

**DISSERTATION**

**ON**

**A CRITICAL ANALYSIS OF THE IMPACT OF DRAFT REGULATIONS OF BTRC,  
2021 ON THE RIGHTS OF THE CITIZENS OF BANGLADESH**

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## **DECLARATION**

I hereby sincerely affirm that the work contained in the dissertation is original to me and hasn't been submitted anywhere else before. Nothing about the work I've presented violates any copyright. I also agree to hold the University harmless from any loss or harm caused by a breach of the aforementioned obligations.

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<b>Table of Contents</b>	<b>Page no.</b>
<b>List of Abbreviations.....</b>	<b>1</b>
<b>Abstract.....</b>	<b>2</b>
<b>CHAPTER: 1.....</b>	<b>3</b>
<b>INTRODUCTION.....</b>	<b>3</b>
1.1: Scope & Aim of the Research paper, Limitations.....	4
1.2: Research Question.....	5
1.3: Research Methodology.....	5
<b>CHAPTER:2.....</b>	<b>7</b>
<b>Historical Background of BTRC</b>	
2.1: History.....	7
2.2: Purposes of the draft Regulation of BTRC, 2021.....	8
2.3: Summary of the draft Regulation of BTRC, 2021.....	9
<b>CHAPTER:3.....</b>	<b>12</b>
<b>Scope of the freedom of expression &amp; speech and scope of the right to privacy under the law of Bangladesh upon the impact of the draft Regulations of BTRC, 2021</b>	
3.1: Scope of the freedom of expression and speech under the law of Bangladesh.....	12
3.2: Scope of the right to privacy under the law of Bangladesh.....	14

**CHAPTER:4.....17**

**Legal impact of the draft Regulations of BTRC, 2021**

4.1: Who will be affected by this Draft Regulation of BTRC,2021.....17

4.2: Impact of this draft Regulations upon the rights of the citizens of Bangladesh.....18

4.3: Conflict of this draft Regulations with the International Law.....22

**CHAPTER:5.....23**

**Recommendations & Conclusion**

5.1: Recommendations.....23

5.2: Conclusion.....26

**References.....27-31**

## **List of Abbreviation**

**BTRC:** Bangladesh Telecommunication Regulatory Commission;

**OTT:** Over the Top;

**UDHR:** Universal Declaration of Human Rights;

**ICCPR:** International Covenant on Civil and Political Rights ;

**DSA:** Digital Security Act;

**BTTB:** Bangladesh Telegraph & Telephone Board;

**ITU:** International Telecommunication Union ;

**BTRC-CSIRT:** Bangladesh Telecommunication Regulatory Commission Computer System  
Incident Response Team;

**ECHR:** European Convention on Human Rights;

**NCTB:** National Curriculum & Textbook Board;

## **Abstract**

This research paper's major goal is to examine how the Draft Regulations of BTRC, 2021 would influence the rights of the citizens of Bangladesh. It also explores how these regulations are inconsistent with both national and international laws. According to the Constitution of the People's Republic of Bangladesh, the right to privacy and freedom of speech and expression both fall within the category of fundamental rights. And it is expressly stated in the constitution that any new laws or regulations cannot be in conflict with any of the articles of the Constitution of Bangladesh. And the Draft Regulations of BTRC, 2021 creates controversy with national and international law and also violates the fundamental rights of the citizens of Bangladesh.

## CHAPTER: 1

### INTRODUCTION

The role of the internet is immense behind the digitalization of Bangladesh. People of all classes and ages have involved themselves with various types of modern technology. Nowadays, it is seen that people of all ages are connected to the internet from children to the old people. According to an online report of 2022, about 52.58 million people are using the internet in Bangladesh.<sup>1</sup> Today's world and generation is heavily dependent on social media and OTT platforms. So, the proper usage rules should be followed by everyone. But the rules have to ensure that they do not undermine the freedom and security of any citizen of Bangladesh. Since everything is gradually becoming dependent on the internet as a result of modernizing the world including our country, it is important to ensure everyone's safety in this regard. But ensuring the safety and rights of all Internet users is not an easy task. The Government is ensuring the safety and rights of all citizens by enacting various laws. At the same time proper implementation of laws is also required. Therefore, in keeping with the social and economic reality of Bangladesh, Bangladesh Telecommunications Regulatory Commission (BTRC) is established to ensure modern telecommunication services and skills, internet access etc. to the maximum number of citizens of Bangladesh. Bangladesh Telecommunications Regulatory Commission (BTRC) is established under the Bangladesh Telecommunications Act, 2001. BTRC manages all matters related to Bangladesh Telecom like wireline, cellular, satellite and cable. BTRC started its operations on January 31, 2002. This commission is one kind of

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<sup>1</sup> Simon Kemp, 'Digital 2022: Bangladesh' (2022) <<https://datareportal.com/reports/digital-2022-bangladesh>> accessed 16 October 2022



independent commission.<sup>2</sup> Recently, BTRC published a draft Regulations , 2021 which is inconsistent with the Constitution of the People's Republic of Bangladesh, the International Human Rights Framework including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Freedom of expression and right to privacy are very necessary human fundamental rights according to the Constitution of the People's republic of Bangladesh and International Law.

