

Free polls sans free media?



SHAKHAWAT LITON

THEIR is a paradoxical situation that troubles us as we move closer to the next parliamentary election.

The Right to Information Act, 2009, unequivocally recognises the citizens' right to information by pronouncing in its section 4 that "every citizen shall have the right to information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with the information."

In case of exercising the franchise, people's right to know has been further consolidated in section 12 (3b) of the Representation of People's Order, 1972, which empowers citizens with the right to know about the parliamentary candidates before they choose their representatives. And presently, digital platforms like the websites of newspapers, online news portals and social media sites are considered among the most effective tools to disseminate information about the candidates across the country.

But the recently passed Digital Security Act (DSA) has come up with some provisions that pose a major threat to independent journalism ahead of, and during, the next election. The stringent restrictions imposed on digital platforms by the DSA will make independent journalism difficult. As a result, voters may be deprived of getting adequate information about the candidates and the activities of political parties contesting the polls.

Let's elaborate on the paradoxical situation. In 2005, a writ petition was filed with the High Court urging it to direct the

DSA VS PEOPLE'S RIGHT TO KNOW

- The recently passed Digital Security Act (DSA) has some provisions that may pose a threat to independent journalism ahead of, and during, the next election.
- The media serves as a useful tool to inform the voters of the activities and performances of candidates or political parties contesting an election.
- Some provisions of the DSA, the Editors' Council says, "end up policing media operations, censoring content and controlling media freedom and freedom of speech and expression."
- The Editors' Council identified at least nine sections of the DSA that it deemed dangerous.
- Section 25, for example, will directly affect independent journalism during the polls as any parliamentary candidate may file a case against a journalist/editor portraying their report on his/her activities as "false" and claim to feel "de-

- famed", "irritated", "humiliated" and "embarrassed".
- The biggest threat to journalism lies in section 43 of the DSA, which gives police unlimited power to arrest anyone without any warrant and to search offices, seize computers, computer networks, servers, and everything related to the digital platforms.
- The controversial provisions of the DSA also run counter to the Right to Information Act as people may not get adequate information about the candidates and political parties because of the media not taking any risk to run investigative reports on them.
- A 2016 High Court verdict says: "In modern democratic countries, citizens have a right to information in order to be able to know about the affairs of each political party which, if elected by them, seeks to formulate policies of good governance."

Election Commission to collect and disseminate among voters some information about parliamentary candidates, which would allow the voters to know about the candidates before they cast their votes. In response, the High Court delivered a landmark verdict which was later upheld by the Appellate Division that said it had found the prayer made in the writ petition to be legitimate and endorsed the petitioner's arguments that "voters are of utmost importance in parliamentary election and they have the right to elect or reject a candidate on the basis of their antecedents and past performance and whether they are competent to discharge the function as a lawmaker and represent the people in the House of the Nation."

As a reference was made to an Indian Supreme Court verdict in this regard, the HC in its verdict said the question of the right to know was also examined in the said judgement [of the Indian SC] and that it was held that people's right to know is inclusive

beyond the legal limit for electioneering, or spending money to buy votes or manipulate the local administration in its favour. And digital platforms like the websites of newspapers, online news portals and social media sites can quickly and effectively disseminate the information and basic facts about the candidates on a large scale. For this, the media must be allowed to work freely.

But unfortunately, some provisions of the DSA, as the Editors' Council has stated, "end up policing media operations, censoring content and controlling media freedom and freedom of speech and expression." The Editors' Council, known as Sampadak Parishad, in an extensive write-up published in major dailies on September 29, said: "The Act gives unlimited power to the police to enter premises, search offices, bodily search persons, seize computers, computer networks, servers, and everything related to the digital platforms. According to the Act, the police can arrest anybody on suspicion without a warrant and do not need any approval of any



authorities. It will create an atmosphere of fear and intimidation which will make journalism and especially investigative journalism virtually impossible."

The Editors' Council identified at least nine sections of the DSA that it deemed dangerous. Let's examine two of the sections to understand how it will affect journalism over the course of the election.

According to section 25 of the DSA, if any person using a website or any digital device deliberately or knowingly distributes any information or data that is attacking or intimidating in nature; or if a person publishes or distributes any information despite knowing that it is false to irritate, humiliate, defame, embarrass or discredit a person, then all such actions of the individual will be considered a crime. And for this, he or she may face up to three years in jail or a fine of Tk 3 lakh or both. A person will face up to five years in jail or a fine of Tk 10 lakh or both for committing the offence for a second time.

This provision will directly affect independent journalism during the polls. How? For example, if a parliamentary candidate in his affidavit conceals any information about his assets or other things, and a newspaper uncovers it through investigation, this will surely "hurt his image." He may claim to feel "defamed", "irritated", "humiliated" and "embarrassed" by portraying the report as "false."

The media may not feel comfortable publishing investigative reports on influential parliamentary candidates who amassed huge assets through unlawful means and abuse of power. The Editors' Council has rightly said that this (Section 25) "will directly affect all investigative reporting in the media. Such reports are usually about some irregularities performed by institutions and individuals. Corrupt people will use this law to intimidate journalists and media organisations and try to prevent publication of such stories on the pretext that the reports have attacked or intimidated them. Actually, every such report can be said to fall under one or more of the above categories and can be used to harass the media."

