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**“Freedom of Expression vs Hate Speech: A Comparative Analysis
under ICCPR and Bangladesh constitution”**

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Declaration

I, Md.Sarwar Jahan Joy ID: 2020-3-66-034, hereby declare that the dissertation titled “Freedom of Expression vs Hate Speech: A Comparative Analysis under ICCPR and Bangladesh constitution” was entirely prepared by me under the supervision of Sayeed Hossain Sarwar, Senior Lecturer, Department of Law, East West University, for the fulfillment of the requirements of Course Law 406 (Supervised Dissertation) for the LL.B (Hons.) degree offered by the Department of Law, East West University. I further declare that the content of the dissertation has not been submitted to or published by any journal, newspaper, or article. The content and materials used for the dissertation are duly acknowledged and recognized in the references and properly cited.

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List of Abbreviations:

ASK – Ain o Salish Kendra

BLAST – Bangladesh Legal Aid and Services Trust

CGS – Centre for Governance Studies

CPR / ICCPR – International Covenant on Civil and Political Rights

CSA – Cyber Security Act

CSCA – Cyber Security Act (Bangladesh)

DSA – Digital Security Act

ECtHR – European Court of Human Rights

HRC – Human Rights Committee

ICT Act – Information and Communication Technology Act

ICCPR – International Covenant on Civil and Political Rights

IPC – Indian Penal Code

IT Act – Information Technology Act (India)

NGO – Non-Governmental Organization

UN – United Nations

UNGA – United Nations General Assembly

UDHR – Universal Declaration of Human Rights

USA / US – United States of America

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Abstract

The Bangladeshi Constitution and ICCPR discuss freedom of expression and hate speech. This paper examines those statutes. It examines how free speech and hate speech prevention may conflict. It examines how different nations interpret and balance these rights in their legislation. Comparative constitutional law, international human rights legislation, and legal theory are used to determine where to draw the line between protecting speech and outlawing hate speech. The study focuses on how Articles 19 and 20 of the ICCPR and Articles 12, 22, and 39 of the Bangladesh Constitution are applied in countries with widely varied legal, cultural, and political histories. Case studies from developing and democratic nations demonstrate how diverse legislation methods might make it difficult to enforce fundamental rights without compromising human dignity or social cohesiveness. The results demonstrate that many countries struggle to define hate speech while guaranteeing free expression. The study raises moral and legal problems such whether prohibiting hate speech inhibits political discussion or if free speech increases violence and prejudice. The study compares countries' practices to demonstrate how international norms are applied. The report concludes by advising states, human rights groups, and civil society on ways to defend free expression and combat hate speech using the ICCPR.

Chapter 1: Introduction

Introduction

Freedom of expression has the power to change the world by influencing and sharing innovative ideas which is a fundamental human right that is safeguarded by international law. However, hate speech becomes more prevalent, especially online, and this right becomes more and more in conflict. Additionally, the right to freedom of expression is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), whereas Article 20 requires nations to outlaw speech that incites violence, discrimination, or violence. In the Bangladesh constitution Article 39 guaranteed freedom of speech, but it allows for reasonable restrictions to protect public order, morality and national security, which can be used to address harmful speech like hate speech.

Moreover, a seemingly contradictory situation raises serious questions for lawmakers, courts and human rights advocates. It is essential that states protect open dialogue and democratic discourse, but this cannot be done by allowing harmful messages to spread unchecked. In what ways can we limit speech without violating human rights obligations?

Furthermore, in countries with rising nationalism or instances of severe religious tensions or ethnic divisions, governments will leverage national security/public order to apply restrictions on expression, and this sometimes even involves the suppression in dissent —abstracted as a public interest concern over preventing hate speech. On the other hand, hate speech can be silent when neglected; it may divide and perpetuate ideas that are not accurate and ultimately make way for actual damage – sometimes a wide-sweeping one.

A comparison of results of national approaches to implementing articles 19 and 20 of the ICCPR is vital given the current situation. This study adds to global conversation on the lines separating protected expression from illegal hate speech by examining legal standards, judicial reasoning and policy conflicts in balancing these rights.

Research Question:

1. To what extent freedom of expression and the prohibition of hate speech can be balanced under the ICCPR and also the Constitution of Bangladesh?

Secondary Research Questions:

a. How does the Bangladesh constitution interpret and implement Articles 19 and 20 of the ICCPR in their domestic jurisdictions?

b. Can legal limitations on hate speech be consistent with international standards for freedom of expression, and what are the comparative approaches that should be taken under Bangladesh constitution to achieve this balance?

Research Methodology:

This study follows a qualitative and doctrinal legal research methodology. It primarily depends on the examination of fundamental legal sources, such as national legislations, international treaties, and judicial decisions. To support and enhance the primary analysis, secondary sources, including scholastic journal articles, legal commentaries, policy papers, and reports from both governmental and non-governmental organizations, are examined. To provide real-world context, documented case studies of Bangladesh are examined when applicable. This research is literature-based and does not involve empirical data collection. Rather, it relies on a systematic review and critical analysis of existing legal frameworks and related academic discussion.

