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Media Ethics: Self-Regulation vs Statutory Regulations

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Media Ethics: Self Regulation Vs. Statutory Regulations

By Sayed Kamaluddin

Someone said that journalists write the first draft of history. This is perhaps correct, but up to a point. Journalists are no historians, nor are they painstaking researchers. So future historians while researching for their materials, might base their preliminary findings on press coverage. However, one also has to keep this in mind that some of these writings may not be of any use for the future historians if the concerned journalists had not strictly followed the ethics so that it could stand the test of time and convey their stories’ proper perspective.

Another point also needs to be noted here to get the proper perspective of the correct situation in Bangladesh. While people in this country zealously protect their fundamental right to express their own views on any given issue, they are not particularly keen to tolerate dissenting voices, a sine qua non for a pluralistic society. Unfortunately, no political leader of note has ever attempted to stamp this basic weakness out of the system by inculcation.

Politicians do not enjoy or welcome criticism anywhere in the world. This is the hard part. In a democratic, civil society, they simply tolerate it. They have learnt to realise that they have to tolerate it because there is no alternative. Under a less tolerant and lesser democratic dispensation, the critics become the obvious targets of the high and mighty. But that is another story.

Constitutional Guarantee & Ethics

Constitution has guaranteed freedom of thought and conscience in Bangladesh, like in very many other countries. But what is after all does the media ethics mean? What does either self-regulation or statutory regulation really mean? Have the newsmen become too busy with the breaking story in looking for a new angle, overlooking the problems that others may be facing because of the overzealous newsmen’s insensitivity to certain aspects of the same story? The phenomenon of ‘trial by newspaper’ is not unknown in Bangladesh. Sweeping allegations, violation of privacy, and lack of objectivity are some of the areas where certain publications have been indulging in with impunity.

There are laws against these indecent attacks. But some people are reluctant to go to court for fear of prolonging the ordeal and also getting wider publicity. In some cases, some people have tackled the issue by going to court against some of their tormentors that ended in tendering public apology by the offending publication. Apparently one has to be satisfied with the apology, for such legal actions against these unethical behaviours never resulted in any punitive actions against the offenders. That is another reason why people with some weaknesses tend to compromise, affecting the process to take punitive actions against the offending publications. In the absence of any sign of an organised social activism against stamping out these unsavoury incidents, it may continue to haunt the
unsuspecting victims. Reputation once impaired cannot be repaired. Some case history will further throw some light on the peculiar nature of these incidents.

Ethics is synonymous with the profession of journalism. However, there is hardly any formal code of ethics in Bangladesh. Of course, there is a written code of conduct done by the Press Council, based on the discussions of the government officials, publishers, printers and the representatives of journalists. However, the document contained a section inviting the media practitioners, owners and printers to sign it and be obligated to honor the codes. But till today, none came forward voluntarily to sign the document. So, though written, the code remains anonymous.

There are, however, some sacred cows of journalism such as the President, the judiciary, and the armed forces. Journalists prefer to stay away from writing against them. But the problem has just started when the head of the government, including some cabinet members started browbeating the High Court judges in public meetings before a partisan slogan-chanting crowd. This infuriated the fourth estate to warn the government that it was clearly trespassing its limits.

There are also legal framework that invariably tend to take the media into task rather than ensure its rights and protect it from the official onslaught. The relevant laws seem to protect the government leaders from the media’s coverage, assuming that the media would always try to invade their privacy by raising unpalatable questions. These leaders tend to become nervous when asked about accountability and transparency. It is a continuous battle of survival for the media in the developing countries.

One can also look at it in a different form. Like the Four-way test of the Rotary movement worldwide, call it ethics – Is it the truth, Is it fair to all concerned?, Will it build goodwill and better friendships?, and Will it be beneficial to all concerned? – journalism as a profession is essentially an ethical concept. Do the journalists think of the Rotary’s ‘4-way test’ to form a part of the ethics that they could follow it as well? Or is it too idealistic and impractical to be concerned with? Rotary takes special interest in developing the talents and enthusiasm of the prospective members in their early years, instilling in them a sense of personal and civic responsibilities. Of course, Rotary is a movement, a dream to serve the humanity and not a profession to earn a living. And that makes a lot of difference.

Journalism obviously is also concerned with freedom, democracy, truth, privacy, honesty, objectivity and so on. But how does one scrupulously maintain these ethical compulsions or what happens when someone deliberately defies such ethical values? It is a complex question and there is no easy answer.

