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Legal And Ethical Responsibility Of The Newspaper

By

Badri Bahadur Karki
Legal and Ethical Responsibility of the Newspaper

Concept of the Freedom of the Press:

Freedom of the press today generally means absence of interference by the state with the press. Any restriction of or control on the part of the state must be supported by a valid legal power or authority. Thus, the freedom of the press forecloses the state from assuming a guardianship of the public mind. In fact, state authority has to be controlled by the public mind, not the public mind or opinion by the authority. In England, the freedom of press means the right to print and publish anything which is not prohibited by law or made an offence, such as sedition, contempt of court, obscenity, defamation, blasphemy. Freedom of the press in England is thus the freedom from prior-restraint or pre-censorship. A subsequent punishment takes account of the abuse of the freedom by punishing anybody who published anything which has been made illegal by law as injuring to the society.

The struggle for freedom of the press had its greatest triumph when it came to be guaranteed by a written constitution of USA as a fundamental right. It is now firmly established in the USA that democracy cannot thrive on standardisation of ideas either by legislature, courts or dominant political or community groups. It rests on a competition of ideas on public issues and even provocative and controversial views which strike at prejudices and preconception. While in England, the press could not claim any right or privilege that was denied by any law, in India, the validity of that law itself became open to challenge. Even subsequent punishment has been brought under the constitutional check and judicial review. In short, in India, the freedom of the press involves freedom of employment or non-employment of the necessary means of exercising this right. In other words, freedom from restriction in respect of employment in the editorial force is automatically included.
With the promulgation of 1990 constitution, now the press in Nepal too is in a position to claim similar freedom. Freedom of opinion and expression has been guaranteed as a fundamental right to all citizens. In addition to usual freedom of opinion and expression, right of the press and publication and right to information too have been conferred as fundamental right. No news item, article or other reading material are to be censored. No press is to be closed or seized for printing any news item, article or other reading material. Neither the registration of a newspaper or periodical could be cancelled merely for publishing any news item, article or other reading material (see Article 12(2)(a), 13, 16 of Nepalese Constitution).

Need for Limitation:

If the press is such a useful and indispensable instrument for generating and exchange of views and opinions in a democracy, the question at once arises, why should there be any need for controlling this freedom by law at all? The reason is quite obvious. Like any other individual rights or freedoms the freedom of press too could not be guaranteed and enjoyed in absolute terms. It has to be balanced in the larger public interest. As Lord Denning of England has said "........
It does not mean that the press is free to ruin a reputation or to break a confidence or to pollute the course of justice or to do anything that is unlawful. The press in not above the law. Once the need for restrictions is accepted, the inquiry would be how much of restriction would be reasonable in the public interest.

Legal Responsibility:

Freedom carries with it responsibility even for the press, freedom of the press is not a freedom from responsibility for its exercise ....... this responsibility is to the society.
itself which has other public interests to maintain, apart from the freedom of expression. As Cooley has cogently stated (constitutional limitations 6th ed. 66).

In any civilized society where individual rights are declared and enforced, weather by ordinary law or by the constitution, the rights implies a duty not to abuse that right. As the right being 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 rights of other individual. What is meant by responsibilities in the matter of exercise of the freedom of expression is made clear in Article 10 (2) of the European Convention on Human Rights thus "The exercise of these freedom, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and are necessary in a democratic society, in the interests of the national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

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 having vested interests. As a result, instead of creating free market of ideas tends to become an instrument of suppression of views. It is, therefore, essential that even where a newspaper is conducted by a political party, its report of news must be truthful and unbiased. If its views were those of a particular political party it should say clearly so it must not try to influence the public unawares.
Abuse of Freedom and Safeguards:

The possibility of freedom of the press to be abused is quite evident in all countries. But the remedy devised for tackling this problem has not been so easy and without controversy. The press cannot be suppressed, nor can the remedy lie in state monopoly or nationalisation of newspapers. That would be the assumption by the state of the guardianship of the public mind—the very antithesis of democracy. The present constitution of Nepal has devised a mechanism which not only guarantees the freedom of the press, but also has laid down certain grounds (purpose) for which "reasonable restriction" through law could be imposed. By doing so we have maintained a check even on the power of parliament so that the freedom of press remained well protected. By virtue of the provisions to Article 12(2)(a), 13(1) and 16 the parliament has power to enact a law imposing restriction on the "freedom of opinion and expression" in the interest of sovereignty and integrity of the country to maintain harmonious relation among various groups and communities, against sedition, defamation and contempt of court etc. These restrictions are not unusual or unique in the sense that we find more or less same kind of restrictions imposed by US and Indian constitutions as well. At any rate, the state is bound to balance between the right of the individual and the interest of the public at large.

