were granted bail and they walked out of jail. The incident following the death of a goat forced the police headquarters to take steps to curb random misuse of the cyber law against editors, journalists, social media users and free thinkers.

Such bitter experiences of the past should have been in the minds of the government officials and policymakers who were involved in drafting the digital security bill placed in parliament on April 9. Previous incidents, however, indicate a careful policy of excessive dependence on

Historic UNSC visit

The significance should not be lost sight of

TO have the Security Council members visit a country is indeed extremely significant, particularly when that is taking place in connection with a matter as important as the Rohingya crisis. Noteworthy is Myanmar relenting eventually to allow a UN visit to the Rakhine State; we would hope that the significance of the entire visit would be fully understood by our policy makers, and that the occasion would be fully utilised to carry our point home to the visiting team members.

Bangladesh is facing several challenges posed by the unprecedented influx of the Rohingyas, the humanitarian and security issues being the two most deleterious consequences of the influx. And nobody more than Bangladesh wants not only a quick return of the refugees to their country but also an enduring solution so that we would not have to face such a situation in the future. And it is not for Bangladesh alone to achieve that. Role of the UN, the UNSC particularly, is very crucial in this regard.

The views and attitude of the Security Council as a collective body towards a particular situation becomes inconsequential when some of its permanent members cast their veto against it. We are fully aware of the respective positions of Russia and China on the Rohingya issue. Every single proposition have so far been thwarted by their vote against firm actions against the Myanmar government to compel it to uphold international laws and conventions. Direct interaction has more impact than tomes of papers, briefing notes and documents circulated to UNSC members. Thus the visit should provide a very good opportunity for Bangladesh to change their mindset through direct interaction between their permanent representatives and our foreign office mandarins at the very highest level. But that might not be possible given that, coincidentally, the most important persons in the foreign office associated with policy making would be absent from the country, assisting the PM on her visit to Australia, during the period of the said visit. And we fear their absence during the very crucial UN visit might give the wrong signal to the UN delegation.

We believe a meeting with our highest level of the foreign ministry, before the UNSC delegation meets the Prime Minister, would give due weightage to the visit and have the desired effect. We urge the authorities to give this a serious thought.

Rising child rape incidents

End impunity

A number of human rights organisations have expressed concerns over rising incidents of child rape at a protest rally on April 25 at the central Shaheed Minar. According to their statistics, in just the last three months, as many as 99 children became victims of rape all over the country.

Our children are increasingly becoming more vulnerable, less protected and becoming easy victims of this sickening wickedness. As activists at the rally pointed out, this increase in the number of child rapes is in part due to the culture of impunity.

This worrying trend also warrants busting myths around child abuse. Contrary to popular belief, most child sexual abusers hail from close circles of the victim: an overwhelming majority of children who are sexually abused know their abuser. As such, most cases of child sexual abuse are suppressed due to social taboo or fear of stigma.

Media coverage on this issue is dominated by incidents that are committed by strangers—which constitute rather a little portion of the entire phenomenon. The real situation is likely to be far worse.

The authorities have to ensure that no perpetrator of child sexual abuse escapes justice. Also, social awareness must be raised among parents and children to become aware of these worms that live near them.

PROJECT ■ SYNDICATE

Why is Bangladesh booming?



KAUSHIK BASU

BANGLADESH has become one of Asia's most remarkable and unexpected success stories in recent years. Once one of the poorest regions of Pakistan, Bangladesh remained an

economic basket case—wracked by poverty and famine—for many years after independence in 1971. In fact, by 2006, conditions seemed so hopeless that when Bangladesh registered faster growth than Pakistan, it was dismissed as a fluke.

Yet that year would turn out to be an inflection point. Since then, Bangladesh's annual GDP growth has exceeded Pakistan's by roughly 2.5 percentage points per year. And this year, its growth rate is likely to surpass India's (though this primarily reflects India's economic slowdown, which should be reversed barring gross policy mismanagement).

Moreover, at 1.1 percent per year, Bangladesh's population growth is well below Pakistan's 2 percent rate, which means that its *per capita* income is growing faster than Pakistan's by approximately 3.3 percentage points per year. By extrapolation, Bangladesh will overtake Pakistan in terms of *per capita* GDP in 2020, even with a correction for purchasing power parity.

To what does Bangladesh owe its quiet transformation? As with all large-scale historical phenomena, there can be no certain answers, only clues. Still, in my view, Bangladesh's economic transformation was driven in large part by social changes, starting with the empowerment of women.