### **1.1:Scope and aim of the Research paper, Limitations**

#### **Scope & Aim of the Research paper:**

This research will be based on a critical and analytical study and the nature of this research paper is instructive as well as descriptive. This research study especially includes the limitations of the draft regulations of BTRC, 2021 and how the implementation of BTRC's draft regulations may conflict with the national laws and international laws and also may violate various fundamental rights of the citizens of Bangladesh. The main objective of this research study is how to implement the draft regulations of BTRC,2021 without violating any fundamental rights regarding freedom of expression and right to privacy of the citizens of Bangladesh. Besides, legal decisions of some cases which are related to violation of fundamental rights are also discussed here.

#### **Limitations:**

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<sup>2</sup> 'Bangladesh Telecommunication Regulatory Commission' (2018) <<http://old.btrc.gov.bd/faq/what-btrc>> accessed 16 october, 2022

Due to time constraints, the analysis was unable to provide further instances or a more comprehensive assessment of the impact the Draft Regulations of BTRC, 2021 would have on the rights of Bangladeshi citizens. Because it is such a new legislation that is being suggested for implementation but has not yet been put into effect. A few organizations have recently written against it. There hasn't been a significant amount of discussion either yet. Because key content needed a subscription, another barrier was the sites' insufficient information and lack of data access. Consequently, doing qualitative research has become quite challenging. In order to facilitate a more fruitful discussion, the research did not address any opposing and prejudiced perspectives in any opinionated element.

### **1.2: Research Question:**

The relevant research questions arise for this research paper are:

- Does the draft regulations of BTRC,2021 violate any fundamental rights of the citizens of Bangladesh?
- What can be amended in the draft regulations of BTRC,2021 to ensure fundamental rights of the citizens of Bangladesh?

### **1.3: Research Methodology**

This research paper will be based on a critical study about the draft regulations of BTRC, 2021 and also an analytical study where the defects and corrective issues of these draft regulations will be discussed. So, this research paper will be a suggestive as well as expositive study. In this research paper the information is followed mainly from the governmental official site,

BTRC's original and draft regulations, Constitution of the People's republic of Bangladesh. Here, information has also been collected from the International Human Rights Framework including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) as well as parents Acts, instruments and other resources regarding this issue. Besides, secondary resources have been collected from many books, newspapers and journal articles which are of national and international levels as well as internet sources have also been used in this research paper. This research paper will be written in a qualitative manner.

## CHAPTER:2

### Historical Background of BTRC

#### **2.1 History:**

Earlier, Bangladesh had relatively little depth of understanding about telecommunications. Then, the Telegraph Act was first introduced in 1885 as the first law relating to technical services. which was further expanded by the Wireless Telegraphy Act, 1933. In 1979, the Bangladesh Telegraph and Telephone Board Ordinance created a constitutional body for the efficient management and development of Bangladesh. The BTTB Ordinance of 1979 remained the only basic telecommunication service provider after further amendment in 1995. Later on, telecommunication developed further through voice conversation, internet, various social media for communication, messaging etc. In the late 1990s it underwent a more extensive change with improvements. Then, under the Bangladesh Telecommunication Act, 2001, (Act No. 18 of 2001) Bangladesh Telecommunication Regulatory Commission (BTRC) was established which is known as an Independent Regulatory Commission. BTRC started its operations from 31st June 2002. After that, according to the Bangladesh Telecommunication Act,2001 BTRC is given the necessary responsibilities of the Ministry of Posts and Telecommunications.<sup>3</sup>

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<sup>3</sup> 'Bangladesh Telecommunication Regulatory Commission' (2018)  
<<http://old.btrc.gov.bd/history-and-vision#:~:text=In%20order%20to%20facilitate%20a,Bangladesh%20Telecommunication%20Regulatory%20Act%202001>> accessed 16 October, 2022

## **2.2 Purposes of the draft Regulations of BTRC, 2021:**

In order to promote fast and stable socio-economic development and provide reliable telecommunication services, the Bangladesh Telecommunications Regulatory Commission (BTRC) was established. The main purpose of BTRC's regulations is to govern the telecommunications in Bangladesh. Also, it has some other purposes which are mentioned in the regulation 3 of the draft regulations of BTRC, 2021. Those are discussed below:

