



RIGHTS WATCH

On the disproportionate use of force on protests

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The reason we have law enforcement agencies in modern states is to protect the rights of the citizens. However, when disproportionate force is used against the citizens by states using these agencies, the very same rights are violated. Below is an analysis keeping the quota reform movement in the background.

Freedom of assembly and freedom of expression are fundamental rights as per our Constitution under articles 37 and 39, and also under our international obligations e.g., the International Covenant on Civil and Political Rights. Restrictions may be imposed on such rights but they have to be reasonable, objective, and proportionate.

Under section 128 of the Code of Criminal Procedure 1898 (CrPC), the law enforcement agencies may disperse an assembly by force. However, the amount of force needs to be proportionate to the circumstance of each particular case (*Queen Empress v*

Subba Naik And Ors, 1898). Evidently, if a protester is shot (even with a rubber bullet) when he/she is keeping his/her arms open expressing anger towards the inhumane response of the law enforcement, it cannot be regarded as a proportionate response.

The law enforcement agency may argue that they are justified in using such force as self-defence. However, the fourth paragraph of section 99 of the Penal Code 1860 (PC) clearly emphasises the requirements of necessity and proportionality. Especially when an unarmed or lightly armed person is killed, it is deemed to be disproportionate (*State of U.P. v Ram Swarup*, 1974). Furthermore, it needs to be remembered that right of self-defence is not a right of the attacker but rather of the victim, which does not apply to the law enforcement agencies in most situations.

Additionally, police may use force to effect arrest of the protesters, which is allowed under section 46 of the CrPC. However, judicial interpretations of

this provision again shows that the actions of the police need to comply with the requirements of necessity and proportionality (*Dakhi Singh v State*, 1955). Section 46(3) also prohibits the causing of death while using such force unless the person is accused of an offence punishable with death or imprisonment for life. It needs to be noted that the Police Regulations Bengal 1943 (PRB) in regulation no. 154, 155 mention similar requirements.

Next, coming to the question of criminal liability and legal defences, criminal charges under sections 302, 304, 323, 325, etc of the Penal Code can be brought against law enforcement officers for causing deaths and injuries to peaceful protesters. Section 132 of CrPC makes the job difficult as it restricts the option to initiate prosecution against such person without the sanction of the government. Even if prosecution is initiated against the responsible officers, the same provision mentions the 'good faith' and 'superior order' defences. As for the good faith defence,

it requires due care and attention, and as for the 'superior order' defence, it cannot be pleaded when the order is manifestly illegal.

Moreover, the legal defences under sections 76 and 79 of the PC of 'believing in good faith to be bound by law' and 'believing in good faith to be justified by law' also do not apply when the law enforcement agencies could not have reasonably believed that they were obligated to or justified in using such disproportionate force that result in deaths (*Jahir Mia and Islam Howlader v State* 13 DLR 857).

But only putting all the blame on the subordinate police officers is unfair and ineffective. The superior police officers who enable and allow such acts can be held responsible as well as abettors. The legal defences for them should fail when the acts that cause large number of deaths and injuries are not the result of a mere mistake of fact in good faith but rather utter disregard to the principle of proportionality.

At times, attacks and use of force

be fall on protesters from non-state individuals or political activists. Needless to mention that there is absolutely no legal justification of such attacks when attackers are not part of the law enforcement force and have no authority to interfere with protests and assemblies. Furthermore, attacks, killings and human rights violations often also come as results of continuous dehumanisation, incitement to violence, and acts of abetment in the online sphere. Such acts clearly constitute offences under sections 25, 31, etc. of the (infamous) Cyber Security Act 2023 and other laws.

Lastly, in addition to criminal remedies, constitutional remedy is also available under Articles 44 and 102 of the Constitution. Indeed, for violation of Article 32 (fundamental right to life and liberty) the state has been asked to provide compensation in an array of cases.

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FOR YOUR INFORMATION

The new quota scheme

LAW DESK

Positive discrimination or affirmative action schemes are permitted under articles 28(4) and 29(3) of the Constitution of Bangladesh. The preamble to the constitution envisions an egalitarian and exploitation-free society where there is fundamental freedom and dignity.

Indeed, quota reform is a policy decision, however, policy decisions are always to be guided by the fundamental principles enshrined in our constitution. In order to do 'complete justice' under the tenets of article 104 of the constitution, the Appellate Division (AD) of the Supreme Court went on to resolve the contention and also recommend specific percentages of quotas, while acknowledging the government's prerogative to revise the same as/if needed. After the AD overturned the decision of the High Court Division, the government circular was made in the same light. The new quota scheme is applicable to all government jobs across all grades.

As per the circular, this new quota scheme is applicable to all governmental, semi-governmental, autonomous, self-governed and statutory authority (*shoshashito* and *shongbidhiboddho kortripokkho*). Overall, seven per cent quotas are now reserved within the scheme. Five per cent quotas are reserved for the children of freedom fighters, martyred freedom fighters, and Beerangonas. One per



cent quotas is reserved for the indigenous community and one per cent for persons with physical disabilities and 'Tritiyo Lingo'. The circular also says that if the quota seats are not filled, the seats will be filled from people who have no quota. Except this seven per cent, rest of the seats are now open for all based on

merit. The new circular will come into effect immediately.

While this is certainly a welcome move on part of the government, we ought to still reflect on how things could pan out, had there been meaningful dialogue between the government and the protesting students early on.

RIGHTS ADVOCACY

Internet outage and OUR RIGHTS

At present, internet is no more a luxury, rather a day-to-day necessity for our survival. Internet not only keeps us in touch with the world at large, it also works as a medium to exercise an array of civil and political rights of the citizens (ranging from freedom of speech and expression to the right to use and impart information).

Our Constitution enshrines a range of civil and political rights which are subject to reasonable restriction. The international human rights instruments also are mindful to the necessity to put reasonable restrictions on the exercise of rights and freedoms. However, as per the cutting-edge jurisprudence on human rights, such restrictions cannot be imposed in a way so that the 'minimum core' of concerned rights get infringed.

Evidently, the digital divide makes it a challenge for everyone to use internet on par. However, its absence affects almost everyone in a globalised and internet-based economy where transportation of basic goods and services depend on how internet function. Moreover, internet outage tends to have a disproportionate impact on people who are otherwise marginalised and depend on uninterrupted services of internet for basic monetary transactions to live on.

It is true that internet may also work as a medium for spreading mis- and disinformation. However, it is important that any measure taken to tackle such spread is necessary in a democratic society and is informed by fundamental human rights of all. Furthermore, any measure to tackle such spread also has to be proportionate to the risk or threat sought to be evaded. We also need to be mindful that absence of internet too may create a convenient breeding ground for mis- and disinformation to spread.

In sum, internet has its own share of boons and banes. However, in today's world, internet plays a major role in keeping necessary services accessible. In any case, the absence of internet strikes at the root of many of our lives, livelihood, and exercise of rights.

