

SPECIAL SUPPLEMENT ON WORLD PRESS FREEDOM DAY

Press freedom to ensure responsible journalism

LAW INTERVIEW

Law Desk (LD): Would you please tell us what basically freedom of the press refers to?

Mohammad Nazmuzzaman Bhuian (MNB): Freedom of the press may generally be defined as freedom of publishing one's expression and speech either in print or electronic media without being subject to intimidation or censorship. Therefore, freedom of the press is usually considered as an extended version of freedom of speech and expression. However, article 39 of the Constitution of Bangladesh has separately guaranteed press freedom along with recognising citizen's freedom of thought and conscience vis-à-vis freedom of expression and speech. Though the Constitution of India apparently guarantees more freedom to the press and media compared to other South Asian countries, the Constitution of Bangladesh is one step ahead to that of India which does not exclusively recognise freedom of the press. From the perspective of constitutional law, here lies the uniqueness of press freedom in Bangladesh.

LD: Does this constitutional uniqueness have any significance in practice?

MNB: Definitely, the people of Bangladesh are supposed to enjoy the benefits of such specific constitutional guarantee to right to free press. However, unlike right to freedom of thought and conscience, the Constitution has subjected the right to press freedom to reasonable restrictions. Restrictions imposed upon freedom deserve jurisprudential explanation to clearly perceive the actual meaning of press freedom. Because the sphere of press is no more confined within the limit of print media only; online sphere and social media - what is popularly known as 'new media' - has now a big role to play in disseminating news and views. In other words, press freedom consists of the right to publish views not only in the newspaper, but also in online media.

LD: How do you evaluate the idea of restrictions which is permissible to be imposed upon the press?

MNB: It is true that there is no such concept as absolute freedom since freedom always entails obligations to respect certain boundaries. Therefore, restriction on press freedom is a common phenomenon in every legal system of the world. But, due to the colonial mindset of our power structure and a concomitant poor level of democratic culture, such restrictions often have crossed the boundary of reasonableness. The struggle has therefore always been about what would be reasonable.

In the twenty-first century, however, what appears or would be reasonable is subject to justification and interpretation. But the question is - who has the authority to interpret the term reasonable? In most of the democratic societies, it is mainly the higher judiciary which holds the authority under the Constitution to interpret and judge the reasonableness of any restriction. Though the guarantee in article 39 was upheld by the apex court of Bangladesh on many occasions once a matter reached the court, it usually restrains itself from dealing with the issue of defining or interpreting the term

'reasonable' in case of imposing restrictions. Nevertheless, comments and observations issued by Human Rights Committee, European Court of Human Rights, Supreme Courts of different countries, etc. on the issue of press freedom and associated media law may always guide us in understanding the connotation of the term 'reasonable' from our indigenous context.

LD: Do you think that restrictions imposed under article 39 of our Constitution are in parity with those suggested under article 19 of the International Covenant on Civil and Political Rights (ICCPR)?

MNB: If we compare these two provisions, we will see that our article 39 is not in conformity with the ICCPR. To be more specific, article 39 has listed a bundle of restrictions to be imposed upon press freedom which are not in line

will employ 'self-censorship' while playing its role of criticising the untoward activities of the government. We still fail to understand the distinction between sovereignty of the State and interest of the government. It's true that State will always aim to secure its national interest and sovereignty. In doing so, however, citizen's right to privacy, freedom of expression and press freedom cannot be sacrificed. Rather what we should do is to strike a balance between national security and citizen's right.

LD: How can this balance be maintained?

MNB: It's a common scenario that, the harsher restrictions are seen in those societies where democratic values, rule of law and respect towards human rights are vulnerable. With an excuse of necessity, the State should

In order to ensure that, the State has the major duty to minimise the discretionary authority of restricting press freedom under the existing laws.

LD: In the context of responsible journalism, how it is important to disclose source while publishing news or views in the press?

MNB: Conventionally, a journalist can exercise the privilege of not disclosing source where from he/she gets information. However, such journalistic privilege is not specifically recognised in law. Therefore, a journalist may be required to identify his sources before courts or tribunals. A journalist should rely on unnamed sources only as an exception and in those rare cases where but for a guarantee of confidentiality of its source, information of significant public interest would remain in dark. On the other hand, the court should order for such disclosure only in the interests of justice or national security, or for the prevention of crime.

However, in the absence of any specific legal provision, the principle of proportionality may be applied in dealing with such issues of disclosure. Thus, the possibility to offend individual's right to privacy does not appreciate to disclose the source unless such a non-disclosure would hamper the greater public interest. For example, the court may only order for such disclosure if it finds that the injury that would occur due to the disclosure of the communications must be greater than the benefit gained by the disclosure for the adequate disposal of the cases in hand.

