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Address

By

Sultan Hossain Khan
An Address by Justice Sultan Hossain Khan
Chairman, Bangladesh Press Council

We are very pleased to respond to the invitation of Asian Mass Communication Research and Information Center and to participate in this Seminar.

We are also happy to be in Thailand, one of our esteemed neighbours to whom Bangladesh bears a sense of unbounded friendship.

I shall now speak a few words regarding the subject for which we have assembled here.

Freedom of the Press today means absence of interference with the Press by the State or any authority and person, except in so far as it is authorised by the constitution and by laws which are constitutionally valid. The expression 'freedom of the press' means the right to print and publish without any interference. But, as will be seen presently, this freedom, like other freedoms, cannot be absolute but is subject to well-known exceptions acknowledged in the public interest, which in Bangladesh are enumerated in Art. 39 of the Constitution of Bangladesh.

Freedom of the Press in a representative democracy with a party government means the right of all political parties to have access to the instrument of Press so that they may appeal to the electorate on the basis of their respective programmes and ideology.

In short, democracy, i.e., government of the people by the people themselves, cannot function unless the people are well informed and free to participate in public issues by having the widest choice of alternative solutions of problems that arise. But in the modern world of speed and manifold engagements, very few amongst the public have the time or leisure to go
through the fountain sources of information. The daily newspaper is practically the only material which most people read. The people can, therefore, be given the fullest scope for thought and discussion on public discussion, if only the newspapers are allowed to represent different views, including dissenting views without any control from the Government to represent only one shade of opinion, or the policy adopted by the Government.

Thus freedom of the Press to-day has both an affirmative and a negative content: It means the right of an individual to print and publish whatever he pleases, free from any interference excepting those which may be imposed by constitutionally valid laws.

If the Press is such a useful or rather an indispensable instrument for information and exchange of views and opinions in a modern democracy, the question at once arises, -why should there be any need for regulating or controlling this freedom by laws?

The protections of the Press afforded by constitutions of several countries carry with them a fiduciary duty on the part of Press itself to exercise the protected rights responsibly—a duty widely acknowledged but not always observed by editors and publishers.

This responsibility is to the society itself which has other public interests to maintain, apart from the freedom of expression. This is the reason why not merely freedom of the press, but other constitutional rights are not absolute, even though in some constitutions these have been enunciated in absolute terms. Absolute freedom would allow every citizen a right at his pleasure to injure the reputation, the peace, the property, and even the personal safety of every other citizen.
In any civilised society where individual rights are declared and enforced, whether by ordinary laws or by the constitution, the right implies a duty not to abuse that right, guaranteed to all citizens alike. It would be hollow to others unless one individual respects the similar rights of others or transgresses the bounds of his own right, and affects the other right of other individuals.

In view of the above, the avenues of abuse of the Press, in modern times, should be noticed in brief as follows:

(a) The foremost danger is that since the Press is a most potent instrument of mass communication, newspapers are sought to be used by powerful parties and financial groups or even individuals having vested interests, for purposes of 'propaganda', i.e. to further their private interests to the detriment of the public, as a result of which the Press, instead of creating a 'free flow of news and views' tends to become an instrument for suppression of news and views, and an agency of monopolistic control of even news and reports.

(b) The basic assumption that freedom of Press is indispensable to offer to the public all points of view involved in public issues and to give a truthful account of events so that the readers may freely form his view on each issue is defeated if every newspaper gives a biased or coloured report of news and advocated only one of the solutions, namely, that advocated by the party or group which conducts that newspaper. In such a case, the reader must read all the newspapers to get the proper and comprehensive material for his choice or determination.

It is, therefore, essential that even where a newspaper is conducted by a political party, its report of news must be truthful and unbiased, and if its views
are those of a particular party, it should say so instead of trying to influence the reader unawares.

(c) The greatest source of abuse of the modern Press is that, instead or working as an instrument of free discussion in a democracy, it has largely become a handmaid of commercial propaganda.

