

LAW opinion



FACTfile



Journalists as human rights defenders: New challenges

A. H. MONJURUL KABIR

AUGUST 2003 will mark the third anniversary of the U.N. secretary-general's special representative for human rights defenders. Ms. Hina Jilani was the first to carry out the post's mandate, which called for her to press for the implementation of the 1998 Declaration on Human Rights Defenders and intervene in cases of threats to and harassment of human rights defenders worldwide. The 1998 Declaration recognises journalists as human rights defender and adds a critical momentum to the protection of human rights and its defenders worldwide. Journalists' role as substantial provider of information in the form of news, pictures and informed analysis endow them with unique role to serve democracy in diverse ways. They also directly contribute to the emancipation of people's right to information.

The right to information is one of the main human rights that protect and develop the human life. The use of the right to information will be able to contribute to solve the many social and cultural problems of the individual and the national level. But there are many pre-conditions, which are related to economical, social, cultural and political development for realising the right to information in a country. Unless a country has solved the main problems like hunger, education, health, social security and political freedom, it is not possible to realise the right to information. There is a strong relationship between the right to information and the development level of a country. The individuals who live in developed countries have many more possibilities in using the right to information than developing countries.

Freedom of expression the first casualty?

It is perhaps as an underpinning of democracy that 'freedom of expression' and 'access to information' are of significant importance. Free expression is fundamental for democracy. On the other hand, information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole. Unless there are good reasons for withholding such information, everyone should be able to access it. More importantly, freedom of expression and access to information are critical components of transparent and accountable government. They play a key role in enabling citizens to see what is going on within government, and in exposing corruption and mismanagement. Open government is also essential if voters are to be able to assess the performance of elected officials and if individuals are to exercise their democratic rights effectively, for example through timely protests against new policies. Journalists are key to achieve this freedom or struggle for it.

The Universal Declaration, the European Convention and other international human rights agreements enshrine the rights to freedom of expression and access to information. These core documents explicitly protect freedom of expression "regardless of frontiers," a phrase especially pertinent to the fast evolving media around the globe:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, and regardless of frontiers." Article 19, Universal Declaration of Human Rights.

"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Article 19, International Covenant on Civil and Political Rights.

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of borders." Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms

No matter what the means, government restrictions on speech or access to speech of others violate basic freedom of expression protections. In addition to direct government censorship of communications, or privatised censorship, freedom of speech is threatened by diverse factors.

The right to free speech faces the strongest challenges during times of crisis. Whether or not any of us agree about each particular decision made to prevent public access to sensitive information, it is a shared responsibility to chart any such efforts so that communities are at least aware of what is no longer available to us.

Ensuring the free flow of information is of supreme importance in a demo-

cratic society, but there is recognition that the right to free expression is not absolute. National security is one area where restrictions are placed on freedom of expression. However, governments across the world are well known for invoking national security to cover a huge range of issues and information, which they would rather not see in the public domain. For this reason, the highest international standards dictate that any restrictions on free speech invoked on the grounds on national security must meet stringent criteria. International and national jurisprudence, as well as the clear language of a number of treaties, requires that any restrictions meet the three-part test, as set out by the European Court of Human Rights (ECHR) and other courts.

Role of media in human rights

Increasingly media and/or journalists come to the forefront of the movement in defence of human rights. The importance of the media in uncovering past human rights abuses is often downplayed. In terms of basic human rights, the media transforms the ideas of freedom of opinion and expression into a reality. It also emancipates a number of critical agenda. Human rights coverage in media has been increased largely. Media documentation in South Asia of governments' complicity in "unofficial force" hit-squad tactics shows the vital role of media in uncovering human rights abuses as they occur. Risk to journalists covering human rights issues has also significantly increased worldwide. The following salient points could trace the diverse functions the media perform in Asia especially in our part of the world, i.e., South Asia. This catalogue of pro-rights media role is not exhaustive:

Popularising the issues/concepts of human rights

Human rights are not mere issues of academic interests, rather they are the inseparable part of human lives and dignity. The continued coverage (through news and opinion) on issues of human rights from right to environment to juvenile justice have a profound impact on the popular mindset; people are now more aware of their rights and obligations than they were in the past.

Changing 'anti-human rights' taboos and notions:

Media, specially the print media has been actively advocating for changing the conservative (in most cases 'anti-human rights') notions about sex workers, disabled persons, indigenous people, equality of opportunity in public employment, equal wages of female labourers etc.

Expanding people's right to know/information:

Media is keen to ensure people's right to information (right to receive, impart and seek information). It is committed to people's right to know and generally in favour of objective 'Freedom of Information' legislation. Internet is being widely used for both collection and dissemination of information.