It's quite normal that no candidate will welcome the disclosure of unpleasant facts about himself or his past wrongdoings. He may take advantage of section 25 to file cases against journalists and editors to gag the media. He may influence the police to arrest the journalists immediately after the filing of the cases. How will journalists unearth hidden facts about a candidate in such a situation?

For the same reasons, the journalists may not even take the risk of exposing any unlawful activities of a political party, contesting the polls to influence the election. If a political party's high command feels that the party's "image is hurt" by a report—and if they feel "defamed", "irritated" and "humiliated", numerous cases may be filed

against the journalists and editor of a news platform across the country by the party's activists as anyone can sue anyone under section 25 of the DSA.

So, there is a possibility that the media may choose not to take any risk during the election fearing consequences under the draconian legal provision. Again, the voters will be deprived of having adequate information about the candidates and the parties contesting the election, and as a result, their right to know will be curtailed automatically.

The biggest threat to journalism lies in section 43 of the DSA, which gives police sweeping powers to arrest anybody without any warrant on suspicion, to enter premises, search offices, bodily search persons, seize computers, computer networks, servers, and everything related to the digital platforms.

The threat of arrest without a warrant will naturally prevent a journalist from doing his/her work. When police are given the power to arrest without a warrant, on mere suspicion, and to seize computers, computer networks, servers, and everything related to the digital platforms—then media freedom will be buried under this law, as feared by the Editors' Council.

According to the council, comprised of the country's leading editors, "the most dangerous side of this law is that since every newspaper and TV station works on digital system, by giving the power to confiscate a computer, a network of computers including servers, the law enforcing agencies have been given, in effect, the power to shut down a newspaper or TV station or a news portal by confiscating its computers, computer system, computer network and other equipment. Thus, without closing down a media outlet, this clause opens up the possibility of stopping the publication of a newspaper or the operation of a TV station by the law enforcing agencies."

Do we expect the editors of newspapers and online news portals and chiefs of TV stations to keep doing independent journalism during the election despite the risks of facing difficulty to continue operation?

The controversial provisions of the DSA run counter to the Right to Information Act. Due to the controversial provisions, people may not get adequate information about the activities of political parties including collection of election funds and spending the money for electioneering beyond the legal limit as the media may not take any risk to run reports on these activities. Hence, people's right to know about the political parties' activities during the polls may be curbed. People's right to know about the affairs of the political parties is immensely significant, according to a High Court verdict delivered in 2016.

"In modern democratic countries, citizens

have a right to information in order to be able to know about the affairs of each political party which, if elected by them, seeks to formulate policies of good governance," said the HC verdict delivered in a case related to making public the annual audit reports submitted to the EC by the registered political parties.

"Ignoring the people's right to know, keeping them in dark and playing hide-and-seek with them in a democratic country like ours where all powers belong to the people and their mandate is necessary for ruling the country, no registered political party can be allowed to take the stand that the audited statements submitted to the Election Commission were 'secret information,'" announces the HC in the judgement.

But the controversial provisions of the DSA have sparked fears that the media is not free from the risks of facing cases under section 25 and arrest of journalists without a warrant under section 43 that pose a threat to media freedom even if it runs investigative reports on corruption or abuse of powers or the use of black money to influence the polls by individuals or parliamentary candidates or political parties, by obtaining information under the RTI act.

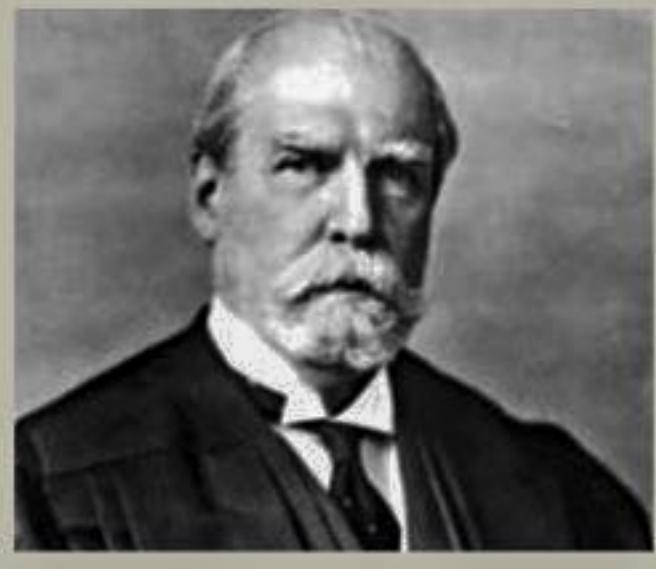
In the above discussion, we have observed how the voters were empowered with the right to know about the parliamentary candidates and political parties contesting the polls—and how some provisions in the Digital Security Act appeared as a threat to free media ahead of the parliamentary polls. What is the meaning of an election and democracy if the voters are not well-informed about candidates and the political parties contesting the polls?

