



**DISSERTATION**

**ON**

**Protection of Fundamental Rights in Mass Media by The  
Constitution and the other Existing laws in Bangladesh**

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## **Declaration**

I am Mohammad Mushfique Hasan student in the Department of Law at East West University. I have done this Legal Research for my academic requirements. I completed my thesis paper originally by myself and there is no copy-paste from any other sources. I have duly mentioned all references from which I receive the information regarding my research and duly acknowledged it. Furthermore, I am fully aware that if I were to resort to forgery, I would develop the trait of "Nothing" and be subject to severe disciplinary action in accordance with the University's regulations and guidelines.

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## **Abstract**

Mass media's impact on fundamental rights is divided into two categories: Printed media and Electronic Media. Mass media is also synonymously used as Mass communication because its nature of communication nowadays has a significant influence on society. Because of this impact on society, most political campaigns need media coverage to reach trigger audiences and convey their manifesto. This study focuses on the "right to information", "freedom of speech" and "expression", which affect fundamental rights. Day by day, as the Mass media gets more advanced with its acceptance of the risk of violating the right, people have also become a big concern. Keeping that in mind, different regulations have been passed to safeguard individuals' essential privileges. Article 39 of the “Constitution of the People's Republic of Bangladesh 1972” give a roadmap to Unitary Parliamentary Democratic Republic Governments' directions to protect citizens' right to freedom of speech, expression, and information. Provinces have legislated their right to information laws. This research paper is based on a literary survey of the facts and figures of the development of mass media and the legislation introduced to safeguard citizens' rights; the nature of the research is quantitative and descriptive in form.

# Chapter 01

## Introduction

The Constitution of the People's Republic of Bangladesh is known as - 'It's an Autochthonous Constitution. Because Bangladesh gained independence from its previous regime through a bloody struggle and in a completely new way, the Constitution was adopted.<sup>1</sup> Aside from socio-political concerns, Bangladesh's Constitution from 1972, some statutory laws, and other internationally binding legal instruments pertinent to the nation all play a role in preserving, advancing, and ensuring the right to information and its restrictions. The Constitution incorporates both the right to free speech and the right to knowledge, with some justifiable limitations. The country has a few laws that protect citizens' right to free speech and to hold public office, but many more that do not. Bangladesh is a signatory party to numerous international laws, including the “Universal Declaration of Human Rights” (UDHR) 1948, the “International Covenant on Civil and Political Rights” (ICCPR) and the “Child Rights Conventions” (CRC) 1989. All of which require her to uphold the freedom of expression and the right to information. The current situation of freedom of expression and the right to information in Bangladesh is hypothesized in this essay, along with their limitations due to justified restrictions, and the pertinent domestic legislation and international legal instruments are examined.<sup>2</sup>

While shedding light on the nation's socio-legal dynamics, some findings, and proposals for improving the freedom of speech and the right to knowledge within reasonable restrictions are also highlighted. But absolute freedom often harms the state. It is believed that it revolves around the reasonable restrictions imposed by the freedom of speech Act. So, like in Bangladesh, there are laws for and against free speech. Now we will try to see if the laws existing in the country are independent and how helpful they are for expression and media. In Short, my central idea of the research is to brief about the impacts of the mass media on people's fundamental rights.

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<sup>1</sup> Haque, P. M. (2016, June). Formation of the Constitution and the legal system in Bangladesh: From 1971 to 1972: A critical legal analysis. *Dhaka University Law Journal*, 27(01), 42-56.

<sup>2</sup> Ahmed, A. M. (1999). *Media Laws and Regulation in Bangladesh: Press Freedom and Its Constraints*. Oslo: University of Oslo.

## **1.1 Background of study**

In the eighteenth and nineteenth centuries, it didn't guarantee to mean more than the avoidance of state intercession preceding distribution while yet permitting arraignments to occur after allocation. By the 20th century, in the time of mass media, this limited definition was now not supportable, with different locales perceiving that media opportunity ought to mirror the significant errand of the press in the democratic, open arena.

Besides, the advanced world has made new media inside the system of the data society. This new media influences many fundamental rights. In this paper, we initially dissect the progressions in freedom of speech and information incited by publicizing organizations. Then, at that point, we frame a few experiences concerning protecting clients' information. At last, we interface these points to the discussion over Internet control and its effect on the popularity-based framework (cooperation, pluralism, and public assessment development). The ongoing circumstance is a continuous cycle and shows logical inconsistencies, which request researchers to keep fostering the scholarly wildernesses.

## **1.2 Problem Statement**

The hypothesis statement of this paper is that "Protection of the Fundamental Rights in Mass Media, how it dealt by the provisions of the Constitution and Existing laws in Bangladesh."

## **1.3 Thesis Questions**

- a) Whether the freedom of expression regarding mass media protected by the Constitution and other existing laws in Bangladesh?
- b) Do media regulations in Bangladesh impose restrictions on press and expression freedom?

Subsidiary Questions are:

- a) Whether the Constitution and other existing laws contain any loopholes regarding this issue?
- b) Are those existing laws enough to protect freedom of expression through online mass media?

## **1.4 Objectives of the study:**

The research objectives for this study are:

1. What modes of mass media impact the fundamental rights of citizens?
2. Briefly discuss the rights the mass media impacted in current prevailing circumstances.
3. What are the laws available to protect fundamental rights?
4. Which forum can reach in case of violation of fundamental rights of people through Mass media?

## **1.5 Methodology**

This study will employ a qualitative methodology based on in-depth interviews and participant observation. Secondary materials, journal articles, such as books, conference papers, newspaper articles, and documents from the internet, supplement primary sources like international conventions, national statutory laws, case laws, and so on. The report is written using a comparative approach, with the best practices of the freedom of the press and acceptable limits being sought and adopted to a considerable extent after a thorough analysis of existing materials. Since a thorough examination of the current state of the freedom of the press and appropriate constraints in the context of international legal and Bangladeshi statute instruments has not yet been conducted, a qualitative methodology is being used for this study.