LD: What would you suggest to ensure the better exercise of press freedom in Bangladesh?

MNB: Firstly, the government should seriously take the lead to not only recognise press freedom under the Constitution, but also to protect the freedom in practice. The government should understand that curtailment of press freedom is one of the factors that makes democracy and rule of law vulnerable. A more secure and sustainable balance between regulating and promoting press freedom needs to be devised and fine-tuned to ensure the fundamental right to freedom of the press in Bangladesh. It is to be noted that mere existence of laws that aim to restrict freedom of the press is sufficient to create an environment where journalists apply self-censorship. Therefore, repeal or amendment of the existing colonial legislation should be the first priority, leading to a reduction in the government's armoury of repressive legislation.

Secondly, our journalists should avoid partisan politics and be honest and courageous in maintaining ethical standards of journalism. Temporary benefit and political favour do not sustain a healthy environment for the press and media. Responsible journalism can be expected and realised only when we understand the perils of politics-motivated-partisan journalism.

LD: Many thanks for your invaluable opinion.

MNB: You're welcome.

Dr. Mohammad Nazmuzzaman Bhuian is a Professor of Law at the University of Dhaka, and holds a PhD on Media Law from the School of Oriental and African Studies (SOAS), University of London. Law desk has recently talked to him on the issue of press freedom.



with article 19 of the ICCPR. Say, for instance, I don't find any reasonableness in imposing restriction on the ground of friendly relations with foreign countries in this post-cold war era. Therefore, restrictions on certain grounds of colonial origin including incitement to an offence should lose their constitutional endorsement. Another thing is that, we have largely inherited the British colonial laws which were mainly enacted to curb freedom of expression and speech of the colonised citizens and have no value in the present world of human rights.

One can question the reasonableness of section 124A (sedition as an offence against the State) of the Penal Code of 1860, which suggests that "disaffection towards the government" is a punishable offence of sedition. This section was introduced in the Penal Code to punish hatred towards the British colonial administration, completely ignoring the striking difference between a state and a government. In fact, this was influenced by the socio-political context of rising discontent among Indians against military actions during the famine of 1895 and 1896. However, due to the existence of this section in the penal legislation of independent Bangladesh, the press

not abuse restrictions against citizen's interest by way of bringing both preventive measures and remedial measures in the legal framework. Here again comes the judiciary to play its role to secure the balance. In doctrinal contexts, proportionality is frequently used as a mechanism of judicial review to maintain such a balance. Proportionality analysis is actually intended to ensure that fundamental rights are realised to the greatest extent possible in the circumstances given countervailing rights and interests. In my opinion, the term 'reasonable' under article 39 of Bangladesh Constitution also contains within it such an idea of proportionality.

LD: While considering citizen's interest, how do you see responsible journalism to protect press freedom?

MNB: Protecting press freedom and expecting responsible journalism is a reciprocal matter. If state fails to ensure press freedom, partisan politics engulfs professional journalism resulting in the alarming increase of yellow journalism. In this context, one can argue only in favour of maximum press freedom with minimal restrictions, which in turn would encourage responsible journalism.

Free press: Issues and concerns

RIGHTS WATCH

EMRAAN AZAD

TODAY in the era of globalisation and internet, online journalism has supposedly become a popular platform to hold opinions and impart information without interference regardless national frontiers. Across the countries, social media networks like Facebook, Twitter, or blogs have already shown their strength to mobilise and empower people. At this end, the sense of public's right to information coupled with freedom of the press has now widened the scope of journalism for many countries including Bangladesh. However, the perils of online journalism carries with it cannot be overlooked so easily. Recent brutal killings of bloggers and online journalists or creative writers in Bangladesh are some instances which show how and to what extent online journalism is struggling in order to ensure people's right to information and to exercise its own freedom for the purpose of disseminating news and views. At the faces of these challenges, online journalists - be professional journalists or untrained citizens who nevertheless produce journalistic content - are in need of press freedom.

