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Free media must thrive for the benefit of all

State responses to disinformation should not be detrimental to human rights

WE welcome the statement of the UN special rapporteur for freedom of opinion and expression, which confirmed many of our concerns about how responses by states and companies to disinformation in many countries in Asia have been "problematic", "inadequate" and "detrimental to human rights". Irene Khan made the comments while placing her report at the ongoing 47th session of the UNHRC in Geneva. She presented an accurate picture of how false or manipulated information—interacting with political, social and economic grievances of a populace—is being used to polarise society and fuel public distrust. Of equal concern are the existing responses to combat such information, which, far from succeeding to do it, have rather contributed to undermining freedom of expression, endangering human rights, democratic institutions, etc.

We have seen both ends of the disinformation spectrum play out in a cyclic manner in Bangladesh, with free media being its biggest casualty. We have seen how, instead of allowing free media to thrive, which could effectively help fight disinformation, the authorities have used vague and overly broad "false news" laws to clamp down on dissent and criticism of the government. The dreaded Digital Security Act remains the headline instrument used to serve this purpose. Various coercive measures and tactics have also been used to obstruct free flow of information. According to Ain o Salish Kendra (ASK), there have been some 111 instances of journalist harassment between January and May this year. Many people have been jailed, tortured, and intimidated in various other ways, simply for being critical of the powers that be. This is but symptomatic of the general lack of safeguards for freedom of expression and opinion in the country. The cumulative effect of this environment is fear and uncertainty, as people don't know whether expressing even legitimate grievances will have consequences.

While disinformation is certainly not a new phenomenon, digital technology has clearly added a very important dimension to it, as it has enabled pathways for disinformation to be created, disseminated and amplified on a scale never seen before. This is a real threat, and the government has a responsibility to combat it. But as experts have repeatedly said, the path to it is not overly restrictive regulation of internet platforms or repressive laws and measures. Such tactics haven't worked in the past, and will not either in the future.

Instead, as Irene Khan stressed, "diverse and reliable information, digital literacy, smart social media regulation and free, independent and diverse media are the obvious antidote to disinformation." Everyone has a responsibility in this regard. We must all support investigative journalism, reduce financial incentives for fake news, and improve digital literacy among the general public. It is also important for news organisations to call out fake news and disinformation without legitimising them. But most importantly, the government must allow free media to thrive. Without a free and independent media, no measure or policy against disinformation will work.

Laid off jute workers in dire situation

Govt must help pay their arrears and revive the jute industry

ACCORDING to a DS report published yesterday, over 31,000 temporary and substitute jute workers are facing acute economic hardship after losing their jobs following the closure of nine state-owned jute mills in the Khulna-Jashore industrial belt in July, 2020. While many workers, mostly male, are now earning meagre livelihoods by pulling rickshaw-vans, the women workers have no earnings, since they cannot even get jobs as domestic workers due to the pandemic. Although the jute mill authorities promised these workers that they would be paid their due wages within two months, this has only been partially implemented in the last one year. The Bangladesh Jute Mills Corporation (BJMC) has been focusing on paying the arrears of permanent workers, but substitute and temporary workers have been pushed to the back of the list. According to its officials, the arrears of substitute workers roughly amount to Tk 112 crore but there is no estimation for temporary workers yet.

The situation regarding the jute industry is so dire that the government had to close all of its jute mills on July 1, 2020 due to heavy financial losses and excessive production costs. During the shutdown, the government had said that a fund worth Tk 5000 crore would be allocated for all jute mill workers who had lost their jobs as a result. This means that on average, each jute worker was to receive Tk 13.86 lakh. The government also added that these workers would be trained and given priority once the jute mills are "modernised" and "reopened" under public-private partnerships or some other joint ventures. But none of these assurances have seen the light of day as of yet.

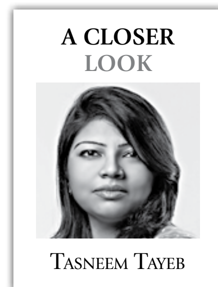
Meanwhile, the jobless workers are passing their days in hunger and uncertainty. The government must allocate the funds to pay them their dues and benefits while making good on their promises, which will involve modernising the jute industry and re-training the workers so that they can be employed again. Reviving what was once one of the most lucrative industries in the country will require innovative technologies and marketing strategies. The government can start by replacing all plastic shopping bags with jute bags, which are far better for the environment. Investments in research in developing innovative jute products have to be made to meet market demands.