Literature Review:

Benesch (2012) came up with the idea of "dangerous speech" to describe speech that is likely to lead to violence. This framework is helpful, but it doesn't look at how Articles 19 and 20 of the ICCPR are interpreted in different law systems. Barendt (2005) gave an in-depth look at freedom of speech, pointing out both its strengths and weaknesses. The work is mostly about the West and doesn't really look into how the ICCPR can be used around the world, especially in non-Western settings. Weinstein and Hare looked at the logical reasons for protecting hate speech. The study doesn't look at the laws that make it illegal to say hateful things in international law, especially Article 20 of the ICCPR. Garton Ash wrote about free speech in a globalized world, looking at digital dangers as well. The study focuses on real threats to free speech but doesn't give specific examples of legal tools that can be used within the ICCPR framework. Sarat and Kearns looked at the relationship between law and violence and talked about how words can be used as a weapon. They don't directly compare the legal systems at play or talk about how judges decide what speech is protected and what speech is offensive. The following theses fill in these gaps by focusing on the ICCPR, comparing key articles across different countries, and looking at the legal and moral implications of floating in the framework of global human rights. This thesis fills in those gaps by focusing on the ICCPR and comparing how its main articles are used in various countries. It also looks at the legal and moral effects in a global human rights setting.

Scope of Research:

This study is limited to freedom of expression and hate speech regulation as interpreted under Articles 19 and 20 of the ICCPR and Bangladesh Constitution. It includes a comparative analysis of selected countries legal systems between ICCPR and Bangladesh focusing on Constitutional laws, major court rulings, and policy responses or restrictions unrelated to hate speech, nor does it examine all digital platforms in depth.

Limitation of the Research:

There are three important limitations to this study. The research is mainly based on secondary sources and legal texts that may not capture current realities at ground level or problems with law enforcement. With very limited time and resources, we were unable to undertake fieldwork or interviews with legal practitioners, activists or government officials. Although comparative in some respects, it is selective, excluding certain regional or religious considerations. Second, hate speech definitions differ across cultures making legal comparisons complex.

Chapter 2: Legal and Theoretical Foundations

2.1 International Human Rights and Freedom of Expression

Freedom of expression is a key right in international human rights law. It allows people to generate and share ideas, engage in public discussion and contribute in political, cultural and social activities. The Universal Declaration of Human Rights (UDHR), Article 19¹, and the International Covenant on Civil and Political Rights (ICCPR), Article 19², both acknowledge this right as essential. Still, transnational law also recognizes that freedom of expression has limits. While people have the right to hold and express opinions, this right can discord with other

rights and interests, such as human dignity, equality, and religious beliefs. National security and social harmony are important. As a result, international legal frameworks set boundaries that allow countries to put certain restrictions to protect legitimate societal interests³⁴⁵.

The meaning of these borders varies significantly from country to country in light of their particular social, cultural, political and historical setting. This variation supplies a basis for relative analysis, which describes how states balance free expression against the need to prevent harm from hate speech.

¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 19.

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 19.

³ UN Human Rights Committee, 'General Comment No 34: Article 19: Freedoms of Opinion and Expression' (12 September 2011) CCPR/C/GC/34.

⁴ UN Human Rights Committee, 'General Comment No 34: Article 19: Freedoms of Opinion and Expression' (12 September 2011) CCPR/C/GC/34.

⁵ Dominic McGoldrick, 'The Limits of Freedom of Expression' (2006) 6(1) *Human Rights Law Review* 125.

2.2 ICCPR Article 19: The Right to Expression and Its Limitations

Article 19 of the ICCPR establishes a three-tiered structure for protecting freedom of expression:

(1) Freedom to hold opinions

This part is absolute. No restrictions of any kind may be placed on a person's internal thoughts, beliefs, or viewpoints.

(2) Freedom to express opinions

Individuals can share their ideas through speech, writing, art, or digital communication. This includes the right to receive and share information.

(3) Limitations on speech that are valid

Article 19(3) allows states to place restrictions on speech, but only if those restrictions are:

Proportional and necessary and for a legitimate purpose, such as: Protecting the rights or reputations of others, Protecting national security, Promoting the public order, Safeguarding the public health or morals

The structure reveals the two sides of freedom of speech. It is well protected but there may be limits to protecting other important values.

This notion is the essence of article 39 of the Constitution of Bangladesh. It encourages free speech and expression. But it does permit "reasonable restrictions" for the sake of state security, public order, morals, and good relations with other countries⁹.

⁶ ICCPR (n 2) art 19(3).

⁷ General Comment No 34 (n 3) para 22.

⁸ Constitution of the People's Republic of Bangladesh 1972, art 39.

⁹ Laurence Boisson de Chazournes and Lori F Damrosch (eds), *The Balance Between Freedom of Expression and Social Harmony* (Oxford University Press 2016).

