

Public broadcasting: From 'absolute control' to 'controlled autonomy'?

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THE cabinet okayed on 7 May 2001 two draft laws seeking to grant autonomy to Bangladesh Betar and Bangladesh Television. It was one of Awami League's foremost electoral pledges in 1996 to give autonomy to the electronic media. The draft law, which will now be sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting, is taken to be tabled in the coming budget session of the 'House of the Nation' destined to be the last session of the 7th Parliament.

The latest government move to give 'autonomy' to the state-run electronic media at the end of its tenure bypassing substantial recommendations of the government appointed 'Betar-TV Autonomy Commission', which it was instrumental in setting up for the purpose in the first place, has evoked sharp criticism from the civil society.

Politics of autonomy: Saga of public broadcasting

In many fragile democracies of Asia, Africa and Latin America, autonomy of electronic media is considered controversial issue having a great deal of control over public broadcasters, using them as a mouthpiece for government rather than as an independent source of information for the public. It is only when the independence of public broadcasters is guaranteed, in law and in practice that they can truly operate as servants of the public interest, providing high quality information from a variety of sources to the public. The governments of illiberal democracies attempt to devise mechanism to retain control over the electronic media directly or indirectly. Bangladesh is not an exception. Since the independence of Bangladesh the electronic media had always been a propaganda machine.

During the autocratic rule, the electronic media was branded as a media devoted for the sole cause of the then autocrat H.M. Ershad, his wife and their close associates ("Shaheb-bibi-gulam"). Until 1991 the issue of autonomy of radio-TV did not come to the forefront of the societal discourse.

Granting autonomy to Bangladesh Betar and BTV was one of the main demands in the joint declaration of the three alliances announced after the fall of Ershad. In November 1990 three major political alliances, popularly known as the 5, 7 and 8 party alliances announced 'Joint Declaration' to consolidate the movement against autocracy. Section 2(d) of the Joint Declaration states, "The mass media, including the radio and television, will have to be made into independent and autonomous bodies so that they become completely neutral..."

With the restoration of parliamentary democracy in 1991 on the basis of consensus among major political parties, the issue of 'public broad-

casting autonomy' gained momentum. The expectation was high in the public regarding the granting of autonomy of electronic media inline with the Joint Declaration. Regrettably the BNP government did not uphold its commitment to grant autonomy to electronic media. The then Minister for Information publicly denounced the idea of 'neutrality of state-run media' and claimed the government's right to enjoy 'subjective coverage' as it was voted to power. Such absolutely unprecedented argument in favour of a 'loyal electronic media' from an elected government put an abrupt end to the hope for an autonomous public broadcasting service. However the BNP government did form a commission to assess the matter. The commission prepared a set of recommendations to relax the government control over the electronic media. But the recommendations were never published, let alone be materialised.

Left Democratic Front leader Rashed Khan Menon initiated a bill seeking withdrawal of state control over the public broadcasting in the fifth parliament during BNP's regime, where he proposed that the authority of parliamentary committee on Ministry of information be strengthened to conduct the affairs of Betar-BTV. But the bill was never passed.

The Awami League government constituted a 16-member 'Commission for Framing Rules and Regulations for the Autonomy of Bangladesh Television (Radio-TV Autonomy Commission)' in September 1996, coming back to power after long two decades. Following several foreign visits by its members and a series of discussions, the Commission submitted its report to the Prime Minister in August 1997, recommending 'full autonomy' for Radio and TV. Afterwards the government maintained absolute secrecy on the content of the report. It did not even spell out its plan of action to follow up the Commission's costly exercise. There had been a little progress in implementation of the report recently when Prime Minister Sheikh Hasina said that her government would deregulate the electronic media before it completes its term.

The Report

The Commission was required to submit its findings and its recommendations to the Prime Minister within six months. This was subsequently extended by three months. The Commission finalised its report on 30 June 1997. The findings of the Commission included both administrative and non-structural measures, and means of handling satellite and terrestrial, and FM radio bands. The recommendations of the Commission included formation of a National Broadcasting Commission (NBC) completely independent of the Government, accountable

only to a Parliamentary Committee on Information. The NBC would administer both Bangladesh Betar and Bangladesh Television. NBC would approve the budgets for both Bangladesh Betar and Bangladesh Television, which would function and operate from their own income. A Code of Conduct would be signed between NBC and the private operators. A Standard Committee would be formed by NBC to monitor Satellite and terrestrial programmes, and take action against violation of the guidelines. In the area of news coverage, protocol value would replace news value. The commission, headed by former civil servant M Asafuddoula, suggested that the President appoint one chairman and six members of the National Broadcasting Commission.