Bangladesh has a long tradition of newspaper publication. The date goes back to early nineteenth century. Till 1971, the year of emergence of Bangladesh, there were 27 dailies, 57 weeklies and 128 monthlies in Bangladesh. After independence in 1971 for a very short period, all newspapers were closed except four and the publication of these 4 were taken over by the Government. In late, 1975, the situation normalised and the closed newspapers of the private sector were allowed to come out. But still then some clause of the Press and Publication laws continued to abstract smooth development of the newspaper industry. At the close of 1990 when interim government and later the present democratic government came to power a period of liberalisation of press media started. Now newspaper publication in Bangladesh has become easier and the newspapers are free in their function. There are now, 176 dailies, 633 weeklies and 285 monthly newspaper in Bangladesh.

The media or the Press in Bangladesh is a free one the like of which may not be found in any other South Asian Country.

With the fading away of restrictive laws to own a Printing press and of Publication of newspapers during period of our history between 1947 and 1971, and pre-censorship of news by the executive authority—having been done away with, at present there is no restriction to own and publish a newspaper except that the owner or the publisher shall have some minimum financial capacity in the form of a bank balance as fixed in a government
notification. This restriction has been made in the interest of the workers and journalists of the newspaper so that the owners or publishers can pay the former for their work in bringing out a newspaper. The provision prescribes that the owner or publisher of a newspaper shall only have to subscribe to a declaration that he is bringing out a paper under a certain name and that he has financial resources and that the editor of the paper possesses reasonable educational qualification or has adequate training and experience in journalism. These conditions do not create any impediment or obstruction if anybody intends to publish or bring out a newspaper.

This unrestricted freedom to own and publish newspapers in Bangladesh has in consequence tended to abuse the freedom. The abuse of the freedom and corrupt use of the Press take the form of publishing untrue, maligning and defamatory materials against a person or institution; publishing untrue or imaginary stories; publishing seditious material; publishing obscene or blasphemous materials; inciting persons to commit offences, etc. in the publications; publishing of materials calculated or tended to bring down the dignity or image of the Courts and committing contempt of Court, or publishing prohibitory materials which would bring the publication within the mischief of Official Secrets Act. The attending publications, which are objectionable and prohibited under law under the aforesaid categories are liable to the overseered or watched in the interest of public good and order.

In Bangladesh, we have a Press Council, created under law made by Parliament, with a view to preserve the freedom of press and maintaining and improving the standard of newspapers and news agencies in Bangladesh.

The role of the Press Council in our country is essentially that of an impartial arbitrator or monitor of press or the media. Press Council is now functioning as a body exercising a moral authority over the journalists.
Since its inception in 1979, the Council has been accepted as a highly dignified quasijudicial institution. Almost every case filed before it has been keenly contested by the parties aided by eminent law-years.

Although the Press Council of Bangladesh has no corporeal or financial punitive powers and its decision have only moral sanctions like those of a Court of Honour, its effective role is being recognized not only in the newspaper but also by the citizens and the government.

The complaints received by the Council broadly fall into two categories: complaints by the press and complaints against the Press. Any person feeling aggrieved about anything done which is likely to impair or interfere with the independence of the Press may approach the Council. Similarly anybody aggrieved by any publication or non-publication in any newspaper or journal may lodge a complaint with the Council for breach of the recognized canons of journalistic ethics and taste. The Council is empowered to make observations in respect of the conduct of any authority including Government, if it considers it necessary, for the performance of its functions under the law. On the other hand, if it finds that a newspaper or a news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct it can warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist. Thus the Council has a lot of moral authority. Its decisions are final and cannot be questioned in any court of law. The decisions of the Council have generally been honored and accepted by the media and authorities alike.
In furtherance of its object, some of the important functions which the Press Council is required to perform are: to help newspapers and news agencies to maintain their independence; to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards; to ensure on the part of the newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship; to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism; to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance; to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or in news agencies; and to concern itself with developments such as concentration of or other aspect of ownership of newspapers and news agencies which may affect the independence of the Press.