2.3 CCPR Article 20: The Prohibition of Hate Speech

Article 20 imposes explicit and stricter duties on States by requiring the proscription of certain harmful forms of expression.¹⁰ It has two major parts:

(1) Prohibition of war propaganda¹¹

Any support or promotion of war must be banned by law.¹²

(2) Prohibition of hateful advocacy

States have a duty to outlaw any expression that promotes national, racial, or religious hatred and that stimulates discrimination, hostility, or violence.¹³

This article deals with speech that incites violence or causes massive discrimination. Whereas Article 19 grants some scope for limitations, Article 20 actually obliges states to be criminalizing of specific prejudicial speech. This creates a tension between Articles 19 and 20. One protects and the other prohibits.

Different legal systems approach this differently. For an example, the US has a general First Amendment protection for any kind of speech, however hate-filled, but unless it calls for imminent lawless action. European countries has much stricter rules against hate speech, owing to their experiences with genocide and persecution.¹⁵

In Bangladesh, legislation such as the Digital Security Act (repealed)¹⁶ and Penal Code provisions prohibit incitement and harmful speech, although concerns exist about misuse to stifle dissent¹⁷.

¹⁰ ICCPR (n 2) art 20(1).

¹¹ ICCPR (n 2) art 20(2).

¹² UN Human Rights Committee, 'General Comment No 11: Prohibition of Propaganda for War and Inciting Hatred' (1983).

¹³ Jacob Kiska, 'Hate Speech Laws: A Global Perspective' (2014) 12(4) *International Journal of Constitutional Law* 154.

¹⁴ *Brandenburg v Ohio* 395 US 444 (1969).

¹⁵ *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994).

¹⁶ Digital Security Act 2018 (Bangladesh) ss 25, 28, 29, 31.

¹⁷ T I Rahman, 'Freedom of Expression in Bangladesh: Constitutional Promise and Political Realities' (2020) 7(2) *Bangladesh Legal Studies Journal* 45.

2.4 Theoretical Perspectives on Speech Regulation²⁰

Several key theoretical frameworks explain why and how states restrict speech, especially hate speech:

(1) Liberal Theory (Marketplace of Ideas)

This perspective, linked to John Stuart Mill holds that truth emerges from the clash of ideas. No thought, no matter how objectionable, should be censored unless it poses a direct threat.¹⁸ This approach is reflected in the American free-speech model.¹⁹

(2) Communitarian or Social Harmony Theory

This theory highlights social harmony, equality and public order. Speech breaching these values are restricted. This is the approach used by a lot of European and South Asian legal systems. Evanston, Illinois: International Network Against Cyber Hate speech. This framework recognizes speech that is more likely to cause real-world violence by examining: speaker influence, audience vulnerability, social tensions, medium of communication, historical patterns of violence²¹.

(3) Dignitaries Theory

From this viewpoint, hate speech is a direct assault on human dignity and equality, particularly against those groups who are already especially vulnerable. It justifies limiting speech in order to protect vulnerable communities²².

For example, both social harmony and dignitary's theories of free speech impact on legal approaches in relation to hate speech in Bangladesh—a country in which issues of religious, ethnic and political sensitivity are particularly live.²³

¹⁸ John Stuart Mill, *On Liberty* (1859).

¹⁹ Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge University Press 1982).

²⁰ Amitai Etzioni, 'Community and Censorship' (2006) 14(2) *Journal of Political Philosophy* 123.

²¹ Susan Benesch, 'The Dangerous Speech Framework' (World Policy Institute 2012).

²² Eric Heinze, *Hate Speech and Democratic Citizenship* (Oxford University Press 2016).

²³ Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press 2012).

2.5 Balancing Competing Rights in International Law ²⁶

The main challenge in regulating hate speech is balancing, the right to freedom of expression and the protection of individuals and groups from violence, discrimination, and humiliation²⁴ International human rights law depends on three main principles²⁵:

(1) Legitimate Aims

Restrictions must be for a recognized protective purpose.

(2) Required Ness

The measure must be necessary to the achievement of the legitimate purpose.

(3) Proportionality

Restrictions should not be excessive in relation to the threat.

These principles are embedded in the constitutional and statutory frameworks²⁶ of Bangladesh. But problems emerge when restrictions are too broad or used to silence criticism rather than to prevent real injury.²⁷

2.6 Conclusion

This chapter elaborates on the key legal and theoretical frameworks that govern freedom of expression and hate speech regulation. The conflict between ICCPR Articles 19 and 20, along with differing philosophical and legal views, shows that why balancing free expression and societal protection remains a global challenge. These foundations prepare the ground for the next chapter, which will compare national approaches including Bangladesh in applying ICCPR standards on free expression and hate speech.

²⁴ General Comment No 34 (n 3) paras 33–35.

²⁵ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976).

²⁶ Constitution of Bangladesh (n 8) art 39(2)

²⁷ Amnesty International, *Bangladesh: Muzzling Dissent Under the Digital Security Act* (2020).