The Petition and the Rule Nisi

Since its submission to the government, the Commission's report has been kept in secret as a 'classified document'. Odhikar, a leading Bangladeshi human rights NGO, filed a writ petition (Writ Petition No. 4314 of 2000) against the Ministry of Information, and the National Broadcasting Authorities (Bangladesh Betar and

The proposed Bill

Instead of formation of a National Broadcasting Commission as recommended by the autonomy commission, the government is now planning to form two separate authorities and government itself would appoint members of these bodies. Each authority would have a chairman with some members to assist in running the affairs of the two public broadcasting agencies. Under the two draft laws approved by the cabinet - Bangladesh Betar Authority Act, 2001 and Bangladesh Television Authority Act, 2001 the government can sack the chairman of both the authorities without giving any reason.

On 10 May State Minister for Information Prof. Abu Sayeed defended the draft laws stating proper implementation of the laws would ensure the autonomy of the state-run radio and television. He, however, said the concept of autonomy did not suit in the era of free flow of information. He hoped that the laws would come to effect before the end of the Awami League government's term. "Once the parliament passes the laws, a national broadcasting policy will be formulated

Chief Justice (d) Leader of the Opposition in the Parliament shall constitute the National Human Rights Commission. The Commission shall consist of a chairperson and four members. At least one member should be a woman [Sec 3 (1) (2)]."

International standards and the obligations of Bangladesh

The International Covenant on Civil and Political Rights (ICCPR) is an international treaty, ratified by over 140 States, which imposes legally binding obligations on parties to respect a number of human rights set out in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms very similar to those found at Article 19 of the UDHR. Guarantees of freedom of expression are also found in all three major regional human rights systems, at Article 9 of the African Charter on Human and Peoples' Rights, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 13 of the American Convention on Human Rights.

Last year Bangladesh acceded to the ICCPR considered by the human rights experts as the most influential human rights mechanism of the UN. Article 2 of the ICCPR places an obligation on Bangladesh to "adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant." This means that States including Bangladesh are required not only to refrain from interfering with rights, but that they must, in appropriate circumstances, actually take positive steps to ensure that the rights contained therein, including freedom of expression, are respected.

The State's obligation to promote pluralism and the free flow of information and ideas to the public, including through the media, does not permit it to interfere with the media's freedom of expression. This is clearly reflected in comments by the Ghanaian Supreme Court: "The state-owned media are national assets; they belong to the entire community, not to the abstraction known as the state; nor to the government in office, or to its party. If such national assets were to become the mouth-piece of any one or combination of the parties vying for power, democracy would be no more than a sham." An important implication of these guarantees is that bodies, which exercise regulatory or other powers over broadcasters, such as broadcast authorities or boards of public broadcasters, must be independent. This is reflected in a case decided by the Supreme Court of Sri Lanka, which held that a draft-broadcasting bill was incompatible with the constitutional guarantee of freedom of expression.

Under the draft bill, the Minister had substantial power over appointments to the Board of Directors of the regulatory authority. The Court noted: "The authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought."

The Supreme Court of Ghana noted that it was the role of the National Media Commission "to breathe the air of independence into the state media to ensure that they are insulated from Governmental control." The same view is reflected in the preamble to the European Convention on Transfrontier Television "Reaffirm their commitment to the principles of the free flow of information and ideas and the independence of broadcasters." Independence from government control exercised as a matter of public financing would also be prohibited by the guarantee of freedom of expression as it engages the same underlying principles.

Guaranteeing people's right to know

Public broadcasters are a vital component of the broadcasting sector in most countries, and will continue to be long into the future. Historically, such broadcasters have often been the only national broadcast medium and they continue to occupy a dominant position in many countries. Funded out of the public purse, they are a unique way of ensuring that quality programmes covering a wide range of interests and responding to the needs of all sectors of the population are broadcast. They thus ensure diversity in programming and make an important contribution to satisfying the public's right to know.

The public broadcasting sector in Bangladesh has notoriously been misused as a propaganda tool of vested interests of the ruling parties (in power). Bangladesh Betar and Bangladesh Television were established with the primary aim of rendering public service for the transmission of news and entertainment. But both institutions were from the very inception, devalued by political appropriation, overt censorship and restraints of due process.

Autonomy signifies self-rule. Empowering the government with the hiring and firing authority contradicts the very essence of autonomy. The Government seems to be determined to give a new meaning of the term 'autonomy' as according to the State Minister for Information, "the concept of autonomy did not suit with the era of free flow of information!"

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Bangladesh Television) on 17 August 2000 for full publishing the report in public. Terming the inaction of the Government in implementing the recommendations of the Commission Report as "arbitrary, unlawful and malafide, inasmuch as such inaction is a violation of the fundamental right guaranteed in Article 39(freedom of thought and conscience, and of speech) of the Constitution", Odhikar demanded for speedy implementation of the recommendations.