The Media Laws & Ethics

The media laws were first introduced in the subcontinent, of which Bangladesh is a part, to restrict the liberty of the media and also to protect the interest of the East India Company and its corrupt officials. The company ruled over the subcontinent for decades.
until Queen Victoria decided that it was too impart part of the world to be left to a private company rule. While times have changed and the world had transformed itself into a different place, its remnants are still haunting the media practitioners in this country. Under the Code of Criminal Procedure, 1898, as marginally amended later, any report or act by a newsman can be defined as prejudicial and could be persecuted under the Penal Code of 1860. The two codes have been further strengthened to take punitive actions by the inclusion of sections on prejudicial reports and acts of the Special Powers Act, 1974.

It needs a little clarification. The Special Powers Act, 1974 is known as "black law" in the country and was extensively used by successive governments against the journalists and politicians alike for political reasons. However, once democracy returned to the country through 1991 parliamentary polls, the parliament omitted Sections 16, 17, and 18 of the Special Powers Act which fettered freedom of press and freedom of speech. But at the same time, Sections 99A, 99B, 99D and Schedule II of the Code of Criminal Procedure have also been amended, almost incorporating the same provisions of the omitted Sections 16, 17, and 18 of the Special Powers Act, 1974.

In fact, as a result of this change or amendment in the laws, the punishment for the offence has been made severe by enhancing the sentence of two years to seven years, by amending Section 505 of, and by introducing Section 505A, in the Penal Code. So, for the media practitioners it was not merely a ‘back to square one’, but a real setback too.

In this connection, a comment made by senior Advocate A. N. M. Gazipur Hoque, who compiled the Mass Media Laws and Regulations in Bangladesh (published by AMIC in 1992) is noteworthy. He said: "...Now it is very much noticeable that the media laws in Bangladesh are growing and changing so fast that one can sarcastically say that by the end of the century, like the 'population explosion', it would be difficult to follow the changes and amendments of the laws relating to press for a person who is not keen about the subject." This perhaps gives a rough idea about the nature of the governments that have been ruling the country since its emergence as an independent state in December 1971.

Freedom of thought and expression is guaranteed in the constitution of Bangladesh. How does one establish one's right as sanctioned by the constitution without encroaching upon the rights and freedom of others, as people in this part of the world tend to do? In this context, the question of ethics obviously comes in. One cannot possibly establish one's own right by denying another person's rights. But while establishing this right for himself, one has to maintain certain norms or ethics so as not to encroach upon another person's right or freedom. Here, the parameters of media ethics come into full play: how much is too much and how little is too little and who or which law is to determine this? And more questions come forthwith.

Restrictions, Communications & Ethics

However, before going into the details of these questions, freedom ensured by the constitution requires elaboration to get to the bottom of the issue. The constitution, of
course, guarantees all the freedom of association, freedom of press and freedom of expression to the citizens, but these are subject to “reasonable restriction to assemble or to form an association or union and to express their opinions either in writing or published through press.” Here in this context, the print media would always come under severe scrutiny. Who is to decide the meaning of the terms such as “reasonable restrictions?” Obviously, the concerned officials, who also act as per the whims of the Government of the day, and usually take arbitrary decisions to please their political masters.

The 'foreword' by Professor M. Tawhidul Anwar of Dhaka University in the “Mass Communication Laws and Regulations in Bangladesh” would be relevant here. He said: “The riddle has always been about who defines what is reasonable. The judiciary will interpret this, but the flexibility of using or abusing the laws in favour of the ruler of the roost is always there. And it is more so as the establishment has the technical privilege to execute any law even unlawfully for some time, till a verdict comes determining who is right and who is wrong. The time lost as well as the consequences left cannot be reverted. In the process, the innocent is subjected to atrocities.”

Besides, there is some downside also, under which the constitution empowered the Government to curtail or suspend certain guaranteed rights and also to prevent citizens, from taking shelter of the court to implement the fundamental rights during the emergency. While the President (or Prime Minister) is satisfied that security or economic life of the state or any other part thereof is under threat by war or external aggression or internal disturbances, the President may issue proclamation of emergency and suspend the rights mentioned above. (Articles 33, 37, 38, 39, 43, 78, 141A, 141B, and 141C of the Constitution of the People's Republic of Bangladesh)