Breaking the cycle of impunity:

Under the current system, government personnel have the privilege of "official immunity" - effectively protecting them from criminal prosecution or civil suits - even if they commit serious human rights abuses. Additionally, governmental organs and institutions possess "sovereign immunity," preventing them from being sued for damages for human rights violations committed by their officials. These two forms of immunity allow officials to commit severe human rights violations with impunity and prevent victims from ever obtaining effective redress. The print media through its extensive



coverage opposes the granting of impunity to the unruly law enforcers and follows up such cases - thereby forced the police and other government agencies to break the vicious cycle of impunity, at least, in some cases of grave violations.

Making the law enforcing agencies accountable:

Using news and statistics to create culture of accountability for realising human rights is an important aspect of media's human rights pro-active contribution. Reporters perform an incredibly diligent duty.

Supporting human rights defenders, activists, groups and NGOs:

Media focuses the work of human rights defenders, activists, groups and NGOs of defending human rights. It also actively promoted their fact-finding/investigation work. Media is particularly concerned about the security of the human rights defenders as proclaimed in the UN Declaration on the Human Rights Defenders, 1998.

Waging campaign against male domination, religious extremism:

Promoting the cause of equality between man and women, and supporting women groups' against the prevalent male domination is a critical agenda of the mainstream print media groups of South Asia. Combating violence against women and children is an area where the media attention and intervention(s) have become a regular phenomenon.

Monitoring cases of public interests:

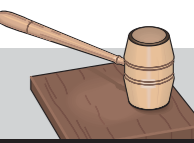
Media regularly monitors the cases of gross violations of human rights and of public importance. Such vigilance makes the concerned authorities including the police, the magistracy, and the office of the public prosecutors accountable.

Supporting institutional efforts to protect human rights:

Media actively supports the courts and other national human rights institutions in their endeavours to protect human rights better.

A.H. Monjurul Kabir, a human rights advocate, is a legal and human rights analyst and researcher. He can be contacted at <monjurulkabir@yahoo.com>. In the last episode, Mr. Kabir will analyse the impact of Security and Terrorism Quagmire on media and free journalism.

LAW watch



Conflicting coexistence of freedom of press and defamation

SHEIKH HAFIZUR RAHMAN KARZON

FREEDOM of press, an offshoot of freedom of thought, conscience and speech, has become instrumental for establishing a democratic state where fairness, transparency and free expression constitute skeleton of that polity. Every segment of the above right is very important as freedom of thought and conscience is essential for developing human personality, knowledge and civilisation. Freedom of speech and expression including freedom of press is the very foundation of democracy. Without ensuring free expression, criticism and open discussion democracy cannot function smoothly. But this freedom, like other rights, is not unfettered as it has been given to the citizens subject to a number of conditions including the right of the persons to remain unassailed by the press reports. Freedom of press is important but right to reputation is also important, as it is the most dearly valued property and attribute of a citizen. So law has to accomplish the delicate task of maintaining a balance between two very important but conflicting rights.

Constitutional mandate

Article 39 of the Bangladesh Constitution has provided freedom of thought, and conscience, and of speech. Article 39(1) has guaranteed freedom of thought and conscience in absolute language as state or any other authority cannot impose any restriction on any citizen the way she/he thinks. The state cannot make any law curbing thought and conscience of citizens, it cannot pass any instruction to which line the citizens should direct their thinking. Thought and conscience is the inherent attribute of human being and it is a continuous process through which human personality sprouts. So the Constitution very correctly recognises this indispensable right of every citizen and keeps this right beyond any restriction.

The freedom of speech and expression and freedom of press have been guaranteed by Article 39(2) of the Constitution. Though freedom of press is implicit in the freedom of speech and expression but considering the importance of print media, freedom of press has been mentioned separately. But these freedoms are subject to any reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, in relation to contempt of court, defamation or incitement to an offence. All the citizens of Bangladesh can exercise their freedom of speech and expression by remaining within the constitutionally stated horizon. If anybody oversteps the boundary she/he will be considered to have violated the constitutional provision and will be subject to sanction of law.

Defamation

Defamation has not been defined in the law. As common parlance goes, defamation means to injure one's reputation, to rob one's fair name. According to Clerk and Lindsell, when a person directly communicates to



the mind of another, matter untrue, to disparage the reputation of a third person, he is on the face of it guilty of a legal wrong, namely defamation. Defamation can be committed by words, signs or visible representations which can stigmatise the reputation of a person by degrading her/him or exposing him/her to contempt, ridicule or public hatred and in this way can lower the prestige of a person in the eye of right thinking members of a society. Most of the citizens, through their tireless endeavour, develop their position in the society and want to lead some respect in the esteem of others. The reputation and dignity acquired by an individual is considered very sacred property and it needs to be protected against any encroachment. When any person does anything, by spoken or written words, by which substantial damage is occasioned to reputation of any other person, simply that is called defamation.