Earlier on 13 August 2000, Masood Alam Rabib Ahsan, Director of Odhikar, had served a demand of justice notice on the same authorities (the respondents) seeking the implementation of the Commission Report. Understandably no one from the relevant government ministry or authority bothered to reply the notice. Against the backdrop, a Division Bench of the High Court Division of Bangladesh Supreme Court comprising Justice K. Manowaruddin and Justice M.M. Hossain issued a Rule Nisi on 19 November 2000 "calling upon the respondents to show cause as to why the respondents shall not be directed to consider for implementing the Report dated 30.06.97 submitted by the Commission for the Formulation of Rule and Regulation for the Autonomy of Bangladesh Betar and Bangladesh Television Commission". The Rule was made returnable within four weeks from the date of issuance.

lated in line with the spirit of the Independence War, and social and national interests," the minister added. Defending government's authority to appoint chairmen and members of the bodies to administer the two media, Prof. Sayeed claimed that the constitution has to be changed for vesting the appointing authority on the president.

Some members of the Commission regretted that this proposed laws not only came at the fag end of the government's tenure but also marked a significant departure from the commission's recommendations. In many parliamentary democracies with ceremonial presidency, the president can appoint or nominate persons in different government or autonomous bodies. Such practice has turned into a convention and considered as a mark of recognition of the ceremonial role of the head of state. The question of violating Constitution, if a president appoints or nominates representatives in some autonomous bodies, simply does not arise. The proposed law establishing a 'National Human Rights Commission of Bangladesh' drafted by the Ministry of Law, Justice and Parliamentary Affairs in the present regime also recognises the role of the president:

"Constitution of NHRC: The President in consultation with Committee consisting of the (a) Prime Minister (b) Speaker of Parliament (c)

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(e) Normal communications between East and West Pakistan will be disrupted during war.

(f) Even if the hostilities commence in East Pakistan, strategic factors dictate that major and decisive battles will be fought from West Pakistan.

TOMORROW: MILITARY ASPECT-II

Excerpts from the 'declassified' main report of Hamoodur Rahman Commission

MILITARY ASPECT-I

WE consider that for a proper understanding of the military aspect of the debacle the following matters need to be examined:- (i) The military concept of national defence in the light of the directives issued by the government and the supreme commander from time to time; (ii) The formulation of defence plans for implementing these directives and concepts; (iii) The evaluation of the Indian threat in the light of events as they were developing since the army action of 25th March 1971 in East Pakistan; (iv) The state of preparedness of the armed forces for meeting this threat; (v) The events in East Pakistan preceding the open Indian invasion of 21st November 1971, and their effect on the military situation; (vi) A narrative of events in East Pakistan from 21st November to 3rd December, 1971; (vii) All-out war from 3rd to 17th December 1971; (a) war in East Pakistan; (b) army operations in West Pakistan; (c) the air battle in West Pakistan; (d) the war at sea; and (e) defence against enemy air attack; (viii) A critical analysis of the circumstances surrounding the surrender of the Pakistan army in East Pakistan; (ix) The ceasefire in West Pakistan; (x) Higher direction of war. We shall, of course, wind up this discussion with recording our

conclusions, findings and recommendations.

The military concept of national defence

The basic document spelling out the strategic concept of the defence of Pakistan in War Directive No 4 issued by Field Marshal Mohammad Ayub Khan on 9th August 1967, in his capacity as the Supreme Commander of the Pakistani Armed Forces.

Paragraph 2 of this Directive describes the National Aim as "to preserve national security, integrity and the sovereignty of Pakistan, while promoting prosperity and well-being of its people so as to enable the country to find an honourable place in the comity of nations. Within the framework of such aggression, she has a limited capability for amphibious operations".

After stating the position of

Afghanistan and China, the Directive lays down in its 7th paragraph that the Mission of the Armed Forces would be:

"On commencement of hostilities or as soon as favourable conditions are created or offered, offensive operations will be undertaken to capture and hold as much enemy territory as possible whilst containing and neutralizing the enemy forces elsewhere by all means at

our disposal in the West. In the East

contain and neutralize as many enemy troops as possible, inflicting maximum casualties without running the risk of annihilation".

The Directive then proceeds to mention certain Basic Assumptions, in its 8th paragraph, which must be kept in view for defence planning:

(a) Our greatest, continuing and immediate military threat is from India. The size and posture of Afghan armed forces and the Afghan territorial claim, however, imply a positive threat. Every effort should be made to neutralize this threat through diplomatic and other actions. Planning for defence in West Pakistan must, therefore,

cater for operations on two fronts,

with major emphasis on front

against India.

(b) We should expect to get some

warning of an impending aggression by India - probably seven days.

The war may start with an attack on West Pakistan, as per the last time, or holding off West, East Pakistan may be attacked first. In either case total war would have commenced for us.

(c) No direct substantial military help

can be expected from outside

during a war but some countries

may assist as per the last time.

(d) The war with India will be intense

and fought with great severity.

We hope it will be a short war. Our

ammunition reserves being limited,

we must bring it to a successful

conclusion in the shortest possible time.

(e) Normal communications

between East and West Pakistan

will be disrupted during war.

(f) Even if the hostilities commence in East Pakistan, strategic factors dictate that major and decisive battles will be fought from West Pakistan.

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