There are relevant laws that govern the media coverage that concerns security of the state and libel issues. The security has two aspects. One is sedition. It says: “By any word or signs or visible representation if any one condemns the creation of Bangladesh or endangers the sovereignty or creates, excites disaffection against the government shall be charged under sedition and shall be punishable in accordance with the law.” (Sections 123A and 124A of the Penal Code, and Sections 16 and 18 of Special Powers Act, 1974)

Two secrecy act: “No one is allowed to publish any photograph, sketch, plan or model of document which is a restricted area or place or a confidential document.” (Section 3A of the Official Secrets Act, 1983)

Libel issues: “He who knowingly publishes defamatory matter will be held strictly responsible whether he will be the originator of it or not. Both civil and criminal action may be taken against the offender. Criminal action may be taken under the Penal Code while civil action may be taken by bringing a suit for injunction restraining the publication of the defamatory statement and also by instituting a suit for damages for injury to reputation occasioned by the publication of defamatory statements or news.” (Section 501 of the Penal Code, Law of Torts)
Right to Information

Unlike the Freedom of Information Act of the United States, which was signed into law in 1966 and took effect the following year, there is no law that ensures that the government will provide freedom of information to the people. However, the Bangladesh Press Commission, established in 1982, recommended in its report, published two years later, to formulate a law to ensure freedom of information. It said: “A legislation may be enacted providing that the government disseminate important information among the people and make records available to them from inspection on demand excepting those relating to national security.”

In the neighbouring India as well as Sri Lanka, the “Right to Information” (RTI) is now an established fundamental right. Courts there also perceive this as being part of the right to “Freedom of Speech” (FOS) and the “Right to Personal Liberty”. There is obviously a need to make a law on “Access to Information” which should also increase privileges of the media in line with the privileges of the parliament in Bangladesh. This will enable newsmen to perform better.

One question that comes to one’s mind is that “who cares” to practice media ethics or for that matter, consciously maintains its parameters? Muhammad Jahangir, a media activist who writes regular columns on the media scene in a number of publications, is rather skeptical. Very few publishers and editors know about ethical aspects in the media and fewer still actually try to practice it, says he. Why? Jahangir thinks that in the absence of a functional, effective press council, media ethics has taken a back seat.

A Colombo seminar on “Communication Ethics from a South Asian Perspective” held in November 1993 came out with an interesting recommendation to restructure the existing Press Councils. The recommendation said: “Most of the currently existing Press Councils in the South Asian region act in effect as government agencies” and should be replaced by Media Councils, covering all media and should act “not as extensions of the State but as genuinely independent bodies and perceived to be so. Such Media Councils should comprise respected media practitioners and eminent persons from public life through a mechanism ensured by appropriate legislation.” (Victor Gunwardena, Communications Ethics: A South Asian Perspective)

The Bangladesh Scene

Here one needs to know a little more about the media scene in Bangladesh. Perhaps, Dhaka has the distinction of being the only capital city in the world with the largest number of daily newspapers – 46 or even more come out each day, five of them are English-language and 41 or more are Bengali-language dailies. Quantity, of course, belies quality. Only a few are readable and interesting. With the exception of five English dailies, less than a dozen Bengali-language dailies are viable. The English-language press is generally considered ‘sober’ while a section of the Bengali press, known as successful, thrives on sensational journalism. All the newspapers are privately owned.
The country’s print media witnessed a phenomenal growth after a democratically elected government came to power in 1991. Rules controlling publications were relaxed and permission for bringing out newspapers became easy. There are over 200 daily newspapers with only about 2.5 million daily circulation. Less than a dozen Bengali-language dailies are published outside the capital are known as ‘regional newspapers’ commanding a reasonable circulation and therefore, are financially viable. Any regional daily with more than 15,000 circulation should be considered reasonable and consequently viable.

Why so many people want to publish newspapers? The reason is very simple. Control over media means an easy access to power and authority. Some political activists having access to funds – mostly borrowed from banks – have become newspaper publishers and editors as well. Mostly of course support the ruling party for achieving personal gains and exercising influence. Most of them are also businessmen and industrialists. One such editor/publisher has used his contact and managed to get his US partners an oil/gas exploration contract. These editors/publishers have no interest in the profession or for that matter in maintaining any professional norm or code of ethics. Unfortunately, they have outnumbered the professional editors and publishers. This situation has made enforcement of media ethics all the more difficult.

