

LAW AND SOCIETY

People's understanding of 'Law' during the uprising: A sociolegal analysis

This much is clear - law has very much become part of the everyday conversations. This surge in people's interest in law makes it an apt time for dismantling the colonial legal structures. We need to decolonise our laws to repair the damages done by the previous regime and decolonise our minds to become a truly non-discriminatory, inclusive society. This is something I hope the interim government would consider.

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The July uprising marks a significant event for our national history not only as a moment of political introspection, but also in terms of appreciating people's perception and understanding of law as a lived experience. The events offer a rich case study of observing people's perception and understanding of law - popularly termed as legal consciousness in sociolegal studies. Observing the popular use of law during the protests can help us understand how law in books differs from law in context, law in society, law in everyday reality (Chua and Engel, 2019).

In this piece, I will discuss three aspects of legal consciousness manifested in the uprising: 1. That the chaos of revolution exposed law as both an anti-people force and a useful instrument for demanding justice, 2. That use of legal language in popular discourse made people agents of producing alternative legalities to counter state-sponsored narratives of law, and 3. That people's attitude throughout the process reflects the colonial violence heavily embedded in people's psyche.

Ewick and Silbey's groundbreaking research (1998) presented three types of legal consciousness: 'before the law', 'with the law' and 'against the law'. All the three manifest in this movement. 'Before the law' consciousness characterises law's objective to attain justice. The student protest initially started on grounds of equality and fairness in public service opportunities. As the government remained dismissive of students' demands, the movement presented itself as a fight for anti-discrimination, referring to constitutional promises. As the government remained dismissive of students' concerns and became tone deaf to the gross human rights violations by law enforcement agencies, law appeared as a brute power, exercised unpredictably and resisted by citizens. The cracks appearing in state power put people in 'against the law' legal consciousness.

As the state crackdown caused an overwhelming public outcry, social media flooded with posts condemning the all-out state violence using a sharp legal tone. Until the July uprising, law and legal terminologies did not broadly feature in the daily language people use. Understandably, most of the protesters and netizens were not legal professionals, therefore their use of legal terms is not always theoretically sound, but once you move beyond a doctrinal lens, it provides you with a rich example of legal consciousness. Words like discrimination, citizens, legitimacy, human rights, war crimes, genocide, justice dominated digital discourse. Not just the educated urban bourgeoisie, but also the mass people



(including those who live hand to mouth) were coopting the legal terms to use Facebook updates, posts, tweets, photo captions into legal strategies. This is a ripe example of 'with the law' legal consciousness, where individuals use law as a tool to their advantage.

People can and do rely on legal authority even when they know little or nothing about formal law (Sarat and Kearns, Law in the Domains of Culture: 1995). Many people while demanding an immediate government step down were not sure what would happen next. Nonetheless, in demanding so, people became agents of alternative legalities and actively created rules that confronted state law. These legalities manifested through disobeying state order of curfew, violating the 2012 Anti-Graffiti Act by claiming back freedom of expression. Once the interim government was formed, academics have examined the validity through doctrinal analysis. However, the legitimacy of the interim government can also be explained using a sociolegal

approach which considers law as a subclass of legitimate social order.

The above discussion shows that sociolegal framework of legal consciousness provides a useful analytical framework to understand what factors influenced people's behaviour and demand for an alternative order during the uprising. Throughout various phases of the movement, divergent ideas of law appeared for people to make sense of their reality. Everyone appreciated law from their subjective lived experience. For the state law enforcement agency, law meant their right to self-defence even if that took excessive use of force. For the protesters law was reclaiming the power of the republic that belonged to the people. For those shot down, perhaps law meant a misplaced trust in the state that the police and fellow citizens would not harm them. For the family members of the killed, law is most likely a false promise made by the state. How these conflicting perceptions reconcile in the coming

days is much dependent on the ensuing chaos that is continuing.

I want to wrap up the discussion by touching upon the colonial influences on people's mindset. Given the state's repressive use of law, a wide public mistrust existed against domestic legal mechanisms. In attempting to remedy that mistrust, pockets of individuals appealed to international media and influencers, and some groups of diasporas made petitions to their local counsellors, MPs, senators, and preparing to bring charges against Sheikh Hasina before international judicial bodies like the ICC. While lack of trust in domestic legal mechanism is understandable, these groups' preference for Western/Global North intervention exposes the latent colonial mindset that continues to treat the West as 'saviours' (Mutua 2001). Understanding this mindset is crucial for meaningful change. Cosmetic changes in police uniforms and logos are being considered as a change towards a clean slate. But

such superficial reform cannot rectify Bangladesh's suppressive legal culture which is now continuing in the guise of vengeance, mob justice, moral policing of dissenters (e.g. trifling the attacks on minorities while focusing more on Indian media's overexaggerations/suppressing indigenous people's rallies in the CHTs). These actions are 'othering' citizens and continuing the colonial violence.