Chapter 3: Comparative Analysis between ICCPR and the Constitution of Bangladesh (Articles 12, 28 & 39)

3.1 Introduction

In this chapter, it examines the relationship between the International Covenant on Civil and Political Rights (ICCPR) and the Constitution of the People's Republic of Bangladesh. ¹This chapter specifically focuses on Articles 12, 28 and 39. These constitutional provisions regulate secularism, equality, and freedom of expression. Three core principles that also lie at the heart of ICCPR Article 19 and 20. ²The comparison highlights the similarities, differences and practical challenges Bangladesh faces in aligning its domestic laws with international human rights standards. Moreover, different case studies show various judicial interpretations and enforcement patterns.

3.2 Bangladesh Constitution Article 12: Secularism & Freedom of Religion

Article 12 re-establishes the principle of secularism, requiring the state to eradicate:

1. Communalism in its every form
2. Allowing any religion to have political status and abuse of religion for political purposes
3. Discrimination or persecution against persons practicing a particular religion ³

ICCPR Relationship Articles

ICCPR Article 18(1): Everyone shall have the right to freedom of thought, conscience and religion.

ICCPR Article 20(2): Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.⁴

ICCPR Article 26: All people are equal before the law and are entitled without any discrimination to equal protection of the law⁵.

²⁸ UN Human Rights Committee, *General Comment No 34: Article 19* (2011).

²⁹ Constitution of the People's Republic of Bangladesh 1972, art 12.

³¹ International Covenant on Civil and Political Rights (ICCPR) 1966, art 18(1)

⁵ ICCPR, art 26.

Alignment

Article 12 is in consonance with ICCPR in terms of protecting equality of religion, preventing communal hatred, prohibiting use of religion to incite enmity and upholding equality before law. Next, implementation issues arise when political actors manipulate religious sentiments in a manner inconsistent with ICCPR standards.⁶

3.3 Article 28: Equality and Non- discrimination

Article 28 (1) states

1. The State shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth.
2. Women shall have equal rights with men in all spheres of the State and of public life. ⁷
3. No citizen shall, on grounds only of religion, race, cast, sex or place of birth be subjected to any disability, liability, restriction or condition⁸regarding access to any place of public entertainment or resort, or admission to any educational institution.
4. Nothing in this article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward sections of citizens.

ICCPR Relationship

ICCPR Article 2(1) Obligation to ensure rights without discrimination

Requires states to respect and ensure rights without discrimination based on “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁹

ICCPR Article 26: Equality before the law; equal protection

All people are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all

⁶ Digital Security Act 2018 (Bangladesh); Case records and media reports (2020–2021).

⁷ constitution of Bangladesh, art 28(4).

⁸ Constitution of Bangladesh, art 28(1).

⁹ ICCPR, art 2(1).

persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR Article 20(2): Restricting hateful advocacy threatening equality

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Alignment

Bangladesh's equality clause meets ICCPR standards. Under the constitution of Bangladesh all the citizens of Bangladesh are equal before the law, and everyone is bound to be treated equally. Article 27 of the constitution ensures equal protection before law. Also, ICCPR and the Constitution of Bangladesh gives positive discrimination under article 28 gives positive discrimination or reasonable classification to uphold the backward population.

3.4 Article 39 of the Bangladesh Constitution and ICCPR

Article 39(1): Freedom of thought and conscience is guaranteed.¹⁰

Article 39(2): Subject to any reasonable restrictions imposed by law. The right of every citizen to freedom of speech and expression; and freedom of the press, are guaranteed.

But subject to reasonable restrictions in the interests of security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, incitement to an offence¹¹

ICCPR Article 19

Article 19(1): Everyone shall have the right to hold opinions without interference.¹²

Article 19(2): Everyone shall have the right to freedom of expression.¹³

¹⁰ Constitution of Bangladesh, art 39(1).

¹¹ Constitution of Bangladesh, art 39(2).

¹² ICCPR, art 19(1).

¹³ ICCPR, art 19(2)

Article 19(3): Restrictions must be provided by law, necessary, and for legitimate aims such as “respect of the rights or reputations of others,” “national security,” “public order,” “public health or morals.”¹⁴

The key difference is the more extensive grounds of restriction Bangladesh has which have been criticized for allowing disproportionate limitations. Moreover, ICCPR requires limitations to be necessary and proportionate and often more restrictive than Bangladesh’s practice.

3.5 Case 1: Bangladesh- Shahidul Alam vs. Bangladesh (2018)¹⁵

Background: Photographer Shahidul Alam was arrested under the ICT Act 2006 (Section 57) after criticizing government actions during student protests.

Issues:

Whether criticism of the government falls under protected political expression?

Whether state’s claim of “public order” was proportionate under ICCPR Article 19(3)

ICCPR view:

Political speech receives highest protection under Article 19.

His comments did not cross the threshold of incitement under Article 20(2). The arrest was disproportionate and not consistent with obligations under the ICCPR.

Bangladesh's constitutional outlook:

Authorities said the arrest was justified under the Article 39 restrictions. Right groups pointed to abuse of national security/public order exceptions.