One of the purposes of BTRC's draft regulations is to actualize the best practices of these regulations and ITU recommendations. The use of modern technology to build a digital Bangladesh is immense. That's why, for proper use of this modern technology, everyone has to follow various rules and regulations. So, the regulations of BTRC are always engaged to preserve the objectives of pertinent regulations, guidelines, licenses, permits and certificates of registration with regard to the incorporation of new technologies to realize the vision of Digital Bangladesh. Another objective of BTRC's draft regulations is to assure the permission with existing network topology and regulations. Nowadays, most of the people of Bangladesh are intimately involved with modern technology. In this case, different classes of people are harassing the common people through various scams and frauds. For this reason, the BTRC is taking a variety of concerns to ensure national security and customer protection concerns such as online content including discrimination, portrait of illegal and harmful substances, mimicry, nudity, language, sexuality, violence, fear, threats, horror and other such issues. Besides, to stimulate the spread of healthy telecom services such as local and foreign products is another motive of BTRC. The BTRC is also working on an impartial and momentous impact on the community. In these technological online harassment, miscreants mostly target women and children as an attackable group. Therefore, BTRC's main focus in this issue is to protect the lawful interest of the attackable groups such as women and children from fraud or deception,

heinous content etc. Lastly, BTRC also strives to confirm fidelity for all players of digital and OTT platforms.<sup>4</sup>

### **2.3 Summary of the draft Regulations of BTRC, 2021:**

The draft Regulations of BTRC,2021 is based on the digital, social media and OTT platforms. With the use of mobile phones, internet and various modern technologies, Bangladesh is now broadly spread through digital platforms and social media. As the range of internet users is increasing day by day, now is the time to take some valuable steps on the problem regarding digital security. Because the reckless use of the internet without following any legal guidelines can preclude the general development of our future generations. The other reason is, the internet is readily available, people are constantly spreading illegal, objectionable content material around the world instantly. So, it is very important to take into account what internet users are watching and sharing. As a result of these unethical and illegal campaigns, young people (specially children) and women are suffering the most which is a threat to the development of our society and country. Currently, there is no specific system in our country where digital platform users can raise their grievances and get redressal quickly. With this in mind, the Bangladesh Telecommunication Regulatory Commission Regulations, 2021 for Digital, Social Media and OTT Platforms started working. It's important objective is to deal with illegal and objectionable content so that regular users do not face any harm in their personal life, i.e. national security and any fundamental rights of the citizens of Bangladesh are no longer undermined. BTRC operates under the Bangladesh Telecommunication Regulation Act,

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<sup>4</sup> The Bangladesh Telecommunication Regulatory Commission, Regulation For Digital, Social Media And OTT Platforms, 2021(Draft)

2001. For example: Digital Security issues of online telecommunication platforms will be addressed under the Bangladesh Telecommunication Regulation Act, 2001. BTRC is empowered under the Bangladesh Telecommunication Regulation Act, 2001 (as amended in 2010) and the Digital Security Act, 2018 to regulate any online content material including discrimination, depiction of unlawful or unsafe material, sexually suggestive behavior, nudity, etc.

On 18-01-2021, the High Court Division of the Supreme Court of Bangladesh passed an order in Writ Petition No. 4534 of 2020 making guidelines to regulate the OTT platform and secure government revenue. To obey the order of the Supreme Court of Bangladesh and the imagination of our legendary leader honorable Prime Minister Sheikh Hasina, the Bangladesh Telecommunication Regulatory Commission has formed a committee to formulate regulations to regulate digital platforms. This regulation may be revoked, modified, updated or amended from time to time in accordance with Section 39 of the Bangladesh Telecommunication Regulation Act, 2001. Various factors including but not longer confined to threats to national security, statutory or court orders. These regulations are approved by the government and will come into effect from the date of their issuance via the Bangladesh Telecommunication Regulatory Commission (BTRC).<sup>5</sup>

This draft BTRC's regulations is divided into 4 parts. The first part of this regulation deals with the definition of basic content, objectives of this regulation, eligibility for registration certificate and its procedure. Regulation 2 of this draft regulations defines several essential terms, one of which is digital media and OTT. Here, in clause (g) where digital media refers to digitized content. That is, any information can be exchanged, stored, edited etc. through the Internet or computer network. Also, here is the definition of OTT in clause (k) which states,

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<sup>5</sup> n 4

OTT is a service provider or an application that is furnished to the end user over the public internet. Regulation 5(c) of this regulation provides that the Commission reserves the right to reject an application for a certificate of registration if the application is false, inappropriate and unfinished.

Then Part II, the most important part of this regulation which has created controversy. However, this section deals with several duties of the intermediaries. The intermediaries will have access to anyone's mobile or website. The intermediaries will inform users not to engage in various types of illegal, unethical activities. Users will be notified at least once a year, that this provision gives the intermediary the right to cancel or remove that information if they do not comply with any rules related to access to the privacy policy or contract.

As per Regulation 6, clause (k) the intermediary shall report cyber security incidents and share relevant information with Bangladesh Telecommunication Regulatory Commission Computer System Incident Response Team (BTRC-CSIRT).