Legal Restrictions and Responsibilities (Nepalese Context)

The restrictions on the freedom of press or the newspapers are of two types: prior restriction and post-publication restriction/responsibility. We will discuss them separately in the ensuing paragraphs. Though the production of a newspaper has engaged special attention due to its being an essential mass media and foundation of democracy, it is only one mode of freedom of expression or opinion. Generally, newspaper means any printed
material by a press. But the statute which is directly related to the press and publication in Nepal has defined the term "Newspaper" thus section 2(d) of the Press and Publications Act 2048:

"Newspaper means any printed periodical work containing news or views of public importance brought into public circulation for sale or distribution."

On careful analysis we will find that a "Newspaper" must meet the following requirements:

(a) It has to be a printed material and issued periodically,
(b) It must contain news and views of public importance with or without comment,
(c) The newspaper must be brought into circulation for sale or distribution in public.

As the production of a Newspaper involves many people at different stages and processes the law also prescribes respective liabilities for each of them. The Editor, proprietor/printer/Owner, Author, other staffs, Advertising Agency and Advertiser, Newspaper seller etc. altogether come within the fold of a newspaper.

Registration of a printing press is a mandatory requirement. Any one who keeps and operates a printing press without getting it registered shall be punished with a maximum fine of 10,000 Rupees. For giving false information or failing to update the change in the information furnished at the time of registration would also invite a maximum fine of 3,000 Rupees.
Registration of a Newspaper:

Any one desiring to publish a Newspaper, at first, is required to apply before a Local Authority (Chief District Officer) stating the name, type, language, size, page, number of copies of a Newspaper to be printed and place of publication etc. After having examined the facts stated in the application the Local Authority may issue a provisional Registration certificate and at the same time notify the Registrar of Press about the said newspaper in detail.

If prior registration of a newspaper of the proposed name is not found the Registrar on his part may issue a permanent certificate of Registration. Any contravention of this mandatory provision shall invite a maximum fine of 5000 Rupees or six months imprisonment or both.

Restriction on Publication:

By virtue of the provision of section 14 of the Press and Publication Act 2048 a newspaper is prohibited from publishing any matter related to the following subjects:

(a) Any matter that might promote hatred, dishonour, contempt or enmity towards His Majesty the King or Royal Family or attempt to lower the dignity of His Majesty,

(b) Any matter that might pose as a threat to the sovereignty and integrity of Nepal,

(c) Any matter that might be detrimental to the security, peace and law and order of the country;

(d) Any matter that might promote enmity, hatred, ill-will between the people of a different caste, religion, class, section or community.
(e) Any matter that might disturb the decency, morality and social norm of the people in general.

publication may be prohibited:

The government is also empowered to put restriction on the publication of certain matter related to a specific subject, event or area through gazette notification if the same is deemed desirable in the national interest. Alternatively, publication of certain matter may be subjected to prior approval (pre-censorship) of a designated authority.

Any Editor or publisher who has published a restricted or prohibited material in contravention of the law shall be penalised with a maximum fine of 10,000 Rupees or up to one year's imprisonment or both, provided there is no other punishment exist for such an offence. Additionally, all publications falling under the category of restricted or prohibited materials shall be liable to be forfeited.

Contempt of Court:

The punishment for contempt of Court is contained in Article 26 (2) of the Nepalese constitution. The Supreme court being a court of Record has power to initiate proceedings and impose punishment for contempt of itself and the subordinate courts or judicial institutions. The Supreme Court Act 2048 provides for a punishment of fine not exceeding 10,000 Rupees or one year's imprisonment or both. The District Courts or Appeal Courts may separately initiate proceedings and impose punishment on its contempt.