3.6 Case 2: Bangladesh- Mustaq Ahmed Case (2020-2021)

Background:

Writer Mustaq Ahmed was detained under the Digital Security Act (repealed) for posts criticizing the government’s COVID -19 response. He died in custody in 2021.

Legal questions:

¹⁴ ICCPR, art 19(3).

¹⁵ Bangladesh- Shahidul Alam vs. Bangladesh DLR 41 (2018) 67 (AD)

1. Whether his criticism constitutes “incitement”
 2. If the provisions of the DSA (repealed) are in line with Articles 19 and 20 of the ICCPR.
- Results:
- UN human rights bodies said that Bangladesh had violated its ICCPR obligations because:
- Unclear legal requirements
3. Detention disparity
 - 4 Failure of the tests of “necessity” and “proportionality” under Article 19(3)

3.7 Case 3: India - Shreya Shinghal vs. Union of India (2015)¹⁶

Background: Section 66A of India’s IT Act criminalized “offensive” online messages. It leads to arrest for satire , criticism and political comments.

Judgement: The Supreme Court of India struck down Section 66A as unconstitutional.

Key findings: Ambiguous terms create a chilling effect on speech, Criminalization of “Incitement to violence” or “Public disorder” only, hate speech is not simply annoying or insulting.

ICCPR Connection: This rule is in harmony with Articles 19 principles of specificity and proportionality.

3.8 CASE 4: India- Hate Speech and Political Rhetoric

Communal rhetoric is on the rise in India during elections, but courts have drawn a distinction between speech that can be punished and those which are protected by free speech.

Illustrative case: Pravin Togadia (2014)

Supreme Court held that: Ideological or inciting speech is protected unless it advocates for violence²⁰

Need for Real Likelihood of Harm: IPC Sections 153A and 295A.

ICCPR Connection: The decision of India was consistent with ICCPR Article 19 which requires: Clear definitions, Proportionate restrictions, Protection of democratic dialogue

It aligns with the narrow ICCPR Article 20 (2) test for advocacy and incitement.

¹⁶ *Shreya Singhal v Union of India* (2015) 5 SCC 1 (Supreme Court of India).

3.9 Conclusion

The human rights commitments of the Bangladesh Constitution are relatively robust and consistent with the ICCPR. Secularism, equality and right to freedom of expression is ensured in Articles 12, 28 & 39 of ICCPR provisions. But implementation gaps remain, especially when undue restrictions on expression are imposed or motivated. This conundrum of reconciling constitutional rights with international norms is starkly demonstrated by the case study. Uzbekistan Structural alignment with ICCPR commitments but needs to improve enforcement of free expression protections from discrimination and hate speech.

Chapter 4: Key Challenges and Legal Tensions in Regulating Freedom of Expression and Hate Speech

4.1 Introduction

Although both the International Covenant on Civil and Political Rights (ICCPR) and the Constitution of Bangladesh protect freedom of expression and prohibit incitement to hatred, achieving a practical balance between these rights remains difficult.¹⁷ This chapter examines the major legal, social and political tensions that arise when implementing ICCPR Articles 19 and 20 alongside Articles 12, 28 and 39 of the Constitution of Bangladesh.¹⁸ It also highlights Bangladesh's modern challenges—particularly online, political and social pressures—that complicate the regulation of harmful speech while preserving democratic participation.

4.2 Definitional Problems: What Constitutes Hate Speech?

One of Bangladesh's core difficulties is the absence of a clear and consistent definition of hate speech. ICCPR Article 20(2) prohibits “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, but it does not define how much hostility counts as hatred, nor specify the threshold of incitement.¹⁹

¹⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) arts 19–20.

¹⁸ Constitution of the People's Republic of Bangladesh, arts 12, 28, 39.

¹⁹ ICCPR, art 20(2).

Bangladesh's Definitional Issues

Bangladesh does not have a standalone hate speech statute. Instead, hate speech is addressed through various laws such as: Penal Code sections 153A and 295A,²⁰ Digital Security Act (now replaced by the Cyber Security Act 2026)²¹, Public order and religious sentiment provisions.

Many of these laws use broad terms like “hurting religious sentiment” or “creating enmity”, enabling authorities to classify criticism of government, satire or political commentary as hate speech even when no incitement is present.

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ICCPR Perspective

The UN Human Rights Committee (HRC) specifies that incitement entails both intent and great probability of harm.²³ The first amendment states that overbroad or vague definitions are clearly violative of Article 19, as it increases the risk of conflating offensive speech with genuine incitement. This is compounded by the vast discrepancy between ICCPR clarity and Bangladesh vagueness, thus posing a significant regulatory challenge.

4.3 Digital Platforms and the Rapid Spread of Hate

The rapid expansion of social media in Bangladesh has intensified the spread of religious intolerance, political misinformation, character assassination, communal rumors and gender-based harassment²⁴. Some incidents have triggered mob attacks, communal violence and targeted harassment of minorities and activists.