## Chapter 02

### 2.1 Mass Media and its Historical evolution

The Oxford Dictionary defines entertainment as the Act of giving or receiving amusement or enjoyment. People today need to relieve stress off their shoulders because daily living is so difficult. The fundamental explanation for diversion is to unwind and to acknowledge energy to figure out more proficiently. The domain of electronic media is broader than the scope of print or social media because the fandom of electronic media is significant as it includes illiterate people. Additionally, Mass media is one of the media of communication through which information is circulated to the people. Furthermore, mass media is the source of connectivity among the people of different regions. Additionally, this branch of communication is classified into two types first Print media, and second one is broadcast media. So, these are the essential tools of communication to spread information.

Bangladesh's history of mass media, freedom of speech, and right to knowledge may all be covered in three parts. The first part (1757–1947) covers the press freedom laws and regulations set by the British. The start of the following stage (1947–1971) was sponsored by the Pakistani Government. After Bangladesh's independence and the passing of British and Pakistani legislation, the third phase which lasts today began.

Official and informal censorship can genuinely restrict people's rights to freedom of speech and the press. As soon as '*The Bengal Gazette*' was published in 1780 as the first newspaper in Indian subcontinent. legislative framework to limit the freedom of press was established by the British.<sup>3</sup> The British and Pakistani rulers quickly used both alternatives. Before it had divided, newspapers in India were subject to pre-censorship due to Lord Wellesley's Regulation in 1799. The British Government has given the authority to impose restrictions on freedom of the press and expression in the 'Registration of Books Act, 1867' and the Penal Code 1860. The prohibitions of sedition and newspaper confiscation are implemented to prevent Indians from engaging in provocative actions against the British Government. The provisions of sedition and newspaper seizure were added to the 'Vernacular Press Act of 1878' and the Code of Criminal Procedure of 1898(CrPC). Under Section 99A of CrPC, any newspaper publishing seditious material was subject to forfeiture and seizure by the government beginning in 1898.<sup>4</sup>

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<sup>3</sup> Marx, P. G. (2001). Censorship and Secrecy, Social and Legal Perspectives. International Encyclopedia of the Social and Behavioral Sciences. Retrieved from Gary T. Marx

<sup>4</sup> FM Associates. (n.d.). Applicability of Phone Call Conversation as an Evidence before the Courts in Trial.

The Official Secrets Act of 1923, which outlawed the publication of official secrets as news, put the icing on the cake for press freedom. The 1926 Contempt of the Court Act dealt the Indian Sub-continent's freedom a fatal blow.

Pakistan's 1956 Constitution article 8, which went into effect on 23 March 1956 after nine years of freedom, stipulated press freedom during Pakistan's government. Nonetheless, having such a clause was merely a customary practice. Through the 1961 Press and Publication Ordinance, the military regime controlled the press. The military dictator closed two pro-government journals, *The 'Daily Ittefaq'* and *the 'New Nation of East Pakistan'*. After Bangladesh's independence on 16 December 1971, its constitution was passed on 4 November 1972 and took effect on 16 December 1972. Article 39 of the Constitution restricts thought, conscience, and communication.<sup>5</sup> The 1973 Printing Press and Publication Act replaced the 1961 Ordinance to regulate printing presses, newspapers, and book and printer registration. The Act forbids publishing anything that threatens State and Government interests. Under the Press Council Act of 1974, the Press Council was established in 1979 as a media watchdog to promote press freedom and enhance the quality of news. The Press Council Act, section 12(1) stated that “the Council the jurisdiction to warn, censure, and reprimand a newspaper or news agency. If, after an investigation, the management or a writer engages in any adverse professional conduct, or if they disrespect the ethics of reporting or disseminating news contrary to the public's taste, they will be fired”.<sup>6</sup>

After the fourth amendment of the Bangladesh Constitution in 1975 and the instillation of a one-party political system, the newspaper industry suffered. The government halted all publications on 16 June 1975 after the Newspaper Ordinance, 1975, was passed on 13 June 1975. President Ziaur Rahman considerably restored journalistic freedom, excluding political topics. General Ershad instituted martial law in March 1982 and tightened Press restrictions. Military governments in Bangladesh are less press-friendly than elected ones.<sup>7</sup> The 1990 wave of democracy heralded a revival of the right to information and journalistic freedom in Bangladesh. As soon as Ershad was deposed, the interim government removed the controversial Section 16A of the Press and Publications Act of 1973. Following section 11 (2) (b) of the Press Council Act of 1974, in 1993, a set of "Journalist Codes of Conduct" was

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<sup>5</sup> The Constitution of the people's Republic of Bangladesh, 1972

<sup>6</sup> The Press Council Act 1974, s12(1)

<sup>7</sup> Khatun, A. A. (2017). Press Freedom Dynamics in Bangladesh in Elsebeth Frey. Nordicom, 07, pp. 93-107.

declared.<sup>8</sup> The 2013 amendments to Section 57 of ICT Act of 2006 caused journalists considerable anxiety and humiliation.<sup>9</sup> However, the Right to Information (RTI) Act of 2009 represents a significant step forward in expanding press freedom. The mass media policy was enacted nationally in 2017 to regulate web-based news entryways with professional responsibilities. It reminds journalists to seek information and provide society with accurate news, not fake news.<sup>10</sup>

## **2.2 Fundamental rights violations through mass media**

The concept of modern democracy does not exist without free and transparent media. Media in the 21st century believed the fourth pillar of the state as it plays a vital role in the criticism of the opposition parties on the different issues of the Government, like state policies and legislation.

