LAW REVIEW

The Cyber Protection law and our problematic 'cyberbullying' provision

In sum, the progress that the Ordinance made lies in naming and defining the offence of cyberbullying and broadening its scope. Yet this 'progress' is overshadowed by its use of rather vague and ambiguous language. Given the intricacies and sophistication of the offence, an ill-defined provision will only exacerbate the crises.

MUHAMMAD KHALID KHAN

With the ever-increasing use of various online means of communication, the prevalence of crimes committed in cyberspace has also been on the rise. Apparently to address the issue of cybercrimes, the infamous Digital Security Act, 2018 (DSA), and later the Cyber Security Act, 2023 (CSA) were passed. Both the laws drew criticisms for their particularly vague language, largely used by the previous regime to suppress dissenting voices. Following the July uprising, the Cyber Protection Ordinance, 2024 was expected to be substantively different. However, on multiple counts, the ordinance fell short to meet our expectations.

Among the several changes brought about through this Ordinance, the explicit recognition of 'cyberbullying' as a distinct offence under Section 25 has been a significant one. Cyberbullying is a growing concern all over the world, with legislation being passed in several jurisdictions to specifically deal with the issue. It is commendable that the interim government decided to legislate in that regard. In fact, the provision on 'cyberbullying' may appears fine. However, the said provision suffers from certain fatal defects too.

First, the definition of 'cyberbullying' is not specific as to what exactly constitutes the offence. The Explanation to the Section defines 'cyberbullying' as harming one's reputation or mental health by threatening, intimidating or harassing that person, or publishing false or harmful information, spreading insulting or abusive messages about someone, or spreading rumours or defamatory content. Interestingly, we do not find the mention of 'cyberbullying' in the main content of section 25, although 'blackmailing' has been explicitly mentioned there and subsequently defined in the Explanation as well. It is not clear what purpose defining 'cyberbullying' serves when the same has not been used in the main text of the provision.

Notably, both the DSA and CSA criminalised the act of a person intentionally or knowingly sending such data or information to others, known to be offensive, intimidating or false. Thus, the two Acts did in fact cover some aspects of cyberbullying. Therefore, it is not clear what specific objective this new law intends to pursue.

Second, the section does not delineate what degree or seriousness of harm caused to the victim's mental well-being constitutes the offence. Hence, trivial or non-substantial harm to one's mental health may be counted as an offence of cyberbullying, leading to a floodgate of cases coming to the court.

Third, the definition suffers from lack of nuances. The Section does not provide any exceptions. The Online Safety Act 2023 of the UK, for example, provides an exception in favour of recognised news publishers from the offence of 'false communications.' We have a history of section 25 being used against journalists and media outlets, and a lack of exemption can potentially aggravate the situation, instead of ameliorating the same.

In sum, the progress that the Ordinance made lies in naming and defining the offence and broadening its scope. Yet this 'progress' is overshadowed by its use of rather vague and ambiguous language. Given the intricacies and sophistication of the offence, an ill-defined provision will only exacerbate the crises.

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LAW LETTER

Barriers to access justice

In addition to the language barrier, the unaffordable cost of legal services presents another hurdle for the majority. This makes the legal system a privilege only for the wealthy and influential people, leaving marginalised communities suffer in silence.

JEBA MOBASHWIRA

Law is a tool created by the people, for the people, in order to promote fairness and order in society. However, the legal system, frequently marginalises the very people it is meant to serve and protect—the weak, poor and vulnerable. Law and justice have been placed on a pedestal, accessible only to a few who possess the resources, education, and privilege to navigate the system. However, for the general people, law has become a distant and abstract entity, which is difficult to understand, harder to access, beyond their reach.

The pervasive use of legal jargons is a key barrier to access justice. Laws and legal documents are often written in complex technical language which is incomprehensible to the common people . While such language aims to achieve precision, it often prejudices those who do not have any specialised legal knowledge and training. The reluctance to simplify the law perpetuates 'elitism', making legal services increasingly opaque and alienating for the general populace.

In addition to the language barrier, the unaffordable cost of legal services presents another hurdle for the majority. This makes the legal system a privilege only for the wealthy and influential people, leaving the marginalised communities suffer in silence. The bureaucratic and procedural complexities of the system exacerbate the situation, causing delays that compound the financial and emotional burdens on those seeking justice. The system is designed in such a way that those without power or privilege are forced to navigate endless procedural hurdles, often leaving them disillusioned and without resolution. Thus, justice appears 'so close, yet so far'—within reach but inaccessible when people try to grasp it.