Violation of Ethics

Newspaper reports with wild and baseless accusations against private individuals are almost of daily occurrence. Fortunately, as I mentioned earlier, English-language newspapers rarely indulge in such unethical practices. Of course, one can discipline the recalcitrant publications suing them in a court of law, but the victims usually avoid taking such measures for two reasons. First, of course, one does not like to cross sword with a newspaper - an unscrupulous one at that – and second, such cases drag on for years, if not decades. The only alternative could have been the formation of an effective quasi-judicial body with adequate authority to bring in the delinquent media to task. Unless any agency is armed with adequate authority to ensure implementation of its own decision, the culprits would continue to get away with murder.

There is, of course, one such body called Bangladesh Press Council (BPC). It is a quasi-judicial body, headed by a retired Supreme Court judge. As mentioned earlier, this also acts as a government agency. It was established by enacting a law, entitled “The Press Council Act, 1974.” Under the act, the Council “shall have the same powers throughout Bangladesh as are vested in a civil court while trying a suit under the Code of Civil Procedure 1908 (V of 1908)” About the object and function of the BPC, the act says, among others, the Council is “to build up a code of conduct for newspapers and news agencies and journalists in accordance with high professional standards.”

About the general powers of the Council, it says that it has “the power to warn, admonish and censure” the newspapers, their editors or reporters if it finds their actions do not
conform to the media ethics. Complainants can file a case against any news organisation before the Press Council. If the Press Council, after following a due process of law, finds gross violation of ethics by the concerned news organisation, it can only “warn, admonish or censure” it and ask the editor of the concerned publication to publish the judgment in the publication in full. But if the editor does not abide by the decision, it cannot compel the publication to do so. So the Press Council is essentially a ‘toothless tiger’ and therefore cannot serve any useful purpose unless properly empowered by the government.

Press Institute of Bangladesh (PIB), a government-funded body with the specific job of improving the quality of the profession of journalism by imparting training on various aspect and frame guidelines, including the maintenance of high ethical standard. It was supposed to be an autonomous institution and while in the beginning, it was allowed to maintain a respectable distance from the government, but gradually it became a part of the Information Ministry. The members of the PIB’s Board are selected, though two posts are reserved for the two top journalist union leaders.

Like everything else in the country, PIB has also become thoroughly politicised. The country is thoroughly divided between the two major political parties – the Awami League (AL) and the Bangladesh Nationalist Party (BNP). Journalist Union has also been split into two since 1997, supported by the two parties. The government appoints its “own man” as the Director General of the PIB. There is only one criteria for nominating members of the PIB Board of Directors – supporters of the ruling party. Independent and arguably more competent journalists cannot even be considered for such appointment for the simple reason that they are independent and would like to remain so. The PIB, therefore, has failed to perform its due role. It would continue to fail to perform until it has been made fully autonomous and is allowed to run by reputed professionals independently.

PIB could be used as a watchdog body to keep a watch on the conduct of the newspapers in the country. It can also initiate awards for reporters/photographers monthly or annually as an incentive for doing better while at the same time, maintaining the code of ethics. In fact, run properly. PIB can be the most effective agency to promote the cause of the media, both print and electronic. Electronic media is fast assuming greater importance and requires to be provided with appropriate guidelines.

There were two associations - one for the newspaper owners, BSP (Bangladesh Sangbadpatra Parishad), and the other for the editors, the Editors’ Council. A third one, Editors’ Guild, has been formed recently by newspaper owners/editors and the idea is to promote the cause of their business interests such as supply of newsprint, rates of the government advertisements and quick disbursement of such advert bills. The Editors Council the Editors’ Guild, however, could play a crucial role in establishing a ‘code of ethics’ for the media if media activists could effectively persuade them to do so. Moral pressure from outside in the region could also be extremely helpful.
Case studies  Violation of Ethics

No. 1: An NGO, headed by a retired civil servant A. M. A. Muhith, is involved in generating public awareness to save the environment. It tried to develop a social movement against the encroachment of land along the River Buriganga in one side of Dhaka. This river is also the main communication channel between the capital and rest of the country. Literally hundreds of people, with muscle power and possible political clout have been trying illegally to grab parts of the riverbank between Dhaka and nearby river port Narayanganj, for years while the authorities maintained a stony silence. The movement created quite a stir in the society and received a lot of media coverage. It has found out that Sena Kalyan Sangstha (SKS- retired army welfare agency) has already filled up about three acres of the riverbank and constructed a huge godown on the new site. The concerned government agency asked SKS to demolish the godown and return the land.