The right to information is the fundamental right incorporated in the Constitution in the fundamental rights chapter. Articles 39 and 39A say, every citizen of the state is entitled to access the right to information, and the accessibility of information is ensured through mass media. Because it has become the basic source of reaching or collecting information through media channels, through this mode, access to information cannot be denied.<sup>11</sup> The mass media is synonymously linked to the term mass communication and information system. The main areas of activity are newspapers, radio, and television. It does not diminish the importance of other mass media tools, but it generalizes access to information regarding radio, newspaper, and television. There have been fixed qualifications to apply in these media institutions to moderate and act as a presentation on the radio and television. Still, in the case of newspapers, the skill of writing is required as mandatory.<sup>12</sup>

In Bangladesh, to protect the freedom of expression and right to information, different organizations have been established to protect this fundamental right. The freedom network is a Bangladesh-based development and media organization to keep an eye on the activities in the state. According to research, 71 journalists had at least 35 legal cases filed against them, and

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<sup>8</sup> Kabir. (2003). Media Regime in Bangladesh: Rule of Obstructive Law. A Paper Presented at Odhikar's Workshop on Media, Democracy and Human Rights.

<sup>9</sup> ACHARJEE, D. (2016, August 22). Govt set to abolish Sec 57 of ICT act. The independent.

<sup>10</sup> Anderson, B. I. (2007). News Writing and Reporting for Today's Media (7 ed.). New York, USA: Mcgraw-Hill College.

<sup>11</sup> The Constitution of the people's Republic of Bangladesh, 1972

<sup>12</sup> Islam, M. (1995). Constitutional Law of Bangladesh, Bangladesh Institute of Law, and International Affairs (BILIA), Dhaka, 208.

16 of them were detained in 2021. In contrast, 23 journalists had ten legal cases filed against them and three arrested between January and May of 2022. The number of cases recorded under the law reached around 4,000 since the section of the law, as the Centre Governance Studies says. Many cases are against journalists. The World Press Freedom Index 2022 likewise focuses on the disturbing condition of press freedom in Bangladesh, positioned in the 162nd situation out of 180 nations, ten scores down from the 152nd in the 2021 file. Most South Asian neighbours are positioned above Bangladesh in the list. A committee to protect Journalists report from 2021 revealed that between 1992 and 2022, at least 23 journalists were killed in Bangladesh and that the practice of torturing and harassing them persisted unabatedly. Between January 2012 and September 2021, there were at least 2,257 instances of torture, harassment, threats made by police enforcement, death threats made by members of the ruling party or government officials, or anonymous phone calls.<sup>13</sup>

On 5 February 2013, Bangladesh witnessed the internet's increasing role in its socio-political sphere. Common people felt empowered using the internet. We may point to the episode in 'Shahbag' in February 2013 as an example of empowerment for the first time in the country's history; tens of thousands of people showed up to protest there after being stirred by online articles and social media posts. It was the first demonstration of the true power of social media to mobilize massive groups of people on a political issue in Bangladesh. However, the 'Shahbag' construction revealed serious flaws in the neighborhood's general body of ordinances, which protect residents' freedom of expression. The Government struggled to make decisions and tried to please everyone, which led to confusion. The law enforcement agency then detained four secular 'Shahbag' bloggers and organizers suspected of "hurting religious emotions." Such measures sent mixed messages to the public and raised serious concerns about whether Bangladesh has a real legal safety net for internet communication.<sup>14</sup>

On 1 February 2021, Qatar-based international news channel 'Al Jazeera' released a documentary accusing the collaboration of the prime minister and the army chief of staff of Bangladesh for political gain. It became a buzzword on the country's social media, but the mainstream media seemed to remain silent regarding the documentary. The purpose for this quietness,<sup>15</sup> Dhaka Tribune put it, is the present status of media and defamation regulation in

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<sup>13</sup> Khan, A. S. (2022, June 22). Press freedom at stake as violence against journalists. *New Age*.

<sup>14</sup> HUSSAIN, F. (2014, April 10). Digital freedom in Bangladesh: Navigating in uncertain waters. *INDEX ON CENSORSHIP*.

<sup>15</sup> NETRA REPORT. (2021). Investigative documentary blows the lid off corruption at the heart of Bangladesh government. Sweden: NETRA NEWS.

Bangladesh, and how the legal executive interprets it, makes it rash for any Bangladeshi media house to wander into any sort of significant remark on the discussion.<sup>16</sup> Moreover, the Government labeling the report as 'Yellow Journalism' made the situation more critical for the local press to say anything about this. It was all about getting harassed legally, thanks to the existing media laws in the country, that made the local press say nothing much but just some smartly crafted pieces of news or op-eds. The most feared Act on this matter that made it possible for the local press to remain silent was the Digital Security Act. With all the existing cases of journalists imprisoned under this law, no one thought it would be wise to make things worse by reporting on this circumstance.<sup>17</sup>

To summarize, Human privileges are the lawful freedoms of individuals given to them through the agreement of the relative multitude of nations; in 1947, in the Universal declaration of human rights (UDHR), all states agreed to give certain rights to the people of all nations without any discrimination.<sup>18</sup> This multilateral agreement ensures that these rights apply to all United Nations members (UN). Additionally, as this Convention is a binding requirement for all UN member states, all governments must see its enforcement.<sup>19</sup> The right to information, Freedom of speech, and right to privacy are a few rights entitled to the people in the Constitution of Bangladesh. In addition, these are fundamental rights that may claim in a court of law, and the state must protect these fundamental rights of citizens.