Breach of Privileges of the Parliament:

Privileges are attached to a house of a legislature collectively
or to its members individually, with a view to enabling the house to act and discharge its high functions effectively without fear or favour, without any hindrance from any quarter. By virtue of Article 62 (3) of the Nepalese Constitution no comment shall be made about the good faith concerning any proceeding of either House of parliament and no publication of any kind shall be made about anything said by any member which intentionally distorts or misinterprets the meaning of the speech. On breach of the privilege of the parliament a person may either be admonished, warned or imprisoned for a maximum of three months' period.

Law on Defamation:

Whoever by words or signs or visible representations, makes or publishes any imputation concerning any person, intending to harm, or having reason to believe that such imputation will harm the reputation of such person is said to defame that person. If proved guilty the defendant may be liable to pay up to 50,000 Rupees as damages and a fine of 5000 Rupees with or without an imprisonment extending to two years. So far our courts have taken a very liberal view and no journalist have been jailed on defamation cases.

Some other Laws:

In addition to the specific laws just discussed above there are some other general laws which apply equally in case of journalists as well. Of these, Working Journalists Act, Radio Act, Postal Act, News Agency Act, National Broadcast Act, Taxation Laws, Children's Act, Copy-Rights Act, Patent and Trade mark Acts, Customs Act etc. It is well established that the press as a medium of expression or journalism as a profession has no special rights or privileges. The publisher of a newspaper has thus the same rights no more or no less than any other individual
to write or publish news or his views.

Extra-Legal Responsibilities:

Although the law is becoming all pervasive yet it is only one of the norms that regulate and control the activities of human life or activities. As is true of the profession of lawyers, doctors, auditors in their respective professions, journalism too a very important role is played by Journalistic Ethics. Ethics is a normative discipline which does not merely reflect the morals but passes critical judgement on their value, analyses them from a class viewpoint and consequently is able to justify preferences for certain standards of behaviour over others.

The need for an institution to ensure a high standard of responsibility on the part of the press arises from the reality that this freedom is likely to be abused by the publication of matters which are though legally not punishable yet debase the public taste. Therefore, almost every democratic country has set up a body which could serve as a watchdog over the standards of journalism. These bodies are although known by different names the most popular nomenclature has been "Press council". In Nepal, it is a statutory body consisting of representatives of the journalist profession and members of public and parliament. Among others, the council has power to frame code of Ethics for the journalists. In exercise of the power conferred by section 7 (b) of the Press Council Act 2049 it has promulgated code of Ethics. (see at Appendix- I). The Nepal Journalists Association also has formulated a code of Ethics for the journalists belonging to the Association. However, the later code does not have statutory sanction but still can influence the conduct of the journalists in Nepal.

* * *
Appendix - I

Code of Conduct for Journalists - 1992:

(1) Journalism is a profession which should be responsible to the entire mankind. As such, the people engaged in this profession should always remain dedicated to human values, democratic behaviour, national interest and public welfare.

(2) Every journalist should make truth, mutual trust, honesty, justice and impartiality as his identity while publishing or broadcasting news or views.

(3) If a published news is learnt to have caused unintentional harm to anybody or if the information proves wrong then it will be the bounded duty of a journalist to publish correction of the news or publish it in an appropriate space when approached for publication of denials based on facts.

(4) Journalists should not disclose the confidentiality of the news source.

(5) Journalism should never be misused for self benefits. It is a serious moral crime to take or try to take economic or any other benefits by making news as a tool for black-mailing.

(6) One should not give space to publication of news or comments that are prejudicial to the prestige of any individual or a family that are fabricated or likely to infringe the right to privacy.

(7) No news should destroy the credibility of any institution out of malice or for self-benefits.
disrespectful language and obscene materials should not be given any space in a responsible newspaper. While reporting on crime and rare cases, one should be vigilant over the fact that information did not fan out excitement and deviations and that it did not add further injuries on the afflicted parties.

Journalists should have professional relationship among each other. To blame each others through the publications will be viewed as contrary to professional ethics.

BADRI B. KARKI
ADVOCATE