The third part of this regulation deals with the ethical rules related to digital media. And the last part of the regulation lays down the rules for blocking information in emergency situations and penalties for violating certain regulations.<sup>6</sup>

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<sup>6</sup> Ashutosh Sarker, Zyma Islam, 'BTRC draft rules on OTT: Govt given indemnity for its actions' *The Daily Star* (Bangladesh, 20 October 2022)



### **CHAPTER:3**

#### **Scope of the freedom of expression & speech and scope of the right to privacy under the law of Bangladesh upon the impact of the draft Regulations of BTRC,2021**

##### **3.1 Scope of the freedom of expression and speech under the law of Bangladesh:**

The world is now at a region where the world surroundings are going via a data overload. The use of the web is at its peak making people from all walks of lifestyles just a click away from each other. At present, it may be claimed that the six degrees of separation are closer together than ever. These six ideas mean that any two people may be connected by a chain of acquaintances with a maximum of five intermediates, allowing for global connectivity.<sup>7</sup> But nowadays, many modern social media have been introduced through which it is possible to keep in touch without the need of more than five intermediaries.

Nowadays, the upward thrust in the use of blogs, vlogs, podcasts, instagram, facebook, tumblr and such make the need for breaking news on TV much less necessary as news now travels faster through such sites than TV channels. With the use of science at an all time high, it has grown to be very effortless for humans all over the world to categorical their views and opinions

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<sup>7</sup> Paul Kirvan, 'Six Degrees of Separation' (July 2022) <<https://www.techtarget.com/whatis/definition/six-degrees-of-separation>> accessed 22 October 2022

about something and everything. Given the introduced benefit of anonymity provided by using the internet, it has never been easier to specific one's views and reactions on any matter.

The growth and operation of democracy depend on freedom of expression. The court's conclusion that there cannot be any democracy without freedom of expression was made in the case of *Farid Ahmad v. West Pakistan*.<sup>8</sup> This case dealt with the link between democracy and freedom of speech. People's freedom of speech depends on a nation's democratic process, the prevalence of political rights, press freedom, the rule of law, and corruption, as well as how well human rights are protected. According to World Audit. Org's (2006) ranking of press freedom among 186 nations, Bangladesh received a score of 66. In the 2012 Democracy Index, Bangladesh came in at position 96.<sup>9</sup>

According to the Constitution of the People's Republic of Bangladesh, freedom of expression and of speech is one of the most important fundamental rights of the citizens of Bangladesh which are mentioned in Article 39. In Art. 39(1) ensures the freedom of thought and conscience & Art. 39(2) ensures the freedom of speech and expression of the citizens of Bangladesh.<sup>10</sup> This freedom is guaranteed by the Constitution, "subject to reasonable restrictions imposed by law."<sup>11</sup> The Constitution of Bangladesh guarantees freedom of speech and expression, but only to the extent necessary to protect national security, morality, and other minority' cultural practices. However, there are several areas that we still need to improve in order to properly practice democracy. Press and electronic media are still restricted from airing any news that is favorable to the general populace but unfavorable to the government. Political parties frequently employ phone call tracking for their own political ends under the guise of doing so.

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<sup>8</sup> *Farid Ahmad v West Pakistan*, PLD 1965 Lah 135

<sup>9</sup> Md. Aminul Islam, 'Understanding Freedom of Expression in Bangladesh' (2014) <[https://www.researchgate.net/publication/259622156\\_Understanding\\_Freedom\\_of\\_Expression\\_in\\_Bangladesh](https://www.researchgate.net/publication/259622156_Understanding_Freedom_of_Expression_in_Bangladesh)> accessed 23 October 2022

<sup>10</sup> The Constitution of the People's Republic of Bangladesh, Art. 39

<sup>11</sup> Fayazuddin Ahmad, 'Restrictions on Freedom of Expression' *The Daily Star* (Bangladesh, 6 October 2015)

Commercial advertising is broadcasting commercials that are objectionable on moral and ethical grounds by utilizing the freedom of speech and expression. Poor distribution has limited the public's right to information.<sup>12</sup> When it comes to exercising one's right to the freedom of speech and expression, the People's Republic of Bangladesh is not entirely independent. There are reasonable constraints contained in Article 39 that are based on the Constitution:

- (a) Opposing the State's interest in security
- (b) Opposed to friendly ties with other countries
- (c) Disrespect for public order
- (d) Disrespect for morals or politeness
- (e) Anything demeaning to the court
- (f) Defamation or incitement to commit any crime

With the exception of defamation, prohibitions generally have little effect on public and social life. Media criticism and journalistic libel have long been central issues in the legal system. That means, in a democratic state like Bangladesh, the freedom of speech and expression is not entirely liberal. In order for the People's Republic of Bangladesh to have a strong democracy and an efficient political system, the government must help to protect and regulate as much speech as possible. The ability to independently express opinions and evaluate government acts should be granted to the mass media.<sup>13</sup>