Thanks to efforts by the non-governmental organisations, along with more recent work by the government, Bangladesh has made significant strides towards educating girls and giving women a greater voice, both in the household and the public sphere. These efforts have translated into improvements in children's health and education, such that Bangladesh's average life expectancy is now 72 years, compared to 68 years for Indians and 66 years for Pakistanis.

The Bangladesh government also deserves credit for supporting grassroots initiatives in economic inclusion, the positive effects of which are visible in recently released data from the World Bank. Among Bangladeshi adults with bank accounts, 34.1 percent made digital transactions in 2017, compared to an average rate of 27.8 percent for South Asia. Moreover, only 10.4 percent of Bangladeshi bank accounts are "dormant" (meaning there were no deposits or withdrawals in the previous year), compared to 48 percent of Indian bank accounts.

Another partial explanation for Bangladesh's progress is the success of its garment manufacturing industry. That

trade unions from the region that would become Bangladesh, repealed it in 1958.

Thus, having been born without the law, Bangladesh offered a better environment for manufacturing firms to achieve economies of scale and create a large number of jobs. And though Bangladesh still needs much stronger regulation to protect workers from occupational hazards, the absence of a law that explicitly curtails labour-market flexibility has been a boon for job creation and manufacturing success.

The question is whether Bangladesh's strong economic performance can be sustained. As matters stand, the country's prospects are excellent, but there are risks that policymakers will need to take into



Bangladesh's economic transformation was driven in large part by social changes, starting with the empowerment of women. PHOTO: STAR

success is itself driven by a number of factors. One notable point is that the main garment firms in Bangladesh are large—especially compared to those in India, owing largely to different labour laws.

All labour markets need regulation. But, in India, the 1947 Industrial Disputes Act imposes heavy restrictions on firms' ability to contract workers and expand their labour force, ultimately doing more harm than good. The law was enacted a few months before the August 1947 independence of India and Pakistan from British imperial rule, meaning that both new countries inherited it. But Pakistan's military regime, impatient with

account.

For starters, when a country's economy takes off, corruption, cronyism, and inequality tend to increase, and can even stall the growth process if left unchecked. Bangladesh is no exception.

But there is an even deeper threat posed by orthodox groups and religious fundamentalists who oppose Bangladesh's early investments in progressive social reforms. A reversal of those investments would cause a severe and prolonged economic setback. This is not merely a passing concern: vibrant economies have been derailed by zealotry many times throughout history.

For example, a thousand years ago, the Arab caliphates ruled over regions of great economic dynamism, and cities like Damascus and Baghdad were global hubs of culture, research, and innovation. That golden era ended when religious fundamentalism took root and began to spread. Since then, a nostalgic pride in the past has substituted for bold new pursuits in the present.

Pakistan's history tells a similar tale. In its early years, Pakistan's economy performed moderately well, with *per capita* income well above India's. And it was no coincidence that during this time, cities like Lahore were multicultural centres of art and literature. But then came military rule, restrictions on individual freedom, and Islamic fundamentalist groups erecting walls against openness. By 2005, India surpassed Pakistan in terms of *per capita* income, and it has since gained a substantial lead.

But this is not about any particular religion. India is a vibrant, secular democracy that was growing at a remarkable annual rate of over 8 percent until a few years ago. Today, Hindu fundamentalist groups that discriminate against minorities and women, and that are working to thwart scientific research and higher education, are threatening its gains. Likewise, Portugal's heyday of global power in the fifteenth and sixteenth centuries passed quickly when Christian fanaticism became the empire's driving political force.

As these examples demonstrate, Bangladesh needs to be vigilant about the risks posed by fundamentalism. Given Prime Minister Sheikh Hasina's deep commitment to addressing these risks, there is reason to hope for success. In that case, Bangladesh will be on a path that would have been unimaginable just two decades ago: toward becoming an Asian success story.

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LETTERS TO THE EDITOR

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How Japan implements automation

With the advancement of technology, automation use is increasing all over the world. This is expected to continue in the upcoming years as well. It is also expected that by using artificial intelligence and the Internet of Things, we will be able to build machines and systems that can replace human labour in many fields. But just because it is possible, it does not imply that it should be done.

In Japan, they use automatic ticket reader machines at rail stations and buses, and ticket issuing machines at ramen restaurants. At health centres, automated blood pressure samplers and eye sight examiners are used. But at the same time, we notice there are highly trained staff waiting near machines at the rail stations, banks, bus entrances and health centres. This decision is important for two reasons. First, machines are machines—they can never replace the problem solving capability of humans. The second is even more important—that of providing opportunity of human interaction if needed. There are situations when the machine simply cannot provide the necessary service to a child or elderly person. We can also understand the importance of human interactions during emergencies. Thus automation is indeed desirable but it has to be implemented effectively and efficiently.

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