However, as the statistics prevails now, recent

respect and protect freedom of the press for its citizens. The Constitution of Bangladesh in its article 39(2) ensures freedom of the press. However, this freedom is not an absolute one, since reasonable restrictions can be imposed on several grounds. In reality, restriction has been brought in section 57 of the Information and Communication Technology (ICT) Act, 2006 (as amended in 2013), under which a punishment of 14 years imprisonment can be given to anyone for deliberately publishing or transmitting false, obscene and derogatory information in a website or in any other electronic form. Among others, prejudicing the image of the State or person, or causing to hurt or about to hurt anyone's religious belief, or instigating against any person or organisation - is a punishable offence. This section embodies uncertainties as to legal interpretation of the restrictions mentioned above. In other words, the section affronts the principle of legality which requires that a law mainly the one which limits fundamental right and freedom must be clear enough to be understood and must be precise enough to cover only the activities connected to the law's objective. Even the thresh-

appointed controller to block online content based upon his own (subjective) satisfaction. Print media due to their online versions has the possibility to suffer the danger of being harassed by dint of this section. On 19 April 2016, the High Court in Nairobi has found section 29 of the Kenya's Information and Communication Act, regarding 'improper use of a licensed telecommunications system,' to be in conflict with article 33 of the Kenya Constitution, which guarantees the right to freedom of expression. Since 2015, this section has been allegedly used by the government to criminalise publishing information online. The Kenyan Court has opined that some terms of the law such as 'grossly offensive', 'indecent', 'obscene', etc. are overreaching and broad (see, Geoffrey Andare v Attorney General [2016]). Similarly in 2015, the Supreme Court of India has struck down section 66A of the Information Technology Act that restricts citizen's constitutional right to express freely their own views. The Supreme Court has viewed that empowering police in India to arrest people for making comments on Facebook and Twitter, directly offends democratic values of India (see, Shreya Singhal v Union of India [2015]). As the Kenyan and Indian experience suggests, what can never be compromised is people's right to know which is now best exercised and ensured through a free, vibrant and fearless online journalism. A similar case challenging the constitutionality of section 57 of the ICT Act is now pending in the Supreme Court of Bangladesh. Apart from this one, two other similar challenges on the issue of section 57, non-bailable nature of offence and wide discretionary power of the police under the ICT Act were summarily rejected by the Court on 30 August and 2 September 2015 respectively. While rejecting the petition, the Supreme Court observed that the government was considering taking some steps regarding the law. As we know, the government has been planning to enact a cyber-security law which has already been criticised for being much harsher than the existing ICT Act.

Unusual imposition of restrictions upon freedom of the press and online journalism has become a common scenario in Bangladesh. Indiscriminate abuse of sedition law and section 57 of the ICT Act, and treating defamation as a criminal offence are now threatening the existence of free press. This way of curtailing freedom is nothing but keeping editors and journalists under constant threat, the fact of which are not actually in favour of ensuring the rule of law, human rights and democracy in a country. The sooner we understand this, the better we progress as a nation.

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LAW NEWS

Right to information for sustainable development

TODAY, 3rd of May is to celebrate the World Press Freedom Day around the world. This international day was proclaimed by the UN General Assembly in 1993 following a Recommendation adopted at the 26th Session of the UNESCO's General Conference in 1991.

Freedom of information is a fundamental freedom and a human right, inherently bound up with the broader right to freedom of expression. It covers the right to seek and receive information, and it complements the right to impart information which is the freedom to make information public via the right to press freedom.