The government can no longer ignore the lives and livelihoods of thousands of workers who have families to feed. Reviving the jute industry should be on its priority list. This will not only allow these workers to survive, but will also revitalise an industry that has huge economic potential.

COVID-19 PANDEMIC

What's wrong with our oxygen supply?

A CLOSER LOOK



TASNEEM TAYEB

ABDUL Matin, retired headmaster of Badshail High School, died at Mohammad Ali Hospital in Bogura on Friday morning. He was among the seven Covid-19 patients who died at that hospital within a span of 13 hours (from 8pm Thursday to 9am Friday), allegedly due to lack of high flow nasal cannula, which is essential in providing oxygen to critical Covid-19 patients. The hospital, designated for treatment of Covid patients, has only two high flow nasal cannulas, although it is supposed to have four (two of which could not be used). The DGHS, despite being informed of the situation earlier, did not respond.

The deaths of Covid-19 patients due to lack of oxygen supply or unavailability of high flow nasal cannulas is not unique to Mohammad Ali Hospital. The media has reported the deaths of five patients in Satkhira Medical College Hospital, allegedly due to an oxygen crisis. The hospital was supposed to have 38 high flow nasal cannulas, according to DGHS. However, hospital authorities said they had only 30 functioning cannulas.

This discrepancy between DGHS figures of available high flow nasal cannulas in Covid-designated hospitals and their actual availability was revealed by a *Prothom Alo* report titled "Discrepancies in distribution of oxygen supply equipment", published on July 3, 2021. The report suggests that while DGHS claimed that 200 high flow nasal cannulas were available at Narail District Sadar Hospital, in reality, there are only two high flow nasal cannulas at the hospital, neither of which are functional.

In a similar case, the DGHS says there are three functioning high flow nasal cannulas in Naogaon Sadar Hospital, while in reality there is none. The situation is the same in Bangamata Fazilatunnessa Mujib General Hospital in Sirajganj and Natore Sadar Hospital, where there are no high flow nasal cannulas, while DGHS figures say there is one in each of these hospitals.

In the capital itself, some hospitals where Covid-19 patients are being treated do not have high flow nasal cannulas. Dhaka Infectious Disease Hospital in Mohakhali, for instance, has been treating Covid patients since last year. However, they were allocated only two high flow nasal cannulas—that too only recently—which they haven't yet received.

Among other Covid hospitals in Dhaka, National Institute of Kidney Diseases and Urology (NIKDU) and National Institute of Neurosciences and Hospital (NINS), both in Sher-e Bangla Nagar, do not have high flow nasal cannula as per a list shared by the DGHS on its website.

"High flow nasal cannulas are not required in every hospital. Hospitals which are equipped with dedicated ICU and HDU might not always require high flow nasal cannula, especially if they have special oxygen supply. If a patient can be given proper HDU support, then high flow nasal cannula might not be required," said DGHS spokesperson Nazmul Islam. When asked when these hospitals might get high flow nasal cannulas, he suggested they will be provided based on demand from hospitals. But the problem is, Dhaka Infectious Disease Hospital, NIKDU and NINS do not have ICU/HDU beds. So what happens to critical Covid-19 patients there? If the data published by DGHS on these hospitals are not correct, then this is another symptom of the inaccuracies and inadequacies that have characterised our Covid response.

It is important to understand here why high flow nasal cannulas are indispensable in treating critical Covid-19 patients. They can supply 60-70 litres of oxygen per minute to patients, which is crucial to those at a critical stage, as against the meagre 15 litres of oxygen that a non-breather mask can supply.

Despite its importance, there remains uncertainty over when all Covid-designated hospitals will have sufficient high flow nasal cannulas to treat critical patients. "We have been discussing this for sometime now, but no one seems to be taking this seriously. Every hospital treating Covid-19 patients should have high flow nasal cannula. However, that is not the case," said Prof Dr Nazrul Islam, former VC of BSMMU, also a member of the National Technical Advisory Committee on Covid-19.

In view of the spiralling Covid-19 cases in the country, Prof Dr Nazrul Islam further suggested, "We need to assess our total need of oxygen. We needed overproduction after India stopped export of oxygen to Bangladesh. But we don't know if that has happened. The government needs to be fully transparent about the needs and local production capacity of oxygen to meet demand. In June 2020, the Prime Minister directed that ICUs should be set up in every district hospital, but even now ICUs have not been established in 37 district hospitals. Now my point is, once the Prime Minister gives an instruction, what happens after that? Who ensures that these directives are being executed? There should be an investigation into why this directive has not been implemented yet, because lives are being lost due to this."