### **2.3 Laws are available to safeguard the Fundamental rights of people. Which are the impacts of Mass media:**

The regulations, which are the fundamental rights of residents these rights were first classified as a multilateral deal by the worldwide association. What's more, that deal pursues an official concurrence with each part state to take on that settlement and acquaint it with metropolitan regulation to safeguard human freedoms. In Bangladesh, before 2009, there were no specific laws protecting the freedom of information. There were only state-operated media working in the country. The caretaker government installed the RTI Act, 2009, during a state of emergency in Bangladesh. The right to information is recognized in the Constitution as a fundamental right and was the subject of the first legal document on the law of information. To ensure the free

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<sup>16</sup> ED. (2021, February 3). Why the silence? Dhaka Tribune.

<sup>17</sup> The Daily Star. (2021, February 03). Our take on the Al Jazeera Report. The Daily Star.

<sup>18</sup> Universal declaration of human rights (UDHR), 1948

<sup>19</sup> The UN General Assembly, 1946, Resolution 59

communication of information to the people and to develop effective governance for Bangladeshi residents, the country passed the RTI Act, in 2009.<sup>20</sup>

Resolution 59(1), passed by the UN General Assembly on December 14, formally requested the convening of an international conference on the free flow of information. Article 19 of the resolution states, "Freedom of information is a fundamental human right and the backbone of the other freedoms to which the United Nations is committed."<sup>21</sup>

Press freedom was deemed so necessary that it was included in the UDHR 1948 established by the United Nations. Article 19 of the UDHR states, "Everyone has the right to freedom of assessment and expression; this right includes the opportunity to hold suppositions without impediment and to seek out, acquire, and disseminate information and ideas through any media and regardless of borders."<sup>22</sup>

Article 18 of ICCPR, 1966 guarantees the right to freedom of thought, conscience, and religion, and the right to freedom of expression and press, as well as the rights to peaceful assembly and freedom of association, is guaranteed by Article 19 of the ICCPR. However, the ICCPR's Article 19(3) imposes three limitations on the right to freedom of expression: compliance with the law, the need to protect the privacy of others out of respect for their rights, and the promotion of public safety, public request, public wellbeing, or ethical standards.<sup>23</sup>

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<sup>20</sup> Hossain, S. (2020, November 10). Right to access information. The Daily Star.

<sup>21</sup> Ibid at resolution 59, art19

<sup>22</sup> Ibid at art 19

<sup>23</sup> International Covenant on Civil and Political Rights (ICCPR), 1966, Article 18, 19 & 19(3)

## Chapter 03

### 3.1 Whether Freedom of Mass Media is Ethically Correct or not.

In a democratic nation like Bangladesh, the Mass media has played a significant part in both the social and political transformations that have taken place. From the background history of the freedom of Mass media we have found that it ensures some people's right, and it has been evaluated for the sake of good for the people, but it is also true that every medicine has its side effects. Justice to one person may sometimes cause injustice to others.

### 3.2 Restrictions over the Freedom of Expression and Right to Information: Bangladesh Constitution and Other Statutes

Freedom of expression and access to information have been stifled rather than supported by most media-related statutes passed before or after Bangladesh's constitution went into effect. Despite the decolonization process, some regulations that date back to when the United Kingdom was a colonial power are still developing and regulate access to information.<sup>24</sup> The right to freedom of speech within reasonable limits was included in the original draft of the Constitution of Bangladesh. To ensure information-oriented participatory governance, Article 39 incorporates the sunshine law's spirit over the secrecy culture. The article's footnotes engulf freedom of expression, thinking, and conscience. To be clear, Article 39(1) protects the Right to think and believe as one pleases, Article 39(2)(a) protects the Right to free speech for all citizens, and Article 39(2)(b) guarantees the Right to a free press. However, Article 39(2) has visualized seven to eight reasonable limitations subject to the law for the interests of State security, friendly relations with foreign states, public request, respectability, or profound quality, contempt of court, defamation, and compelling to an offense, as well as the enjoyment of each Right.<sup>25</sup> As for the restrictions, they are as follows:

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<sup>24</sup> Reporters Sans Frontiers (RSF). (2018, April 26). Bangladesh has the Worst Media Freedom in South Asia.

<sup>25</sup> Shupto, N. A. (2020, May 14). Freedom of thought, conscience and of speech in Bangladesh. NEWAGE Youth.

### **3.3 Interests of State Security**

Press freedom and the right to information are often curtailed when there is fear for the state's safety. Rebellion against the government, conflict with external assault, neighbouring countries, internal strife, etc. Media freedom might be limited if doing so would improve national security. Journalists and free thinkers are frequently detained and prosecuted under criminal libel and other subversion rules. To individuals found guilty of subversion, the whole power of the law may be applied, with punishments extending from fines to the capital punishment or life imprisonment.<sup>26</sup>

Crimes inside and outside Bangladesh that threaten public moral, national security and public peace are punishable under the Code. Restrictions on freedom of speech and access to information in the name of national security can also be found in other existing laws in Bangladesh. Section 124A of the Penal Code was added in 1870, making sedition a crime against the government. One's lack of support for the government is also considered seditious under this clause.<sup>27</sup>

### **3.4 Amicable Relations with the Foreign States**

Many restrictions on the media have resulted from the 1991 expansion of Penal Code section 505A. Section 3 of the Foreign Relations Act, 1932 prohibits the distribution of any book, newspaper, or other document containing information or notion to preserve peaceful ties between Bangladesh and other countries. Maintaining amicable relations with other countries is important for any state.<sup>28</sup>

### **3.5 Public Order**

Any conduct that endangers national sovereignty, good diplomatic relations with other countries, public safety, or public order is illegal under Section 2 of SPA, 1974. It also forbids hostility and prejudice between different social groups. The government has the authority to hold a suspect for up to six months without charge or trial if they believe he poses a threat to the public under Section 3.<sup>29</sup> A public authority may issue mandatory brief requests in extreme cases of aggravation or significant risk under section 144 of the CRPC, 1898. The Indian

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<sup>26</sup> Farhana, T. (2014, March 21). Bangladesh Media: Development and Challenges. *The Diplomat*.