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<sup>12</sup> 'Freedom of Speech and Expression- Analyze and Illustrate' (2017) <<https://www.lawyersnjurists.com/article/freedom-speech-expression-analyze-illustrate/>> accessed 23 October 2022

<sup>13</sup> 'The Right to Freedom of Speech and Expression is not Totally Liberal in a Democratic Country like Bangladesh', (2017) <<https://www.lawyersnjurists.com/article/the-right-to-freedom-of-speech-and-expression-is-not-totally-liberal-in-a-democratic-country-like-bangladesh/>> accessed 23 October 2022

### **3.2 Scope of right to privacy under the law of Bangladesh:**

Privacy is very important for every human being to keep one's individuality to one's own. Everyone needs privacy to live safely. In this digital era, the right to privacy has become essential for every citizen of Bangladesh. In this 21th century, 49.55million people of Bangladesh are using social media according to Social media statistics for Bangladesh in 2022.<sup>14</sup> Hence, the right to privacy has to be ensured by every law, statutory rule, social norms , culture etc.

According to the Constitution of the People's Republic of Bangladesh in Part III indirectly deals with right to privacy in various articles. But there is no specific article which directly ensures the right to privacy as a fundamental right of the citizens. Through Article 43 of the Constitution of Bangladesh, we understand that the Constitution of Bangladesh has divided the rights to privacy of the citizens of Bangladesh into two parts. First one is the home privacy and second one is the right to privacy of correspondence and communication of the citizens of Bangladesh.<sup>15</sup>

According to information provided by the Bangladesh Telecommunication Regulatory Commission, there have been 126.60 million active internet subscribers in Bangladesh as of November 2021, which also included approximately 116.53 million mobile phone subscribers and 10.07 million broadband users. Therefore, a convincing argument might be made that Bangladesh should establish a strong framework as rapidly as possible to secure its nearly 170 million citizens from foreign and domestic privacy risks, compromise, and corruption. Private conversations are frequently intercepted, recorded, and leaked without the consent of the

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<sup>14</sup> n 1

<sup>15</sup> The Constitution of the People's Republic of Bangladesh, Art. 43

parties directly implicated, the High Court Division of the Supreme Court of Bangladesh observed in *The State v. Oli* in 2019 and reminded the Bangladesh Telecommunication Regulatory Commission of its "great responsibility towards proper compliance of the constitutional mandate of maintaining privacy in communication." Earlier in 2016, another court observed in *Aynunnahar v Bangladesh* that the "The right to privacy is a basic aspect of free expression. As a result, this right cannot be violated in the name of surveillance." A trial court in Jhenaidah reportedly reprimanded a civil servant in August 2021 for seizing a private citizen's phone and reading his messages, noting that the messages were sent over an end-to-end encrypted private messaging application and that his action amounted to an infringement of privacy rights.

There is a convincing argument for judicial involvement in the formation of privacy jurisprudence in Bangladesh, but these judicial interventions are few and few between, and there is no landmark decision on privacy or on the contradiction between privacy and press freedom.<sup>16</sup>

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<sup>16</sup> Shahzeb Mahmood, 'Right to Privacy in Bangladesh in The Internet Era: A Chipped Tooth' *The Daily Star* (Bangladesh, 15 February 2022)



## CHAPTER:4

### Legal impact of the draft Regulations of BTRC,2021

#### **4.1 Who will be affected by this draft Regulations:**

The citizens of Bangladesh will be negatively affected if the Bangladesh Telecommunication Regulatory Commission (BTRC) draft regulations for digital, social media and OTT platforms,2021 are implemented. Because it would restrict citizens' constitutional rights to freedom of speech, expression and privacy. If it is implemented, the right of expression and privacy of the citizens will be hindered, which is the fundamental right of the citizens of Bangladesh as stated in the constitution. But among the citizens, women and children will be the most affected by it. Because miscreants usually target these two categories of people on the internet and try to harass them in various ways. And in such a situation, if this regulation is implemented, as the personal security of all citizens will be violated, then women will also lose their freedom and privacy. And also, the problematic Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in India seems to be mirrored by various provisions of Draft Regulations of BTRC,2021.<sup>17</sup> The Indian Rules are an illustration of a structure that undermines democracy and shouldn't be imitated. They have come under fire for endangering human rights, and many have called for their withdrawal. Multiple legal challenges to the Indian Rules are presently pending before Indian courts, which have granted

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<sup>17</sup> 'Letter to the Bangladesh Telecommunication Regulatory Commission: withdraw the Regulation for Digital, Social Media, and OTT Platforms' (7 March 2022) <<https://www.accessnow.org/bangladesh-digital-social-media-ott-platforms-regulation-letter/>> accessed 1 November 2022

temporary orders preventing the Indian Government from enforcing substantial aspects of the Rules.<sup>18</sup>

#### **4.2 Impact of this draft Regulations upon the rights of the citizens of Bangladesh:**

Basically, the draft Regulations of BTRC,2021 is focused on digital, social media and OTT platforms. This law is important for the citizens of Bangladesh but it is also important to ensure that no citizen's rights are violated by the law. Although the regulations used to be stated to be fashioned to make online structures risk-free, which is like a worry-free decision. Unfortunately, if this draft regulation is implemented, the constitutional rights of the citizens of Bangladesh will be violated.