In Bangladesh, the presence of a unitary High Court Division in the capital further highlights this issue of inaccessibility and centralisation of the judiciary. Under the 8th Amendment of the Constitution, six permanent benches of the High Court Division were introduced. However, the initiative was criticised for violating the basic structure of the constitution. Yet, in reality, decentralisation could have eased the plight of the litigants by bringing justice closer to the people. Instead of traveling long distances to the capital, individuals could access legal services in their own divisions reducing both the financial and emotional toll of seeking justice.

Despite significant technological advancements in other sectors, the legal field has lagged behind in adopting digital tools and remains predominantly manual and shrouded in inefficiency. While innovative devices, applications, and AI are being developed to simplify everyday life and reduce human burdens, relatively little attention has been given to making legal systems more accessible, and understandable to the general people.

As Bangladesh stands on the cusp of reforms, the legal sector is one of the most critical areas in need of transformation. To build a more inclusive system, the legal framework must prioritise accessibility, affordability, and availability for all citizens, with particular focus on decentralisation and digitalisation. Outdated laws that perpetuate injustices and no longer reflect contemporary values should be restructured so that the legal system can meet the needs of the modern society. Ultimately, the purpose of the law should be to serve the collective good by ensuring that justice is equally accessible to all, rather than being an exclusive privilege reserved for an elite class.

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LAW ADVOCACY

Bangladesh needs a Mediation Act

AKASH GUPTA AND MOHAIMENUL I. ARNAB

Historically, mediation has been a well-established system for dispute resolution in our subcontinent. Over time, different laws, including the Code of Civil Procedure 1908 (CPC)– the guiding law for civil court proceedings formally adopted the mediation process for dispute resolution. While India enacted the Mediation Act 2023 which provides a framework to mainstream and institutionalise the mediation process for dispute resolution, Bangladesh lacks comprehensive legislation to povide a comprehensive framework for dispute resolution via mediation.

Bangladesh's judiciary is overburdened with a huge backlog of cases due largely to the lack of infrastructure and shortage of judges. The litigation process is often costly; therefore, litigants endure serious hardships. Mediation is an amicable settlement process through which people can, within a short period, resolve their

disputes in a less costly and adversarial way outside the courtroom.

India has recently witnessed a significant growth in people's preference for ADR, especially mediation. Keeping in mind the need for a legal framework for mediation, the Mediation Act, 2023 was enacted, and now it serves as a standalone legislation for mediation. The Act aims to promote and facilitate mediation, especially institutional mediation, enforce mediated settlement agreements, create a body for mediator registration, support community mediation, and make online mediation an accessible and affordable option. It aims to regulate, certify, and promote professional mediation, encourage pre-litigation mediation, make mediation agreements enforceable similar to court orders, and provide a time frame for the mediation process for a timely dispute resolution. Additionally, in its schedules, the law amends many existing laws to make the mediation process streamlined and unified.

Enactment of a legislation similar to the Mediation Act of India has the potential to tackle Bangladesh's existing challenges with backlog. A mediation Act will institutionalise the mediation

The courts must require a mandatory pre-litigation mediation so that disputants attempt mediation before filing suits. Mediation settlement agreements should be treated similarly to a court decree to ensure enforceability and fairness. A mediation council should be in place to oversee the accreditation, training, and other mediation-related issues.

process, allowing people to opt for mediation without filing a suit, and that would significantly reduce the number of cases and burden on the courts.

The Act should be a standalone legislation that works as the guiding legislation regarding mediation, and every other legislation that allows mediation should be amended to remove inconsistencies and ambiguities. The courts must require a mandatory pre-litigation mediation so that disputants attempt mediation before filing suits. Mediation settlement agreements should be treated similarly to a court decree to ensure enforceability and fairness. A mediation council should be in place to oversee the accreditation, training, and other mediation-related issues. The Act should also encourage the accreditation of mediators and mediation centers. It should also provide a fixed timeframe for the process to avoid delays in mediation and ensure timely access to justice. Finally, it should also acknowledge online dispute resolution (ODR).

In conclusion, the Indian Mediation Act, 2023 is a comprehensive law that offers a well-organised, efficient, accessible, and reliable system that adheres to international standards. Enacting a similar mediation law in Bangladesh can promote a people-friendly dispute resolution system– which can ultimately strengthen the overall dispute resolution regime in Bangladesh.

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