<sup>27</sup> Penal Code, 1860

<sup>28</sup> The Foreign Relations Act, 1932, s 3

<sup>29</sup> The Special Powers Act (SPA), 1974, s 2



Supreme Court (SC) held that "public request" encompassed the absence of any acts threatening the security of the state and the absence of insurgence, mob, choppiness, wrongdoings, and cruelty in the case of *Madhu Limaye*.<sup>30</sup>

Article 141A of the Constitution of Bangladesh allows for emergency declaration in security threats, political instability, external aggression, or domestic disruption. In the event of an emergency, citizens may have their rights under Articles 36–40 and 42 suspended, including their freedom of movement, association, assembly, speech, and the press, as well as their freedom of conscience and thought in their chosen profession or occupation, and their right to private property.<sup>31</sup>

### **3.6 Decency or Morality**

The sale, distribution, and exhibition of indecent publications, paper, drawings, creative creations, pamphlets, any product, etc. are prohibited under section 292 of the Code, 1860, while section 293 prohibits the same offenses for anybody under the age of 20.<sup>32</sup> Making strict feel terrible or opinions of the inhabitants of Bangladesh by any sort of articulation is illegal under sections 295A and 298. For example, Section 171G of the Code penalizes providing false or misleading justifications for political action.<sup>33</sup>

### **3.7 Contempt of Court**

Contempt depends on the most liberal of notions, according to which courts cannot and will not tolerate interference with the effective administration of justice. We can find The Contempt of court laws in sections. However, the Contempt of Court Act of 1926 does not strike a satisfactory balance between judicial independence and journalistic freedom. Bangladesh enacted a brand-new law that year, 1926. Since section 4(1) indicates that no broadcast is hate speech if made with good intentions, the new Act is kind of forgiving.<sup>34</sup> 'Eight provisions of the Contempt of Court Act, 2013, have been ruled illegal and unconstitutional by the High Court Division because they conflict with Articles 27, 108, and 112.' However, the court

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<sup>30</sup> *Madhu Limaye v. S.D.M Monghyr*, AIR 2486 (SC) 1971.

<sup>31</sup> *ibid* at Art 141A

<sup>32</sup> *ibid* at s 293

<sup>33</sup> *Ibid* at s 295A & s 298

<sup>34</sup> Contempt of Court Act of 1926, s 4(1)

retains the inherent authority to penalize any party found to have disrupted judicial proceedings.<sup>35</sup>

There is less room for creative license in legally mandated news coverage. Reporters, like everyone else, have a serious obligation to respect the judicial system. *Mainul Hossain and Others v. Sheikh Hasina* is a prominent case. The High Court Division (HCD) has ruled that the application to initiate contempt proceedings against Prime Minister Sheikh Hasina should be turned down. In a conversation with a BBC reporter, Sheikh Hasina made comments deemed offensive and dismissive, casting a shadow over the respectability of the Courts of Bangladesh.<sup>36</sup> In the case of *Md. Riaz Uddin Khan and Another*, the SC ruled that ‘any view that goes too far beyond what is allowed by Contempt of court law or article 39 of the constitution is illegal. If someone uses their first amendment rights to attack the court or undermine its reputation, the court must step in and employ its jurisdiction under Article 108. Nobody can hide behind article 39’s protections for freedom of speech, thought, and conscience to disregard the law’s mandate or the court’s authority for the supposed establishment of law. Per article 108, the SC serves as the court of record and has all the authority typical of such a court, including the authority to punish its Contempt’.<sup>37</sup>

### 3.8 Defamation

Legal protections against slander provide a loophole for the government to abuse its discretion. Sections (499, 500, and 501) of the Code protect against defamatory statements that limit people’s ability to express themselves and gain access to information. Furthermore, the punishment for this conduct has been made harsher by mandating two to seven years. The most common types of defamatory statements are those that diminish the target’s credibility in the eyes of the public, whether in their chosen field of work, their business, their integrity, or their reputation for being corrupt.<sup>38</sup> Indian Supreme Court in the case of *Saxena* decided that ‘the freedom of expression or speech is guaranteed if it is not intentional, defamatory, inaccurate, and irresponsible’. Cyberslandering has taken on new dimensions with the spread of digital technologies.<sup>39</sup>

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<sup>35</sup> SC. (2013, April 04). HC questions legality of eight provisions. The Daily Star.

<sup>36</sup> *Mainul Hossain and Others v. Sheikh Hasina*, 53 DLR 138 (HCD) 2001.

<sup>37</sup> *Md. Riaz Uddin Khan and Another v. Mahmudur Rahman and Others*, 63 DLR 29 (AD) 2011.

<sup>38</sup> *ibid* at s 499, s 500 & s501

<sup>39</sup> *Saxena v. Chief Justice*, AIR 2481 (SC) 1996.

## Chapter 04

### 4.1 Laws Regarding Protection of Mass Media

Without a balance between the people and the free media, popular democracy is either a nightmare or a crisis. It's impossible to emphasize enough how important freedom of mass media for rooting out corruption and making sure people are held accountable. In every political system in history, citizens face limitations in their ability to speak their minds and publish their findings. Restricting press freedom is controversial. There is no such thing as absolute freedom since it always utilizes restrictions. In previous chapter we have discussed some issue and now we would like to discuss the same fact regarding our existing laws whether it gives the freedom to our mass media or not.