Already, in a letter to the Bangladesh Telecommunication Regulatory Commission (BTRC), a group of 45 foreign organizations requested that the proposed rules for social media, OTT platforms, and digital media be canceled or revised.<sup>19</sup>

Currently, most messaging offerings use end-to-end encryption to essentially ensure security of the users. While the proposed regulation states that "no social media intermediary shall be obliged to expose the contents of any digital information," the installation of a system by which the firm may interpret messages going between two parties, which would probably be essential to assure message traceability, would require the corporation to break encryption and expose user data. This method of encryption may be in violation of Article 43 of the Constitution of

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<sup>18</sup> Tejasi Panjiar, 'Bangladesh's Proposed Regulation = Indian IT Rules, 2021. Overreaching, Invasive and Suppressive' (14 March 2022) <<https://internetfreedom.in/report-on-bangladeshs-regulation-of-digital-social-media-and-ott-platforms-and-it-rules-2021/>> accessed 1 November 2022

<sup>19</sup> 'BTRC Urged to Review Draft Rules on Digital Media' *The Financial Express* (Bangladesh, 12 March 2022)



Bangladesh, which grants citizens the right to a reasonable expectation of privacy in their correspondence and communications.

That means, if this proposed regulation is implemented specifically, the citizens of Bangladesh will lose their fundamental rights especially due to legal guidelines. Also, many messaging services will end their offer in Bangladesh which will be so undesirable to the people. Because, while the draft law states that "no social media intermediary shall be required to disclose the contents of any electronic message," end-to-end encryption ensures that only the sender and recipient of a message can decipher its contents. Establishing a mechanism by which the company can decipher messages traveling between two parties, which would probably be necessary to ensure message traceability, would require the company to break encryption and expose user data.

While granting the authorities indemnity, the draft states, If any individual by and large is affected via any Regulations or order issued under the provisions of this draft regulation in good faith, then he can also not frequently file any suit for compensation against the minister or an employee of the authorities , or the chairman, other commissioners, or any officer, employee or consultant of the commission. There are particularly many imprecise and vague phrases that specifically have no sort of unique definition in regulation 6.01(d)) of this draft regulation which generally is fairly insignificant.<sup>20</sup> For example, the sovereignty, integrity or protection of the country, decency or morality, friendly relation with foreign countries, or defamation essentially are no longer given any definitely unique definition in any specific way. The lack of suitable definition and no longer understanding the authentic elements that represent a crime in large part will create an intimidating environment specially for expressing opinions. Because there have been innumerable allegations of unreasonable use of these

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<sup>20</sup> GNI, 'Concerns About Draft Content Regulation in Bangladesh: Submission to BTRC' (9 March 2022) <<https://globalnetworkinitiative.org/ott-bangladesh/>> accessed 3 November 2022

grounds to detain more than a few sorts of humans before. This demonstrates how the lack of proper definition and not knowing the genuine elements that normally constitute a crime will create an intimidating environment for expressing opinions.<sup>21</sup> Part II and III of the said regulation have countless other scopes which may infringe the right of citizens to freedom of expression and privacy assured underneath the Constitution.

Any error or controversy about this regulation is not desirable for the citizens of the country. The proposed regulation will severely disrupt the freedom of expression of journalists and citizens of a number of walks of society in Bangladesh. All citizens of Bangladesh, especially online users, want a safe modern law that will uphold their fundamental rights, not violate them in any way. Besides, the Bangladesh Telecommunications Regulation Act, 2001 empowers regulatory authorities to compel disclosure of information.<sup>22</sup> The hazard of unsupervised/unprotected use of cyberspace has often been a justification for the legislation. Article 39 of the Constitution of the People's Republic of Bangladesh recognises freedom of expression which is violated through this regulation.<sup>23</sup> Additionally, this will put the safety of journalists, critics, and human rights advocates in jeopardy and force service providers or intermediaries to engage in self-censorship.<sup>24</sup> In the modern age, as most people are involved online, it is also the government's responsibility to ensure their online safety.