As per the provision of Press Council Act, 1974, where the Council has been empowered to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standard, the Council has already built up a code of conduct some of them are as follows:

1. The Journalist has the responsibility of keeping the public informed of matters that affect or interest them.

2. In discharging his responsibility the Journalist has to report and comment on achievements and failures and lapses of corporate bodies and individuals. The very nature of this responsibility warrants that the journalist should be exempted from adverse consequences for any publication made in good faith on the basis of evidence, reasonably believed to be true.
3. Information of undoubtable veracity emanating from reliable sources may be published with impunity even though the truth there of cannot be conclusively established on evidences, provided the disclosure is in public interest.

4. In view of the social responsibility of preventing crime and corruption, the Press could adapt such reasonable and legal practices to this end as might not be quite acceptable in other spheres. The impact of being over censorious about information that might lead to exposure of serious public ills would be perilous.

5. Everything that interests the public is not in public interest and accordingly catering to unhealthy public curiosity through sensational stories is a professional misconduct.

6. In view of the magnitude of the impact of the newspaper should be exceptionally careful about the reliability of the sources and the veracity of the stories.

7. The journalist should be fully conscious about the bearing of his writings and must make distinction between reports relating to incidence of a common disease and a public man being down with an infection resulting from indulgence in passion.

8. The newspaper reporting a crime has the obligation of following it through all the stages of litigation and publishing the final judgement of the court, if any, so that the true picture about the matter stands revealed.

9. Subject to the editor's right of scrutiny and improvement, the contradiction from aggrieved parties to any report in the Press should be published promptly on a page likely to draw the attention of the readers of the original story.
10. Subject to restraints concerning defamation and public interest the editor has the right to publish advertisement signed by competent persons even if it appears, on the face of it, against the interest of anyone else, but he will be obliged to publish protest, if any, free of cost.

Moreover the Press Council has made provision for the newcomers in the profession of journalism in Bangladesh to take oath also in order to enable them to abide by the Code of Conduct for the journalist.

Beside, the monitoring powers, the Press Council of Bangladesh enjoys, ordinary criminal and civil Courts in our country. Adjudicate complainants and disputes over publications and writing in newspapers which are offensive and comes within the mischief of any of the laws which attract them.

These laws are:

(a) Sec 99a of the Code of Criminal procedure whereunder offending copies or an edition of a newspaper may be forfeited and seized by the government if it contains any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between class of citizens of Bangladesh or if it outrages the religious beliefs of any class by insulting or insults any religions feeling by the publication.

(b) Sections 500, 501, and 502 of the Bangladesh Penal Code have prescribed punishment for defamation by words or writing or sale of defamatory materials; complainants under the aforesaid provisions are tried by Criminal Courts. Civil Courts adjudicate such complainants where monetary compensations are claimed for defamation and libel.

(c) Sec 124A of the Penal Code of Bangladesh also prescribes punishment for offence of seditious writing; and these offence are triable by Criminal Court.
(d) Section 295A of the Penal Code of Bangladesh also prescribes punishment for outraging religious feelings of any class of citizens by insulting its religion or religious beliefs either by words or by writing. These cases are triable by Criminal Courts.

(e) Section 292 of the Penal Code of Bangladesh has prescribed punishment for publishing and sale of obscenity object. These cases are triable by Criminal Courts.

(f) Provisions of contempt of Courts Act has given power to the superior Courts in Bangladesh to deal with contempts of Courts if by words or by writing the offender brings down the image and dignity of any Court of law in Bangladesh or impeds the Course of Justice.

Before I conclude, I may put on record that enlightened public opinion and political consciousness are the best guarantees of a responsible press. Press Council cannot impose any sanction. Its only authority is its hope that its pronouncements will carry by its intrinsic merits and reason of its decision; and its only resource is its appeal to the whole Press.