### 4.2 Incitement to Offences

To incite another person to commit a crime is illegal and carries criminal penalties. Sections 153A and 153B of the Code clarify what kind of language will result in criminal penalties if it harms students or encourages enmity amongst groups. These two clauses give the government the authority to take legal action in response to the encouragement of crimes against public order.<sup>40</sup> Additionally, any deliberate encouragement to leave the police service or violate discipline is illegal according to Section 3 of the Police Act of 1922. Below, we examine a selection of other laws that pertain to the media and the press as part of this article.<sup>41</sup>

#### 4.2.1 The Evidence Act, 1872

The Evidence Act of 1872 says that anyone who doesn't have permission can't look at evidence from official records that haven't been made public. In addition, no public official shall be required to violate Section 124 and reveal confidential communications made to him if he believes that doing so would be prejudicial to the public interest, yet the state sees these two laws as a necessary evil.<sup>42</sup>

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<sup>40</sup> Ibid at s 153A & s153B

<sup>41</sup> The Police Act, 1922, s 3

<sup>42</sup> The Evidence Act, 1872, s 124

### **4.2.2 The Post Office Act, 1898**

Newspapers published in Bangladesh must comply with the Printing Presses and Publications (Declaration and Registration) Act, 1973, before they can be mailed out. Section 27A is stated explicitly in the Act. In addition, any Postal Service employee authorized by the postmaster general may seize mail that they believe contains treasonous or seditious material.<sup>43</sup>

### **4.2.3 The Press Council Act 1974**

As per section 11 of this act states that it is the responsibility of the Press Council to protect and enhance press freedom and the quality of newspapers and news organizations in Bangladesh. Press Council norms of conduct for newspapers, news agencies, and journalists were established in 1993 per section 11(2) (b).<sup>44</sup> The sense of duty and professionalism expected of journalists is envisioned in Section 11(2)(d). After hearing both sides of a case under Section 12, the quasi-judicial body has the authority to issue warnings, cautions, and rebukes to any news agency, editor, newspaper, or journalist for professional infringement or misconduct of the code of ethics. Section 13 does not require any news agency, newspaper, editor, or journalist to reveal the origin of any news or information published, received, or otherwise disclosed. This exchange could be confidential. However, a publication cannot use phony news sources to claim anonymity and secrecy, regardless of whether such protection is legally mandated. A journalist may be required to reveal his sources in a legal proceeding to ensure fairness or protect the public interest.<sup>45</sup> The SC of India ruled in the case of *Shreya Singhal* that it is not necessary to reveal one's sources unless doing so would be detrimental to the public or national interest.<sup>46</sup>

### **4.2.4 The Special Powers Act (SPA), 1974**

The repressive attitude toward the press that the SPA, 1974, ushered in was inevitable. It gives the state the right to arbitrarily arrest and detain anyone without a trial, and it forbids journalists and media outlets from publishing anything that can be considered harmful to the state. Freedom of the press is limited by the Act's sections in the name of prohibiting harmful

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<sup>43</sup> The Printing Presses and Publications Act, 1973. s 27A

<sup>44</sup> The Press Council Act of 1974, s 11, s 11(2)(b), s 11 (2)(d), s 12 & s 13.

<sup>45</sup> Islam, Z. (2022, August 22). press council act: Amendments go against views of stakeholders. The Daily Star.

<sup>46</sup> *Shreya Singhal v. Union of India*, AIR 1523 (SC) 2015.

activities. A person's right to assemble freely is curtailed by sections 19 and 20. To maintain public order, the government has the authority under these rules to impose its will on such groups and prevent them from engaging in unlawful activity. According to section 32 of the SPA, granting bail to an inmate is prohibited.<sup>47</sup>

#### **4.2.5 The Telecommunication Act, 2001**

The Bangladesh Telecommunication Regulatory Commission (BTRC) must ensure the protection of the privacy of telecommunication, as stated in section 30(1) (f) of this Act. This right may be infringed upon in the name of "National Security" or "Public Order" under the law's provisions. Notwithstanding, in 2006, Congress added Section 97A to the Act, which authorizes the wiretapping of wired and wireless communications by intelligence services to maintain public safety and national security.<sup>48</sup> "No one of the polices official, nor any other public functionary can walk into the place of any resident. to conduct any chase or hold onto anything except if he is properly approved under any regulation," the SC ruled in the case of *Bangladesh v. HM Ershad*.<sup>49</sup> Unfortunately, the rate at which such an instruction is disregarded is spiralling out of control in practice. The Indian SC ruled on August 24, 2017, that the right to privacy is a fundamental right after the case of *Justice K. S. Puttaswamy (Ret.) and others*.<sup>50</sup> There are fewer infringements on this right in the country of Bhutan compared to Bangladesh.

#### **4.3 The Information and Communication Technology (ICT) Act, 2006**

By amending sections 54, 56, 57, 58, and 66 of the ICT Act, 2006, in 2013, a significant barrier to freedom of expression was created for journalists regarding the free press and all thinkers and online entertainment consumers. Particularly after its amendment, section 57 may have been used to stifle people's right to free speech. Sections 54, 56, 57, 58, and 66 have been repealed, and the results may be seen by anyone who cares to look.<sup>51</sup>

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<sup>47</sup> Mondol, D. M. (2007, March 31). Repealing special powers act. The Daily Star.

<sup>48</sup> BTRC. (2022). Regulatory and Licensing Guidelines for Satellite Operator in Bangladesh. BANGLADESH TELE, COMMUNICATION REGULATORY COMMISSION, pp. 1-52.

<sup>49</sup> Bangladesh v. HM Ershad, 52 DLR 162 (AD) 1997.

<sup>50</sup> Justice K. S. Puttaswamy (Retd.) and Another v. Union of India and Others, 10 SCC 1 (SC) 2017.