The draft "Regulation for Digital, Social Media and OTT Platforms" equipped with the aid of the Bangladesh Telecommunication Regulatory Commission (BTRC) is in opposition to the

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<sup>21</sup> n 6

<sup>22</sup> Shahzeb Mahmood, 'A Deep Dive Into Proposed Online Content Regulations' *The Daily Star* (Bangladesh, 25 February 2022)

<sup>23</sup> Tashmia Sabera, 'All That Is Wrong With The Digital Security Act' *The Daily Star* (Bangladesh, 9 March 2021)

<sup>24</sup> TIB, 'Regulation of Digital Platforms' Policy (draft) Can Potentially Make Bangladesh a Surveillance State and Restrain Freedom of Speech: TIB' (2022) <<https://www.ti-bangladesh.org/beta3/index.php/en/activities/6461-regulation-of-digital-platforms-policy-draft-can-potentially-make-bangladesh-a-surveillance-state-and-restrain-freedom-of-speech-tib>> accessed 4 November 2022

constitution . This draft regulation violates the freedom of expression and of speech and also violates the right to privacy of the citizens of Bangladesh.

The Constitution of The People's Republic of Bangladesh implicitly guarantees freedom of thought and conscience and of speech in Article 39 .<sup>25</sup> This article ensures freedom of speech and expression for each and every citizen of Bangladesh and to implement this right state has to be given the opportunity of easy communication because without communication nobody can express their expression or thought.<sup>26</sup>

Again, regulation 7.03 of the draft compels intermediaries such as messaging carrier providers to hint the first originator of a message and reveal his identification after receiving an order from a court or BTRC to unlock the privacy of users' correspondence, which is a clear violation of Article 43 of the Constitution of Bangladesh.<sup>27</sup>

Moreover, the draft regulations' clause of the BTRC raises the serious concern that this power can be abused by violating Bangladesh's Constitution. Because Article 26 of the Constitution expressly specifies that any new law that conflicts with the fundamental rights of the citizens of Bangladesh should be deemed void.<sup>28</sup>

Finally it can be said that if this regulation is implemented, the citizens of this country will be deprived of their fundamental rights and face various difficulties.

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<sup>25</sup> n 10

<sup>26</sup> Anju Man Ara Begum, Hasan Murad, Kazi Arshadul Hoque, 'Telecommunication Regulation in Bangladesh: An Overview' (2016)

<[https://www.researchgate.net/publication/301573015\\_Telecommunication\\_Regulation\\_in\\_Bangladesh\\_An\\_overview?\\_iepl%5BgeneralViewId%5D=1SBY5ymFde1SpTU43SdK4WVj3F0L1vqQmp4F&\\_iepl%5Bcontexts%5D%5B0%5D=searchReact&\\_iepl%5BviewId%5D=hyExmZya1blqVBLXeRZLjeElyDkiZ7CJCKoO&\\_iepl%5BsearchType%5D=publication&\\_iepl%5Bdata%5D%5BcountLessEqual20%5D=1&\\_iepl%5Bdata%5D%5BinteractedWithPosition1%5D=1&\\_iepl%5Bdata%5D%5BwithoutEnrichment%5D=1&\\_iepl%5Bposition%5D=1&\\_iepl%5BrgKey%5D=PB%3A301573015&\\_iepl%5BtargetEntityId%5D=PB%3A301573015&\\_iepl%5BinteractionType%5D=publicationTitle](https://www.researchgate.net/publication/301573015_Telecommunication_Regulation_in_Bangladesh_An_overview?_iepl%5BgeneralViewId%5D=1SBY5ymFde1SpTU43SdK4WVj3F0L1vqQmp4F&_iepl%5Bcontexts%5D%5B0%5D=searchReact&_iepl%5BviewId%5D=hyExmZya1blqVBLXeRZLjeElyDkiZ7CJCKoO&_iepl%5BsearchType%5D=publication&_iepl%5Bdata%5D%5BcountLessEqual20%5D=1&_iepl%5Bdata%5D%5BinteractedWithPosition1%5D=1&_iepl%5Bdata%5D%5BwithoutEnrichment%5D=1&_iepl%5Bposition%5D=1&_iepl%5BrgKey%5D=PB%3A301573015&_iepl%5BtargetEntityId%5D=PB%3A301573015&_iepl%5BinteractionType%5D=publicationTitle)> accessed 10 November 2022

<sup>27</sup> 'New BTRC Regulation Violates Constitutional Rights: TIB' *TBS News* (Bangladesh, 3 April 2022)

<sup>28</sup> The Constitution of the People's Republic of Bangladesh, Art. 26

### **4.3 Conflict of this draft Regulations with the International Law:**

The draft regulations are inconsistent with the International Human Rights Framework, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and European Convention on Human Rights (ECHR).<sup>29</sup> Right to freedom of opinion and expression is an international human right which is also mentioned in articles 19 & 20 of the International Covenant on Civil and Political Rights (ICCPR). In the meantime, if draft regulations of BTRC,2021 are implemented, freedom of opinion and expression and right to privacy of the citizens of Bangladesh will be violated. So, this regulation will conflict with international law. In Article 12 of UDHR,<sup>30</sup> Article 8 of ECHR<sup>31</sup> and Article 17 of ICCPR<sup>32</sup> where mentioned three types of right to privacy. It is clear that, in many international laws, freedom of speech and of expression and right to privacy are clearly stated. Therefore, if this regulation is implemented, it will have a huge impact on international laws, which is not at all desirable to the citizens of Bangladesh.