Government Response

The Digital Security Act 2018 and its successor, the Cyber Security Act 2026 are introduced to regulate online content.²⁵ However, arrests often involve journalists, students and government critics rather than individuals engaged in genuine incitement.²⁶ Enforcement is frequently preemptive and does not meet the ICCPR threshold of imminent harm.

²⁰ Penal Code 1860 (Bangladesh), ss 153A, 295A.

²¹ Cyber Security Act 2024 (Bangladesh); formerly Digital Security Act 2018.

²² Ibid

²³ UN Human Rights Committee, ‘General Comment No 34: Article 19: Freedoms of Opinion and Expression’ (2011) CCPR/C/GC/34

²⁴ Human Rights Watch, *Bangladesh: Repression of Online Speech* (2022).

²⁵ Cyber Security Act 2024 (Bangladesh).

²⁶ Amnesty International, *Protesting Human Rights: Misuse of the Digital Security Act* (2021).

Tension with ICCPR

ICCPR Article 19 requires restrictions on expression to be necessary, proportionate and the least intrusive means of achieving a legitimate aim.²⁷ The broad enforcement of digital laws in Bangladesh therefore creates significant tension between preventing harm and upholding freedom of expression.

4.4 Political Manipulation and Selective Enforcement of the Law Against Hate Speech

Political abuse of speech laws is one of the gravest threat.

Patterns in Bangladesh:

Hate speech laws are sometimes used to target these individuals by silence government critics, restrict opposition activity, intimidate journalists and activists, criminalizing dissent under the guise of “public order” or “religious sentiment”.²⁸

Often criticism of government policy is termed as 'spreading rumors' or 'hurting sentiments' while supporters of ruling parties rarely face any consequence for doing the same.²⁹

ICCPR Warning

The ICCPR prohibits discriminatory enforcement of expression laws and warns against using hate speech restrictions to suppress political dissent.³⁰ Criminal penalties cannot be imposed on speech that does not pose a real, demonstrable threat. Selective enforcement therefore violates Articles 2, 19 and 26.

4.5 Social Impact: Censorship or Protection

Bangladesh faces a central dilemma: So, lack of regulation would help to sustain violence and intolerance & discrimination. Out of control regulation, the rise of censorship and fear among journalists and shrinking civic space.

Real Social Context: The sociopolitical climate in Bangladesh is marked by heightened religious sensitivities, political factionalism and polarization of widely varying degrees, misinformation,

²⁷ ICCPR, art 19(3).

²⁸ Transparency International Bangladesh, *State of Governance Report* (2023).

²⁹ Human Rights Watch (n 8).

³⁰ ICCPR, arts 2, 19, 26.

and variable levels of digital literacy. The risk is therefore to ensure a certain complexity of harmful speech and public order

ICCPR's Balanced Framework

“ICCPR standards are about protecting vulnerable groups and allowing free political criticism. Restrictions are allowed on an as-needed basis. Criminalisation should be discouraged in favour of education, awareness and counter-speech.”³¹

4.6 Public Order, National Security, and Human Dignity

Bangladesh often justifies speech restrictions under “national security,” “public order,” “religious harmony,” “morality” and “human dignity.”³² While these grounds exist in both constitutional and ICCPR frameworks, Bangladesh typically interprets them more broadly.

4.7 Bangladesh's Approach

Authorities often claim that criticism of government threatens public order or national security.³³ Sensitive religious issues are also heavily regulated. However, ICCPR Article 19(3) requires restrictions to be based on real, specific threats not hypothetical, political or overly broad concerns.³⁴

In Bangladesh, if you have seen the popular argument for curbing expressions, they often remind how religion or dignity of a nation is put into jeopardy.

Yet, the Human Rights Committee points out that human dignity cannot be used as a tool to silence legit criticism. Only expressions that literally cause damage or are genuinely incited can be limited³⁵

4.8 Conclusion

Ensuring freedom of expression versus regulating hate speech poses major legal and policy challenges for Bangladesh. Problems such as vague definitions, over-application of digital laws, political exploitation, increasing online radicalization and a definition of public order that is too wide — continue to be important roadblocks. Thus, although Bangladesh's Constitution and the

³¹ UNHRC General Comment No 34 (n 7).

³² Constitution of Bangladesh, art 39(2).

³³ Ibid.

³⁴ ICCPR, art 19(3).

³⁵ Penal Code 1860, ss 295–298.

ICCPR have common values between them, in practice it is deviated from international standards. Key reforms include clearer definitions, stricter limits

Chapter 5: Implementation and Monitoring of ICCPR in Light of the Constitution of Bangladesh

5.1 Introduction

The ongoing monitoring by international bodies, domestic courts and governments is required for implementing Articles 19 and 20 of ICCPR³⁶. In Bangladesh, Article 39 of the Constitution guarantees free expression. Nonetheless, free expression is subject to restrictions aimed at upholding public order and morality, as well as the country's security. This chapter examines how the standards of the ICCPR work in practice, how these standards are being monitored by the UN Human Rights Committee (HRC), and how Bangladesh is not doing this with its domestic laws.