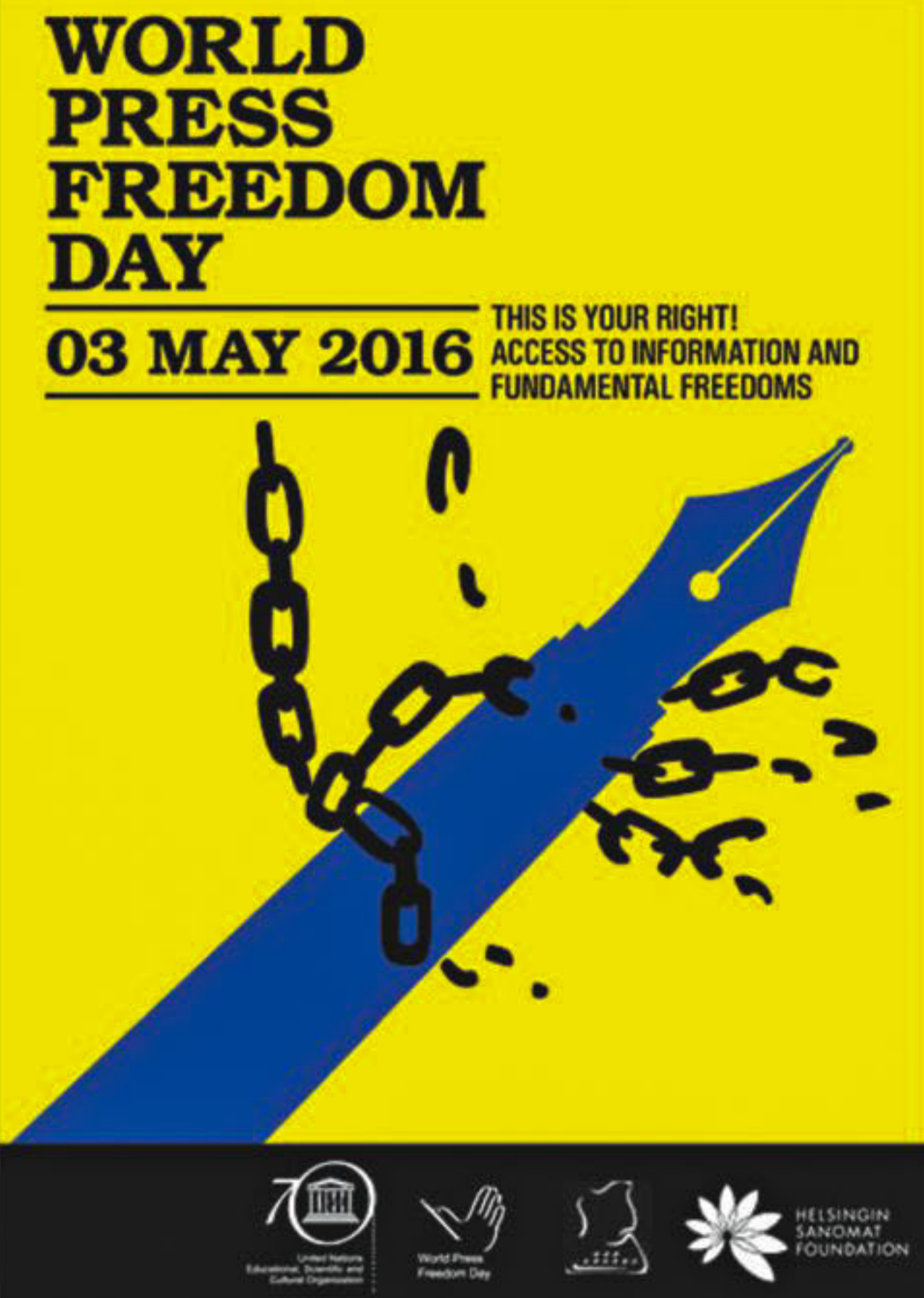
The freedom of information and press freedom both contributes to the 2030 Development Agenda's goal (SDG No. 16) to: "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". In this way, freedom of expression as a whole is vital to achieving SDG target 16.10: "Public access to information and fundamental freedoms".

Journalism has a major role to play in actualising the right to information in the interests of public. At the same time, they may have difficulty in accessing, understanding, and subsequently using the raw data or information. In order to make full use of the right to information, journalists need press freedom.

While giving the right of freedom of press, journalists need an assurance of their physical and psychological well-being. That includes digital security, one of the most pressing issues in recent times, and it impacts directly on processes around freedom of information, press freedom, and sustainable development.

Technological advances and the rise of citizen journalism have cemented the notion that journalism today should be understood in terms of an activity rather than a status. While not every blogger and social activist engages in journalistic activities, those who do so can often face harassment, threats, and possible imprisonment.

More and more attention worldwide is being given to the safety of journalists and to ending impunity. The UNESCO considers the killing of journalists as the ultimate form of censorship and systematically condemns such crimes, and reports on impunity.



years happen to be alarming and challenging for the press and media in Bangladesh. Published on 20 April 2016 by 'Reporters Without Borders', the World Press Freedom Index 2016 shows that the situation of press freedom in Bangladesh is clouded with a climate of fear and tension juxtaposed with increasing control over newspapers by governments and private-sector interests. Being ranked 144 out of 180 countries, Bangladesh possesses an abuses-score of 57.84 which reflects the intensity of violence and harassment to which the journalists and other news and information providers of offline or online spheres were subjected during the year of 2015. More frighteningly, the Country Report on Human Rights Practices for 2015 (released on 13 April 2016 by the US Department of State), reveals that Bangladesh sometimes fails to

old for being satisfied to impose restrictions is associated with an apparent risk that might facilitate the government to misuse the law with an option to be arbitrary and unjust against those holding dissenting opinions online. The severity of punishment under this section is also questionable. The highest punishment for the similar offence is five-year imprisonment under the Pornography Act, 2012 (section 8(3)) and two-year imprisonment under the Penal Code, 1860 (section 500). Upon the emergence of online activists and bloggers, such a law can be seen to curb freedom of speech and expression for the online journalists, sooner or later even engendering freedom for the open and pluralistic press to emerge. Furthermore, section 46 of the same Act highly empowers the government-