Let's recall an Indian Supreme Court verdict that beautifully explains the significance of the awareness of voters. In Secretary, Ministry of Information and Broadcasting, Government of India and Others case judgement in 1995, the apex court said: "A successful democracy posits an 'aware' citizenry. Democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless."

The current paradoxical situation in Bangladesh raises some questions: does the State want to keep voters uninformed about the parliamentary candidates and activities of the political parties contesting the polls? Can an election be held in a free and fair manner if votes are cast by uninformed voters? Can voters be informed properly about the candidates without a free media? To sum it up: can a free and fair election be held without having a free media? The answers to all these questions are blowing in the wind.

Shakhat Liton is Planning Editor, *The Daily Star*.

QUOTEABLE Quote



CHARLES EVANS HUGHES

(1862-1948)

Former Chief Justice
of the United States

While democracy must have its organisations and controls, its vital breath is individual liberty.

CROSSWORD BY THOMAS JOSEPH

ACROSS

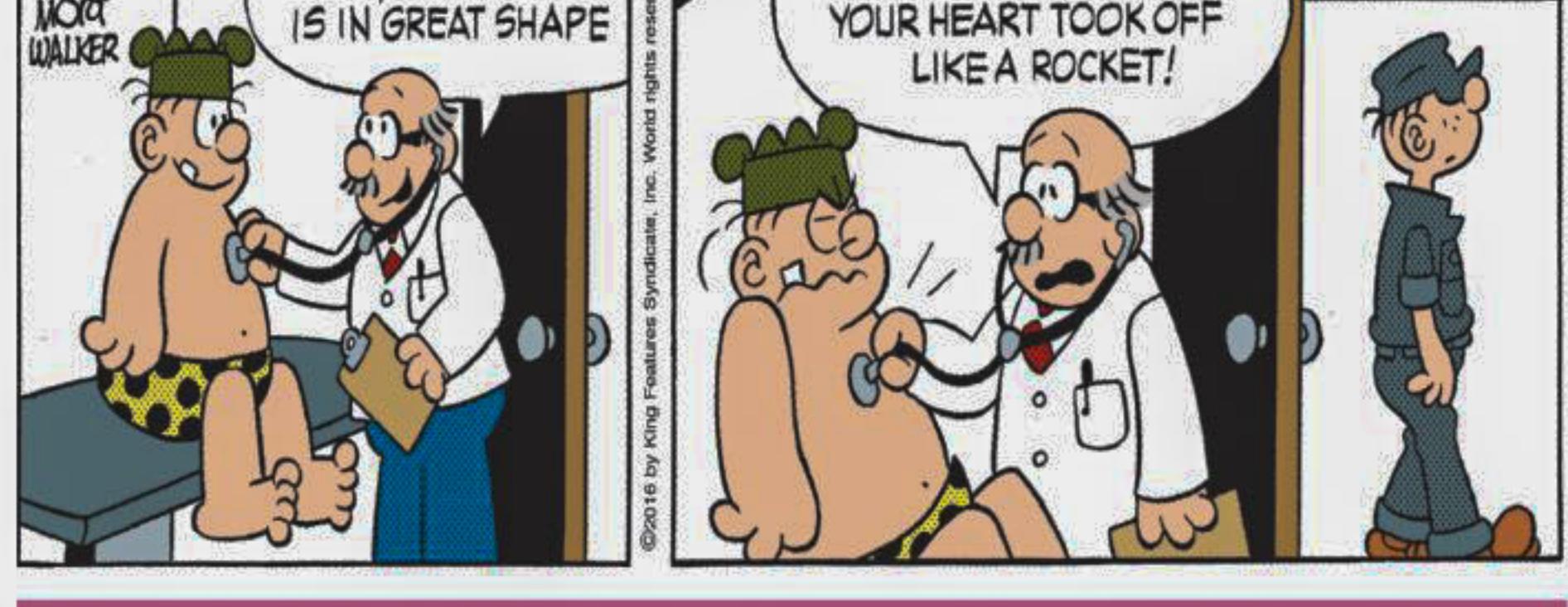
- 1 Ice cream unit
- 6 Plumbing piece
- 10 "It's a Wonderful Life" director
- 11 Sports setting
- 13 Chemically inactive
- 14 Sides in turf wars
- 15 Pine's kin
- 16 Relaxing retreat
- 18 Use a chair
- 19 Pinot grigio, for one
- 22 Oxygen: Prefix
- 23 Finished
- 24 Pretentious people
- 27 Attire
- 28 Window section

DOWN

- 29 Write hastily
- 30 Sub with salami
- 35 Relieve (of)
- 36 Binary base
- 37 Pool unit
- 38 Steer clear of
- 40 Singer's concern
- 42 Blood fluid
- 43 Totalled
- 44 Beholds
- 45 Must have
- 31 Checkout line count
- 32 Omit phonetically
- 33 Entered the marathon
- 34 Newspaper essays
- 39 Word on a bill
- 41 Keats poem



BEETLE BAILEY



BY MORT WALKER



BABY BLUES



BY KIRKMAN & SCOTT

Write for us. Send us your opinion pieces to dsopinion@gmail.com