Function of the UN Counter Treaty on Human Rights

5.2.1 Monitoring and Reporting

Countries that agree to the ICCPR must send periodic reports on how they implement freedom of expression and regulate hate speech.³⁷ The (HRC) will assess whether the restriction on speech was lawful, necessary, and proportionate.³⁸ Lastly, it will assess whether the hate speech laws comply with Article 20's requirement to prohibit incitement to hostility or violence.³⁹

³⁶ ICCPR (1966) 999 UNTS 17

³⁷ UN Human Rights Committee, 'Rules of Procedure' (2019) CCPR/C/3/Rev.12

³⁸ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights* (3rd edn, OUP 2013).

³⁹ Manfred Nowak, *CCPR Commentary* (2nd edn, NP Engel 2005).

5.2.2 General Comments as Interpretative Guidance

General comments can help citizens interpret law.

Pursuant to General Comment No. 34 of the Committee, any restrictions on expression should be strictly justified, must not be aimed at political dissent and must protect the space for democratic debate⁴⁰. Similarly, General Comment No. 11 explains the obligation to prohibit advocacy of hatred under Article 20⁴¹. These Comments influence significantly the way in which domestic courts interpret speech-related rights in circumstances where international mechanisms cannot be invoked.⁴²

5.2.3 Individual Complaints

Bangladesh has not agreed to the Optional Protocol which would allow individuals to lodge complaints to the Committee. However, HRC jurisprudence does, nevertheless, inform activist advocacy, judicial reasoning and law-reform debates.⁴³

5.3 State reports and UN observations

National Report Templates for the UN CPD Bangladesh's Implementation.

In 2000, Bangladesh ratified the ICCPR and shortly after submitted its first state report. In its concluding observations, the HRC noted with concern the nature of laws on speech which have a restricting nature, particularly the Digital Security Act 2018(repealed).⁴⁴ As per the rights group, there have been constant reports of the misuse of these laws to silence journalists, academia and social-media users.⁴⁵

The Cyber Security Act (CSA) 2023 replaced the DSA in Bangladesh, but several vague terms such as "deterioration of law and order" and "hurting religious sentiment" remained.⁴⁶ Such provisions make it not easy to match ICCPR standards requiring clarity and narrow tailoring.⁴⁷

In General Comment No 34 it is stated that a public figure must endure greater scrutiny or criticism. However, Bangladeshi provisions on criminal defamation and the cyber law often

⁴⁰ Human Rights Committee, 'General Comment No. 34' (2011) CCPR/C/GC/34.

⁴¹ Human Rights Committee, 'General Comment No. 11' (1983).

⁴² Optional Protocol to the ICCPR (1966).

⁴³ Bangladesh, 'Initial Report' (2001) CCPR/C/BGD/2001/1

⁴⁴ Human Rights Committee, 'Concluding Observations: Bangladesh' (2017) CCPR/C/BGD/CO/1

⁴⁵ Ain o Salish Kendra, *Human Rights Report* (2023).

⁴⁶ Cyber Security Act 2023 (Bangladesh).

⁴⁷ Human Rights Committee (n 5).

protect political actors from scrutiny⁴⁸. As such, Bangladesh has an incomplete alignment with ICCPR and faces major challenges with compliance.⁴⁹

5.4 Trends in Legal Reform and International Best Practices

5.4.1 Clear Definitions of Hate Speech

Bangladesh does not yet use this standard, resulting in legal uncertainty. This allows for selective enforcement, with some laws enforced more than others, as designated by authorities.

5.4.2 Judicial Safeguards and Proportionality Tests

In several countries, courts are relied upon to test the proportionality and necessity of the restrictions on speech.⁵⁰ The European Court of Human Rights' (ECtHR) ruling in *Handyside* has been deployed to argue that speakers in democratic societies must tolerate some level of offensiveness. Courts in Bangladesh use similar reasoning occasionally, but almost always show deference to government justifications toward public order.

5.4.3 Civil Society Participation

NGOs and independent legal bodies call for clarity in law, provide legal aid for the wrongfully arrested, and raise public awareness on hate speech.⁵¹ Bangladesh is experiencing political pressure against such organizations and very limited institutional support, but they still play an essential role.

5.4.4 Decriminalization of Legitimate Expression

Best practices recommend that imprisonment not be a penalty for defamation or criticism of public officials.⁵² Bangladesh keeps several provisions that criminalize expression, reflecting the tension between ICCPR and domestic politics.

5.5 Civil Society and Free Speech Advocacy in Bangladesh

Civil society groups such as BLAST, ASK, and CGS monitor violations against free expression and also take court action to challenge the application of laws that impose unreasonable restrictions on free expression. They also publish data on arrests made under cyber laws.

⁴⁸ UN Special Rapporteur, 'Report on Hate Speech' (2019) A/74/486.

⁴⁹ N Special Rapporteur, 'Freedom of Expression' (2012) A/HRC/20/17.

⁵⁰ N Special Rapporteur, 'Freedom of Expression' (2012) A/HRC/20/17.

⁵¹ *Handyside v UK* (1976) 1 EHRR 737.

