

August 12, 2014

Please, do not mind

by Saira Rahman Khan



The statue of Roman statesman Marcus Tullius Cicero at the Palace of Justice in Rome, Italy. Cicero said: the more laws, the less justice.

In this age of technology, it has become extremely easy to send comments, messages, reports and other information across the globe in the blink of an eye. News does not travel fast – it travels scary fast. Often a person may write down his thoughts or feelings and press the ‘post’ or ‘send’ button without a second thought. Once the button is pressed it is like a bullet shot out of a gun. The need to control information, speech and expression has given rise to new laws and policies in Bangladesh which are, to say the least, not well thought out; and may be misused as a noose around the neck of free speech. It was the Roman statesman, Marcus Tullius Cicero who observed that ‘the more laws, the less justice’ – and the legal system of our country, coupled with bias policies is a good example of this. However, in this piece of writing, I do not want to dwell on the shortcomings of these new laws and policies. Nor do I want to discuss the intentions of the individuals who draft them. What I want to highlight is the fact that it seems we have forgotten that we have in place older and, let’s face it, less ‘sensitive’ laws that both

provide for and curtail freedom of speech. These provisions can be found in our constitution and in our Penal Code.

The constitution of the People's Republic of Bangladesh had a host of articles that deal with the fundamental rights and freedoms guaranteed to the people of Bangladesh. Among them is the freedom of speech. However, human rights cannot be enjoyed at the expense of, or detriment to, others. This is also true for free speech. The constitution reminds us that there are restrictions imposed by law, in the interest of, among other things, 'public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence'. In the recent past, we have experienced several incidents where freedom of speech has, to some ears and in some minds, amounted to either contempt of court, or defamation or incitement to an offence. As to the issue of maintaining decency – the bile spewed by politicians over each other is enough to make us wish our ears had lids or flaps, just like our eyes.

When one person defends freedom of speech, there is inevitably another who will shout back 'defamation'. So, what is defamation? And when are inflammatory statements not a crime? In a nutshell – when can we exercise free speech without being prosecuted (or persecuted) for opening our mouths? According to the Penal Code, the crime of 'defamation' constitutes spoken or written words or visible representations, said or published with the intention of harming the reputation of a person. So, what constitutes 'harming' a person's reputation? The law goes to explain that if the imputation lowers the moral or intellectual character of the targeted individual or lowers his credit or his character in respect of his calling or makes him feel generally disgraceful in the eyes of others, the imputation will be tantamount to harming his reputation. Are all statements critical of public figures; scathing remarks against individuals belonging to the state machinery; and political cartoons lampooning eminent persons harming their reputation? If that is the case, it is small wonder that the noose is tightening around free speech.

However, sometimes, such flights of speech do not amount to a criminal offence. The Penal Code goes on to categorise which statements are not defamatory. It all depends on circumstances and intention. If something truthful needs to be published for public good; if an opinion is made against a public servant regarding the manner in which he discharges his professional activities; and if any imputation made on the character of another person in good faith and for public good, these will fall among the several representations that do not amount to defamation.

What the Penal Code and the constitution have given us is the freedom to speak out against injustices we face as citizens of a sovereign country. The freedom to speak our mind – within the normal parameters of law and decency – the freedom to criticise those who, purportedly, run the country for their benefit; the freedom to discuss how things could be done in a more effective, citizen-oriented manner. By penning new laws and policies – starting from the Information and Communication technology Act 2006 (Amended in 2013) to the new Broadcasting Policy of August 2014, it is as if attempts are being made to wall up the 'saner' laws on free speech.

Since the law cannot be repealed, as it would be a moral outrage to wipe out freedom of speech, a policy has been put in place to curtail and control what is being said and commented on in public. Ironically, what is usually said in public, in talk shows and in newspapers, does not always amount to the crime of defamation. Something to think about when you try to tune in to your favorite talk show one day only to find it has been taken off the air.

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