<sup>51</sup> Adhikary, T. S. (2017, July 07). The Trap of Section57. The Daily Star.

When the Indian ICT Act 2000 was revised in 2008, it included Section 66A, which is quite similar to the section 57 of the ICT Act.<sup>52</sup> For years, section 66A was abused by police to arrest people for expressing controversial opinions on social media on religious, sensitive social, and political subjects. *Shreya Singhal v. Union of India* was the case in which the SC of India ruled that Section 66A of the Indian Penal Code violated article 19(1) of the Indian Constitution and hence should be repealed.<sup>53</sup> The Supreme Court ruled in the same case that individual freedom and the right to free speech are cornerstones of a democratic society. The Supreme Court also ruled that Section 66A had distorted the relationship between free expression and legitimate limits. In this case, the Supreme Court has given greater weight to the first amendment right to freedom of speech and press.<sup>54</sup>

#### **4.4 The Right to Information (RTI) Act, 2009**

Finally, putting an end to the long-standing culture of secrecy, this act is ushered in a new era of openness in society. The RTI Act developed the rights-based approach to accessing information about government, semi-government, other organizations, and autonomous, allowing individuals and groups to better comprehend government and other entity policies and treat freedom of expression as a catalyst for bolstering democracy, promoting human rights, and ensuring good governance.<sup>55</sup> Access to information is thus regarded as a fundamental right under sections 2(g) and 4. Section 3 provides a supremacy clause in case of dispute with other statutes, but section 7's lengthy list of exceptions contradicts the law's objective in the name of national defense, sovereignty, intelligence, transparency, and public interest. The RTI Act's 5,000 Tk fine is very cheap. The three-person Information Commission is also charged with upholding the law. However, the commission's staffing levels are insufficient to accomplish the goals of the Act.<sup>56</sup>

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<sup>52</sup> KUMAR, Y. (2022, JULY 11). Shrinking space for liberty in South Asia: Analysing the Digital Security Act, 2018 of Bangladesh. THE LEAFLET.

<sup>53</sup> *Shreya Singhal v. Union of India*, AIR 1523 (SC) 2015.

<sup>54</sup> Verma, A. (2021, November 14). Section 66A of the Information Technology Act: police turns a Nelson's eye on. ipleaders.

<sup>55</sup> *ibid*

<sup>56</sup> Lubaba, T. (2020, September 20). Challenges of making the Right to Information Act effective. The Daily Star.

#### **4.5 The Public Interest Information Disclosure (PIID) Act, 2011**

This Act is another landmark effort to shield anyone who reveals sensitive information about matters of public interest from legal liability. A "whistle-blower" is someone who comes forward with truthful information to the appropriate government body. While whistle-blower is protected from legal action for releasing data in the public interest, they are responsible for the integrity of any material they release.<sup>57</sup>

#### **4.6 The National Broadcast Policy, 2014**

It is to police broadcast media, including but not limited to news, commercials show, and discussion shows. It defines disseminating information that could undermine Bangladesh's sovereignty. Causes disorder, discontent, violence, mutiny, and hostility; invades personal space; attacks religious principles and individual integrity; encourages dishonest behaviour, threatens national security, and mocks the military and law enforcement. No commercials must disparage the independence struggle, the language movement, or July 4th. Putting limits on an ad's focus on sensitive topics like politics and workplace harassment.<sup>58</sup>

#### **4.7 The National Online Mass Media Policy, 2017**

This policy recommended the establishment of a National Broadcast Commission (NBC) to coordinate the various aspects of the mass media industry that exist in the digital sphere. All major online news outlets must register under the new rules. This strategy could limit the development and independence of the media by mandating that all online outlets obtain clearance from the new Broadcast Commission and establish an editorial policy.<sup>59</sup>

On the other hand, the National Broadcast Act 2018 draft bill is currently the topic of most dispute. The proposed bill establishes a search committee whose recommendations will be used

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<sup>57</sup> Sourav, R. (2021, May 25). The legal protection of Whistleblowers. The Daily Star.

<sup>58</sup> Odhikar. (2014, July). Statement of Odhikar: The National Broadcast Policy-2014 empowers the government to put draconian restrictions on media and curb the freedom of expression.

<sup>59</sup> UNB. (2017, June 20). Registration must for online mass media. The Daily Star.

to fill the seven seats on NBC. Aside from the Ministry of Information, NBC will be responsible for issuing licenses to broadcast media and registering online media outlets.<sup>60</sup>

#### **4.8 The Digital Security Act (DSA) Act, 2018**

This act provides most restricting speech and the press by imposing severe fines on various online activities. For unauthorized access to or destruction of any materially important data related to State matters, it ensures imprisonment for a minimum of seven years and a maximum of fourteen years, as well as fines of at least Tk2.5 million and as much as Tk10 million, or both.<sup>61</sup> The law mandates a prime minister-chaired, computerized security board of 13 people. The DSA 2018 contains stricter provisions to stifle journalistic freedom than the ICT Act 2006.<sup>62</sup>

For violating these provisions, the authority may arrest any offender Without a warrant. However, only certain violations of sections are bailable. If a person uses a digital device to propagate hate speech regarding the national liberation struggle, the father of the nation, the national flag, or the national anthem, they might face up to 14 years in prison under Section 21 of the Act. If you spread false or defamatory material about another person, you might face up to three years in prison for a violation of section 25 of the act. Any publication intending to defame is punishable by up to three years under Section 29. If you violate someone's religious beliefs or feelings, the government can put you in jail for up to ten years under section 28. Publication of information to encourage hatred towards a group can result in a sentence of up to 7 years in prison for a breach of section 31. If you share content on social media with the explicit goal of inciting violence or hatred among a subset of users, you could face up to seven years in prison under section 31.<sup>63</sup> Freedom groups have voiced widespread concern that section 32, which criminalizes the covert recording of data at government, semi-government, or independent institutions, could stifle investigative reporting. It grants law enforcement broad authority to remove or prevent information found online that threatens national unity, security, safeguard, religious values, economic activities, public order, or the general public's safety. Bangladesh could be forced back into the stone age if press freedom and political debate are

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<sup>60</sup> BNNRC. (2018, October 15). Cabinet Approves New Act to create Independent National Broadcasting Commission for Radio, TV, and Online Mass media. Retrieved from Bangladesh NGOs Network for Radio and Communication.