⁵² ARTICLE 19, *Hate Speech Explained: A Toolkit* (2015)

⁵³Professional journalistic organizations have also been keeping track of censorship and threats to media freedom.⁵⁴

Advocacy campaigns often have barriers like: Political retaliation, Weak institutional protection, Fear of surveillance.

Even with these limitations, civil society is essential to help achieve ICCPR compliance.

5.6 Ethical Dilemmas in Enforcement

5.6.1 Over-Regulation vs Under-Regulation

Regulating too much quashes dissent and limits academic and journalistic freedom while not regulating at all let's hate speech spiral. And that type of speech overwhelmingly harms vulnerable groups.⁵⁵

5.6.2 Protection of Minorities

Governments must protect minorities from incitement, but this should not be used as a pretext for silencing real debate or criticism of the state.⁵⁶

5.6.3 Digital Speech Challenges

Because of the growth of social media, the tension between regulation of harmful content and freedom of expression is pronounced. Bangladesh's cyber laws exemplify this tension.⁵⁷

5.6.4 State power and abuse

Laws on hate speech can be used to stop opponents or to protect political elites. To ⁵⁸govern ethically, restrictions must be equally applied and not used for political power.

5.6.5 Cultural and Religious Sensitivities

In a country with diverse social groups like Bangladesh, there is a challenge to strike a balance between respecting their religion and not curtailing free speech. ⁵⁹As per ICCPR standards, we

⁵³ European Court of Human Rights jurisprudence on defamation.

⁵⁴ BLAST, 'Freedom of Expression Case Records' (2022).

⁵⁵ Reporters Without Borders, *Press Freedom Index: Bangladesh* (2023).

⁵⁶ David Kretzmer, 'Freedom of Speech and Incitement' (2007) 12 *Israel Law Review* 1.

⁵⁷ Susan Benesch, 'Dangerous Speech' (2012).

⁵⁸ UNHRC, 'Rabat Plan of Action' (2012).

⁵⁹ Andrew Neal, *Exceptionalism and Counter-Terrorism* (Routledge 2009).

can recognize the cultural sensitivities of Bangladesh, but we cannot have a blanket ban on dissenting criticism.⁶⁰

5.7 Conclusion

The implementation of ICCPR in Bangladesh is a tug of war between international human rights and domestic priorities with regard to national security, public order, and religion. While provisions of the Bangladesh Constitution for free expression are pretty ok. But these laws would be inconsistent with Articles 19 and 20 due to the general cyber laws and related sanctions against crimes. Bangladesh must increase legal clarity, strengthen its judicial protections and actively engage in civil society. Failure to do so means failing to live up to global best practices but also always maintaining a level of social solidity.

⁶⁰ Eric Barendt, *Freedom of Speech* (2nd edn, OUP 2007).

Chapter 6: Conclusion.

6.1 Introduction.

The study of hate speech regulation and the freedom of expression with reference to the ICCPR, especially Articles 19 and 20 and the Bangladesh Constitution (Articles 12, 28 & 39). In five chapters, the study examines the law, the international framework, the definition, the challenges in the digital era, and the tensions in practice. Bangladesh's situation reflects the recognition of the right to hold opinions, as well as the challenges posed by vague laws, arbitrary enforcement, and rising online threats.

6.2 Findings.

Bangladesh does have clear legal protections, but its definitions of hate speech are vague and sweepingly broad as compared to ICCPR standards requiring narrow, harm-based definitions.

The problem is that they are often used to silence journalists, students or critics and as such there is a gap between intention and practice in the way that harmful speech is amplified via digital platforms while the Cyber Security Act sits on top of this already difficult layering. The main cause of this tension is precisely political abuse: the speeches laws silence dissent and not incitement.

While social sensitivities, religious identity and misinformation make regulation a need, regulatory overreach curtails democratic discourse. BD interprets terms “public order” and “national security”, much beyond ICCPR allows, thus over-restraining the restrictions. There is an apparent gap between international human rights standards and domestic enforcement.

6.3 Recommendations.

1. Legal & Policy Reforms: Use the ICCPR a clear and precise, a narrow definition of hate speech that is concerned with harm and incitement, Change the digital laws so that restrictions are necessary, proportionate and not used against peaceful criticism, Make sure judicial reviews are done openly to reduce selective enforcement.
2. Clarity and Public Education: Spread significant awareness about ensuring digital literacy, appreciating it and questioning it by the public, educate law enforcement, journalists, and public officials on the differences between criticism, offense and incitement, Community outreach can be encouraged on tolerance, religious harmony and responsible speech.

6.4 Conclusion.

Bangladesh continues to juggle free speech and hate speech which is a delicate act. The Constitution and ICCPR both have the same goal of protecting human dignity and making room for democratic debate, but real-life enforcement is often cautionary, controlling or politicized. As society goes digital and become polarized, there is an urgent need to regulate transparently, fairly and proportionately. It is essential that courts, policymakers, media actors, and citizens help in striking this balance as a legal and democratic task.

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