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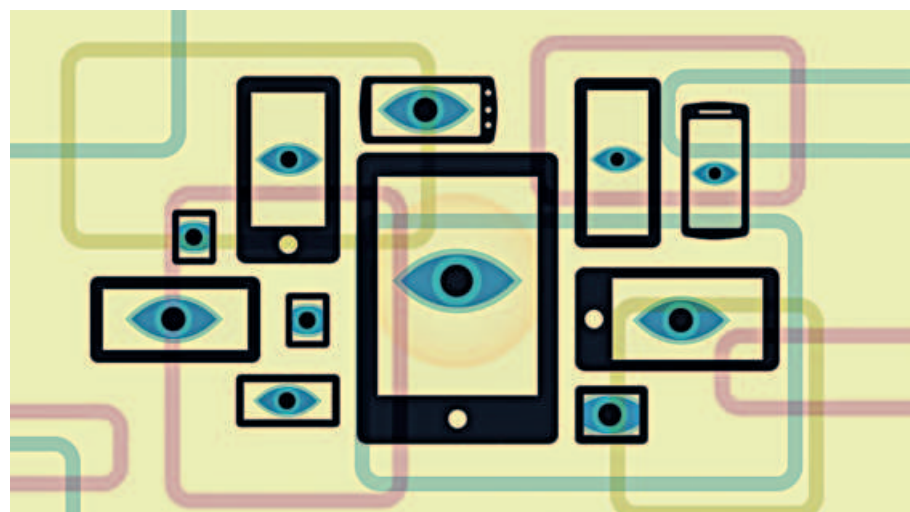
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RIGHTS WATCH

Privacy concerns over phone searches

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During the quota reform movement in July and early August, reports emerged of police conducting unjustified phone searches and making arrests. In addition to targeting protesters, students and pedestrians were also subjected to such searches and interrogations at numerous checkpoints. Authorities invariably defended these actions as necessary for maintaining national security and public order. However, such measures, lacking appropriate legal justification, raise serious concerns about invasions of right to privacy and potential abuses of power. Indeed, when the law enforcers resort to such searches, it trickles down



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to the private actors (e.g., various political activists) as well, creating a false sense of authority and justification in doing what is prohibited to quell the opposition.

The right to privacy is a universally recognised fundamental human right. Article 12 of the Universal Declaration of Human Rights (UDHR) asserts, "No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his

honor and reputation. Everyone has the right to the protection of the law against such interference or attacks." Similarly, Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor or reputation."

In Bangladesh, the right to privacy is

constitutionally protected under Article 43 of the Constitution of Bangladesh, which guarantees that every citizen has the right to the privacy of their correspondence and other means of communication.

Furthermore, the otherwise infamous Cyber Security Act (CSA) 2023 allows a police officer of at least the rank of inspector to seize computers, networks, and data if there is suspicion of a crime under the CSA. The Information and Communication Technology Act, 2006 (ICTA), and the Bangladesh Telecommunication Regulatory Act, 2001 (BTRA), provide additional legal frameworks for data and communication inspections. The Bangladesh Police Act of 1861 and the Code of Criminal Procedure (CrPC) provide law enforcement with certain powers to maintain public order and investigate crimes. However, these laws require that searches and seizures be conducted based on reasonable suspicion and often necessitate a warrant issued by a competent authority.

In the case of *Mrs. Nilufar Hossain v Bangladesh (2024)* it was opined that, "... to have fundamental right to privacy, for example, is not just to have a claim against the State that it refrains from interfering with one's privacy interest,

say through searches and seizures, but also an entitlement to positive state action directed towards the protection of one's privacy interests against the interference of third parties, namely through the law of defamation, data security legislation and so forth."

The Supreme Court of Bangladesh has also affirmed the right to privacy in various rulings. For instance, in *State and Others v Oli and Others (2019)*, the Court held that the right to privacy extends to private communications over the phone, and phone companies must ensure the security and confidentiality of citizens' communications. In *Ayunnahar Siddiqua and Others v Government of Bangladesh and others (2016)*, the Court further noted that the right to privacy is fundamental to the freedom of dissent and cautioned against unjust interference under the guise of surveillance.

Despite the need of upholding public order, fundamental human rights cannot be encroached upon. It is crucial to respect the right to privacy as guaranteed by national as well as national laws in order to shield people from capricious and invasive acts of the state.

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