<sup>61</sup> *ibid* at s 2(a)& s 2(b)

<sup>62</sup> Freedom House. (2018, November 01). Freedom on the Net – Bangladesh. Retrieved from [refworld](#).

<sup>63</sup> *ibid* at s 31



stifled. In light of the current globalization of human rights, the colonial idea or attitude of limiting the free press in a free and autonomous state is illogical.<sup>64</sup>

Finally, it may be said that roughly fifty laws in Bangladesh have some sort of connection to the written, recorded, and broadcast media. Most rules have an anti-press freedom stance, whereas a select number produce press freedom within appropriate bounds.

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<sup>64</sup> Anam, M. (2018, January 31). Commentary: 'Analogue law' for 'Digital Bangladesh'. The Daily Star.

## Chapter 05

### Recommendations and Concluding Remarks

Throughout the paper we have discussed the exact scenario of the mass media in our country in the frame of legal and social perspective. After all the discussion including law analysis and some real incidents in the subject matter of mass media, we have found some big problems and some safeguards of the freedom of mass media. So, there seems to need to be a careful balance between the freedom of mass media and reasonable restrictions. Here are some major findings and recommendations:

#### 5.1 Findings

- Many people in Bangladesh view the media as a means of empowerment; however, successive governments in the country have failed to recognize this and instead compete to limit the freedom of expression in the media.
- The freedom of expression and the right to information have been curtailed by certain provisions of Bangladesh's current press laws, and the scope of reasonable restrictions has been too wide to support democracy, the rule of law, and good governance.
- Lack of expertise and professionalism are among the numerous factors contributing to Bangladeshi media's low trustworthiness. Therefore, politicians, criminals, and businesspeople use their power to manipulate the media.
- Due to self-censorship and outright statutory restrictions, the media in Bangladesh only have limited press freedom.
- when an election or referendum is near, it's common for people to abuse their press freedom to sway the voters' opinions by employing false propaganda or assertions that have an osmotic effect on society.
- The Bangladesh Constitution guarantees article 7, 26, 27, 31, 32, and 39 of the right to freedom of speech within "reasonable restrictions," but certain parts of the current laws, such as the ICT Act, 2006 and the DSA, 2018, are at odds with this guarantee.
- As per media privatization, influential businesspeople and politicians acquire control of print and digital news outlets. In their pursuit of profit, the owners have lost sight of the public service mission of the media they possess.

- If we don't work to improve our society's social, economic, political, and cultural conditions, we can't hope to achieve the level of press freedom we seek.
- Politicians in Bangladesh have curtailed freedom of expression for decades, beginning with the British, continuing through Pakistan, and ending with the march to independence as an independent Bangladesh.

## 5.2 Recommendations

- First, there should be no barriers to entry for media outlets that are transparent in their operations, accountable to their audiences, and committed to upholding the values of freedom of expression and the press.
- Second, when journalists serve as a nation's conscience and are protected by the First Amendment, press freedom is not used to distort the truth and smear their reputations. Remembering that the public good is supreme law is essential for journalists and independent thinkers.
- Third, to make legal instruments that restrict the free press and other kinds of expression more lenient under international human rights agreements to which Bangladesh is a signatory.
- Fourth, considering social media, digital literacy, and the modernization of the press, a comprehensive set of ethics should be devised and enforced to promote knowledge and compliance for all, especially journalists, secularists, and media activists.
- Fifth, legislation alone cannot protect first amendment rights to freedom of speech and the press. There is a growing need for tolerant and respectful treatment of dissenting views and viewpoints based on truth and accuracy rather than obscurity, error, and fabrication to protect press freedom.
- Sixth, For the purpose of freedom of speech, media houses should be institutionalized and united, regardless of their organization or opinion. There needs to be a concerted effort from all parties involved to remove the obstacles to press freedom.
- Seventh, the government, newspaper publishers, journalists, independent thinkers, bloggers, media activists, and civil society organizations (CSO) should work together to establish the limits of press freedom while striking a fair and equitable balance between competing interests.

## **Conclusion**

We've talked about some critical laws about the media so far. There are a lot of laws that deal with mass media, both directly and indirectly. All the rules in Bangladesh are based on the Bangladesh Constitution. Article 39 of the Constitution talks about freedom of speech and freedom of the press. Bangladesh only has one law about freedom of speech and the press. The RTI Act of 2009 and all other rules was reasonably put in place by the Constitution, which says that people have the right to freedom of speech and the press. It is against the law to get in the way of others. The Bangladesh Constitution has used rules that set reasonable barriers as the independent variable. Freedom of thought, conscience, and expression, as well as freedom of the media, have been used as dependent variables. So, there should always be some control over the freedom of the press. Some rules about speech and the media have been kept the same, and other authorities about speech and the media use words that can have more than one meaning. When it comes to addressing the media, there are times when you must trust the police and their good intentions.

So, it looks like the laws of Bangladesh are stricter than the laws about free speech and the media. On the other hand, rules about the press and freedom of speech are based on what the Constitution says are reasonable limits. So, there are doubts about whether they are legal in Bangladesh.

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