A largely circulated Bengali-language daily Janakantha ran a story on 19 August, 2000 against the NGO and accused its chief of raising funds illegally and forcibly from businessmen who complained that Muhith had intimidated them and were forced to pay against their will. Muhith organised a three-day international seminar in January 2000 on the conservation of environment and a lot of people also attended from outside the country. All the expenses for the conference were met by 'extorting money from the businessmen.' The report also accused him of weakening the national economy when he was first appointed the country’s finance minister in early 1980s and that he was ‘corrupt’ and also involved in ‘lots of bad deeds’. There was no specific allegation against Muhith. Obviously, the purpose of the newspaper story was to destroy Muhith’s credibility. The report did not care to contact Muhith to get his side of the story. The newspaper did not publish a rejoinder to the story.

Muhith says, he circulated a report at the end of the Dhaka environment conference, detailing the sources of funds collected and how much was spent. It was also sent to all newspapers. He is preparing to file a defamation case against the publication.

No. 2: An interesting development has place recently. An editor/publisher (also businessman) in a public speech two months ago called some lawyers “sons of pigs” for their involvement in filing a contempt of court case against the Prime Minister. The Prime Minister made certain remarks against the judiciary and lawyers that the lawyers felt was contemptuous. Two weeks after the incident, the concerned editor himself was served with a warrant of arrest in connection with a case filed against him for publishing a story in his newspaper by a lower court. No lawyer was willing to file the bail petition on his behalf before the court for almost a week. He was also allowed by the administration to remain a large till he found a layer to handle his case.

No. 3: The English-language weekly Courier wrote a critical story on the Speaker’s penchant for foreign travel and reported that he had vastly overspent his travel budget and also misused his official vehicles. H. R. Chowdhury, a career diplomat-turned-politician, arranged to file two cases against the editor, one from Dhaka and another from Sylhet, the
speaker’s home district. The name of the wife of the weekly’s editor was also in the masthead as director of publications. Her name was also included as a co-accused in the case and both received summons from the two courts. However, the court in Sylhet had also issued warrants of arrest against the editor and his wife as a means of harassment. Legally speaking, the editor’s wife cannot be dragged into the case.

The couple appeared before the High Court in Dhaka and were given anticipatory bail, since the charge was bailable. Anticipating more trouble, the editor removed his wife’s name from the weekly’s masthead.

No. 4: Ms Seema Chowdhury, a garment worker, was allegedly raped by four policemen in a police station (Raozan, Chittagong) on 10 October 1996 and she later died in Chittagong Central Jail on 7 February 1997. The culprits escaped punishment through legal and procedural loopholes. But the issue never died – with the women’s organisations referring to it time and again. On 3 September this year, Seema’s brother Sajal Kanti Chowdhury, filed a murder case with the Chittagong Metropolitan Magistrate Court against 15 people including former SP of Chittagong and former jailer of Chittagong Central Jail for their alleged involvement in the murder of his sister.

The Seema rape and murder case received so much publicity that the authorities were earlier prompted to form one Parliamentary Investigation Committee and another Judiciary Investigation Committee. Reports of both the committees proved beyond doubt that she was not only a very important but the only witness to the heinous crime.

Ms Elina Khan and Ms Naila Khan, two prominent women’s legal activists, in connection with the Seema case said: “If Seema’s death had been investigated and criminals brought to justice we would not have subsequently seen the rape of a small child called Tania within the four walls of the police control room in old Dhaka, and many other similar criminal acts. Such protection of state violence will continue if justice does not prevail.”

Legal experts say, under the Women’s and Children’s Repression Prevention Act case No 2/97, Seema was both the victim and also the only witness, and that is why her dead body was cremated so quickly after her death. This had also exposed the extreme negligence of the jail authorities and the attempted avoidance of consequences of their own irregularities. There was no evidence that the court’s permission was taken before cremating the body. Such actions call for investigation and action against the jail authorities.

These are just a few of the cases chosen at a random. Dozens of such instances could be given without difficulty. Perhaps this is not peculiar in Bangladesh and similar situation also exist in some other countries as well. It is most unfortunate that these things, particularly the Seema incident, can take place at a time when we are stepping into the new millennium. It is really disgusting that the politicians are letting such things happen without a qualm.
Be that as it may, I would like to conclude by saying that all is not lost yet. There are conscious and concerned people in all professions, including the media, who are taking the lead, though slowly, in the right direction. In Bangladesh, higher judiciary, though of late, increasingly coming under undue criticism, still gives us the hope that at the end, all wrongs being meted out deliberately would be set at right. The path is not an easy one to tread, but with determination and will, the truth shall triumph.

Thank you all for your patience.