A patient with Covid-19 symptoms waiting for treatment in front of Shaheed Sheikh Abu Naser Specialised Hospital in Khulna. PHOTO: HABIBUR RAHMAN

"It should also be investigated properly if there are now sufficient high flow nasal cannulas available in other Covid treatment hospitals," Prof Islam added in light of the incident at Bogura's Mohammad Ali Hospital.

In June 2020, ECNEC approved two projects to upgrade health facilities to fight the pandemic, for which Tk 2,492 crore was approved. The World Bank and Asian Development Bank (ADB) had each committed to fund the projects. The Covid-19 Emergency Response and Pandemic Preparedness Project, involving Tk 1,128 crore, was supposed to upgrade heath facilities to detect and treat Covid-19.

The second project, involving Tk 1,365 crore, was called the Covid-19 Response Emergency Assistance. It was meant to strengthen the government's capability to contain the pandemic. A report published by this daily quoted a planning ministry official saying that essential medical equipment will be procured through the fund.

The World Bank was supposed to give Tk 850 crore to support the former project, while ADB was meant to provide Tk 850 crore for the latter. So, what happened to these two ECNEC projects? The Prime Minister had stressed on quick implementation, with specific suggestions to ensure oxygen supply to district hospitals. But the misery of Covid patients in the districts in recent weeks due to lack of healthcare facilities, including oxygen, has been only too obvious. Who should be held responsible for this?

The Health Services Division has put up a shoddy performance, not utilising even one-fourth of the ADP allocation in the first nine months of the fiscal year. Of the allocated fund of Tk 11,979.34 crore, the HSD could only utilise 2,515.54 crore—around 21 percent of its ADP allocation—between July 2020 and March 2021.

Why this apathy and negligence? There are budget allocations and ECNEC-approved capacity development projects, but where is the progress? While it is a given that fighting Covid-19 is not a task that can be pulled off overnight, 15 months is a good enough time to strengthen the basic infrastructure and ensure treatment of Covid-19 patients, which is their basic human right.

With regard to the mismatch in DGHS data of available high flow nasal cannulas in Narail, DGHS spokesperson Nazmul Islam informed this writer that it had been a case of misunderstanding. Two hundred nasal cannulas had been sent to Narail District Sadar Hospital, which the authorities thought were high flow nasal cannulas. But if that was the case, why was this not clarified and rectified immediately? At which end did the communication gap occur?

The health ministry and its wings have made enough "mistakes" and "errors" in managing Covid-19, and it is high time the concerned authorities assess the performance of this ministry, its departments and its officials to identify if there are flaws in the system that need to be flushed out, or if the faults lie at individual levels, in which case, the culprits should be held accountable for their failures. Whatever the case, it is a generational challenge we are fighting—there are hundreds and thousands of human lives that are at stake here.

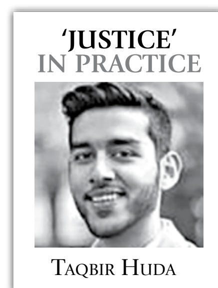
The price for falling short—if lives do indeed matter—will be steep.

Tasneem Tayeb is a columnist for *The Daily Star*. Her Twitter handle is: @tasneem_tayeb

The long road to the repeal of Section 155(4)

Will questions about a rape survivor's 'character' finally be banned in court?

'JUSTICE' IN PRACTICE



TAQBIR HUDA

ON June 30, 2021, the law minister announced in Parliament that the government will finally be introducing legislation to remove Section 155(4) of the Evidence Act 1872—which has long allowed defence lawyers to raise questions about a rape complainant's character, and therefore moral police them in the name of cross examination in court.

The Evidence Act, 1872 is the main law on admissibility of evidence in court proceedings. Section 155 of the Evidence Act specifies four situations where the credit or reliability of a witness may be tarnished through evidence. Section 155(4) states that "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character". Since there is no legal definition of what constitutes a "generally immoral character", this provision can and has been used by defence lawyers to moral police any and all rape complainants, with the judge then being left to decide whether the evidence proves the rape complainant was of a "moral" or "immoral" character.