Law of defamation in U.K

In English law libel and slander are two principal ways by which good name of any person can be assailed. A defamatory statement is a libel if made in writing, film, broadcasting, or other permanent form. When any defamatory statement is made orally or in any temporary form it is called slander. Libel is actionable per se, but slander is not actionable without proof of actual damage. Under English law they are twin torts or two varieties of defamation, the object of the law is to give compensation to the injured party. Libel is not only a civil wrong but also a criminal wrong, an offence under English law. Unless something is said to contempt a court or words are blasphemous, seditious, or obscene, slander is only a civil wrong.

Law of defamation in Bangladesh

In Bangladesh there is no statutory law concerning defamation except what is contained in chapter 21 of the Penal Code. Regarding civil liability of for defamation, any person can file a petition with a civil court for compensation. Every citizen has right to protect his/her reputation this is the ground for which courts entertain suits for damages for libel and slander in Bangladesh as well as in United Kingdom. The civil liability for defamation to pay compensation is not governed by any statutory law in Bangladesh, rather it is determined by the principles of justice, equity and good conscience, originated in England and later on these principles were imported in this sub-continent including Bangladesh. The criminal liability for defamation is codified and embodied in section 499 of the Penal Code of Bangladesh. It is to be mentioned that before the enactment of the Indian Penal Code in 1860 defamation was considered merely as a civil wrong.

As per section 499 of the Penal Code, if any person by words, spoken or written, or by signs or visible representations, makes or publishes any imputation, which will harm the reputation of another person, the former person will be liable to defame the latter person. This section provides a list of exceptions. If any situation fit any of the prescribed exceptions that will not come within the purview of defamation. It is not defamation (1) to impute anything which is true concerning any person, if it be for public good; (2) to express in good faith any opinion respecting the conduct of a public servant; (3) to express in good faith any opinion respecting the conduct of any person touching any public question; (4) to publish a substantially true report of the proceedings of a Court of Justice; (5) to express in good faith any opinion respecting the merits of any case, civil or criminal; (6) to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgement of the public.

Conflict between freedom of press and defamation

Freedom of press is inevitable pre-condition for a free, transparent and democratic society. The first thing any autocratic ruler tries is to curb the freedom of press. The government which is not amenable to people and law, the institution or persons who do something prejudicial for national economy or public welfare always fear free communication of information. So freedom of press is sine qua non for a modern democratic society. Free press keeps the people abreast of all the latest developments. It meets up the demands of modern people to know news of politics, economics, government activities, crime situation, sports, weather, space etc. By hard reports press is mitigating the right of every citizen to know what is going on in country and abroad. By commentaries, post-editorials and other supplements press contributes to form strong public opinion for good governance, convenient law and order situation, and good economic condition. Considering the role of press very significant, the Constitution of Bangladesh separately mentions and recognises the freedom of press. The Constitution, law and people cast heavy responsibility on the press, so the pressmen should present report, commentaries and criticism with great care and caution. They should

be very careful so that through their publication reputation of any person cannot be harmed.

Reputation is very valuable asset of any individual. Therefore, the provision of the Constitution has guaranteed the freedom of press subject to defamation. Constitution has to keep a balance between these two rights, which often conflict with each other. To maintain the unhindered flow of information the Constitution recognises the freedom of press, but it conditions this freedom so that no pressman can disparage the good name of other by taking advantage of this freedom. The Penal Code gives rights to the pressmen to publish reports concerning corruption, criminal activities, abuse and illegal activities if those reports are true and for public good. The Code also gives rights to criticise public figures and public officials.

An apprehension

Under the present dispensation of law the wrong of defamation is a bilateral offence. So any accused can easily get bail. But apprehension mounts when any affluent person or a person holding state apparatus files a case of defamation with any magistrate court to harass any citizen. After taking the case into cognisance if the court (not because of the merit of the case, but due to the influence of powerful state functionaries) issues any warrant of arrest and if the accused person, though innocent, is arrested before getting bail and kept in police custody and later on if that person is adjudged innocent, who will be going to compensate for the suffering of the person? This area of apprehension should be taken into consideration by the main actors of existing system and also by lawmakers.

Concluding remarks

The propriety of law can be determined by the fact that how efficaciously it can regulate the behaviour of different segments of society. Sometimes law has to maintain a middle course to keep balance between different rights if they collide with each other, but not at the expense of justice. All the rights and provisions should be given effect to by the courts by harmonious interpretation if necessary. The Constitution guarantees rights to the citizens and different professional groups, but limits the enjoyment of rights by security of states, welfare of society and rights of others. A check and balance system has been provided by the Constitution, now state machinery should ensure smooth exercise of citizens' rights. At the same time judiciary, civil society and press should be cautious so that none can be harassed by manipulating state apparatus and citizens' rights remain protected.

Sheikh Hafizur Rahman Karzon is a Lecturer, Department of Law, Dhaka University.