Section 155 deals with three other situations where a particular witness can be considered to be unreliable: where a witness is believed to be "unworthy of credit" by other persons who testify, where a witness has received a bribe or other corrupt inducement, and where a witness has made contradictory statements in the past. Therefore, in lumping a rape complainant together with these types of witnesses who have allegedly done something to justify being treated as being unreliable, section 155(4) has the effect of creating a negative presumption on rape complainants by default. Moreover, while there is no offence known as "attempt to ravish" in our existing laws, since this term is included in Section 155(4), it could be argued that it not only applies to the offence of "attempt to rape" but also to other forms of sexual offences not amounting to rape, such as "sexual oppression" (under section 10 of the Nari O Shishu Nirjaton Domon Ain 2000).

The discriminatory nature of Section 155(4) becomes clearer when one considers the fact that generally, the law treats negative character evidence to be irrelevant by default, even for the accused (Section 54, Evidence Act). On the other hand, section 155(4) has the reverse effect by making negative character evidence admissible against a woman alleging rape, even though she is the person seeking justice for an offence committed against her.

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Therefore, the announcement to repeal Section 155(4) came as music to the ears of those who have been pushing for this reform for several years, holding endless seminars, protests and advocacy dialogues to make the demand heard.

Between 2013 and 2018, BLAST held a series of advocacy dialogues to highlight the use of character evidence in rape trials. In 2015, it published a Bangla report titled "*Shotir-e Kebol Dhorshon Hoi*" (Only the Chaste are Raped), an ethnographic study authored by Fatama Sultana Suvra, highlighting the seemingly impossible threshold of morality set by the use of Section 155(4) in rape trials. Ensuring the inadmissibility of character evidence in rape trials arose as a key demand in the Rape Law Reform Now campaign initiated by BLAST in 2018. It was echoed by various stakeholders and included in the 18 point declaration issued at the National Conference on Rape Law Reform, held on December 8, 2018. In taking this reform agenda forward, in 2019, BLAST published a research report titled "Between Virtue and Immorality: Why Character Evidence Must Be Prohibited in Rape Cases" to outline the damaging impact use of character evidence has in rape cases based on analysis of reported Supreme Court judgments on rape. Empirical data about a particular injustice is often much more difficult to dismiss or deny. This report also included extensive reform proposals relating to the Evidence Act, based on examples of legal reform conducted in India and Pakistan from 1980 onwards—to show that the two countries, which also inherited the identical Evidence Act 1872 from British colonisers, had done away with Section 155(4) and made amendments to their law of evidence to improve justice for rape, but Bangladesh still had not.

BLAST then submitted this report and reform proposals to Saber Hossain Chowdhury MP on September 3, 2019, who showed keen interest in advancing this reform. On November 25, 2019, it was also sent to the law minister's office for their consideration. In January 2020, it was submitted to Gloria Jahan Sarker MP, Member of the Parliamentary Standing Committee on Ministry of Law, Justice and Parliamentary Affairs. She generously agreed to speak as a special guest at BLAST's research report dissemination seminar held on January 20, 2020 at Chayanaut Auditorium, where she expressed her desire to move the fight for reform forward.

In October 2020, the Rape Law Reform Coalition, comprising of 17 leadings rights organisations, with BLAST as its Secretariat, issued the 10-point demand on rape law reform, which specifically included repeal of Section 155(4). This 10-point demand was disseminated widely to various lawmakers and key stakeholders at the governmental and non-governmental levels.

Advocacy for legal reform is a lengthy, tiresome and thankless endeavour. Therefore, the purpose of detailing the above context is twofold.

Firstly, it is to show that these reforms do not happen overnight. Rather, it often takes several years of persistent, collective advocacy for the simplest demands to be heard and acted upon—even something as simple as saying a rape survivor's character should not be the decisive legal question in a rape trial, but that it should be completely irrelevant.

Secondly, and on a more positive note, it is to give encouragement to those involved in this arduous task of research and advocacy for legal reform. Sometimes, that piece of research you tirelessly spent time on but were told would "never change anything", can in fact help produce a tangible result. Sometimes, the hours, weeks and months you spent on arranging stakeholder dialogues but were told they are "pointless", can in fact do some good. Sometimes there is some light at the end of the tunnel.

Therefore, we should keep the fight for reform going—especially since there is so much left to change. At the same time, we should be careful to bear in mind that repeal of Section 155(4) alone is not enough. For victim blaming to be truly eliminated in the courtroom, rape shield laws must also be introduced, which extend specific protection to rape complainants.

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