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<sup>29</sup> Staff Correspondent, 'Draft BTRC Regulations to Restrict Freedom of Expression: 45 int'l orgs' *New Age* (Bangladesh, 8 March 2022)

<sup>30</sup> The Universal Declaration of Human Rights 1948, Art. 12

<sup>31</sup> The European Convention on Human Rights 1950, Art. 8

<sup>32</sup> The International Covenant on Civil and Political Rights 1966, Art. 17

## CHAPTER:5

### Recommendations & Conclusion

#### 5.1 Recommendations:

All of the draft's clauses which violate the other laws and the contradictory clauses that jeopardize the fundamental rights of Bangladeshi citizens must be abolished. All rights and liberties of the citizens should be kept secure, and Bangladesh should adopt a flexible, liberated, and secure internet. The problematic Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in India seem to be replicated in the Draft Regulations in many provisions. The Indian Rules are an indication of a formation that violates the constitution and should never be adopted. They have come under fire for endangering human rights, and many have considered the main reason for their withdrawal. Multiple legal challenges to the Indian Rules are presently pending before Indian courts that have granted temporary orders preventing the Indian Government from enforcing substantial aspects of the Rules.<sup>33</sup>

The freedom of speech and expression is constitutionally protected as well as other international laws. It is one of the most essential features of a strong, flexible democracy. It enables individuals to actively engage in the social and political life of their nation.<sup>34</sup>

In Bangladesh NCTB v. AM Shamsuddin,<sup>35</sup> the Appellate Division by a majority decision rejected the contention that Note- Books (Prohibition) Act, 1980 prohibiting publication of note-books text-books is violative of article 39. The majority took into consideration that the

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<sup>33</sup> n 17

<sup>34</sup> Pujarani Behera, 'An Analysis of Right to Freedom of Speech and Expression' (2020) <<http://www.penacclaims.com/wp-content/uploads/2020/07/Pujarini-Behera.pdf>> accessed 3 December 2022

<sup>35</sup> Bangladesh NCTB v. AM Shamsuddin (1996) 48 DLR (AD) 184

Act does not completely debar publication of on note-books which may be published either by the Board or under the authority of the Board in the same way as text-books are approved or prepared and published by it and reasoned that the basic assumption for the exercise of the said right is and must be that it may not offend any law or any right of other person under the law and to give a free hand to the publishers to publish any kind of note-book on text-book without any control from the Board is to defeat the purpose for which the TextBook Board has been vested with authority to prepare and publish or approve text-books for schools. The proposition that the freedom of expression cannot be exercised by offending any law has to be understood in the light of the facts of the case. If a law impinges on the freedom of expression, the inquiry will be whether the law can be justified as a permissible restriction and not whether the right can be exercised in the face of the legal prohibition; if the law cannot be brought within the permissible restrictions under article 39(2), the law will be void and it cannot stand on the way of freedom of expression.

That is, through this case, it is understood that no law can be enacted by violating the fundamental rights of the citizens mentioned in the constitution of Bangladesh. Therefore, since the draft Regulation of BTRC,2021 has not yet been implemented, it is better to enact it anew. But care must be taken to ensure that it does not violate any articles of the constitution of Bangladesh.

Article 26(1) provides that all existing law inconsistent with the provisions of Part III shall, to the extent of inconsistency, become void on the commencement of the Constitution, while article 26(2) provides that the State shall not make any law inconsistent with any provisions of Part III, and any law so made shall, to the extent of inconsistency, be void.<sup>36</sup>

Freedom of speech and right to privacy are clearly mentioned in various international laws. And almost all the developed countries around us have their citizens' right to freedom of speech

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<sup>36</sup> n 28

and security of everything clearly spelled out in their laws such as freedom of speech and expression is viewed as one of the most important rights in a free and democratic republic by both India and the United States. And we can see the application of that law through the judgments of different cases of countries.

The Hon'ble Supreme Court observed in *Union of India v. Association<sup>37</sup> for Democratic Reforms*, "One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes the right to impart and receive information which includes freedom to hold opinions."

On the other hand, in the *FBI V Fazaga<sup>38</sup>* case where the FBI is a secret spy on a community who spied on Muslim Americans based on their religion. Three Muslim Americans challenged this on their violation of constitution and federal law. In 2006 and 2007 their operations were in the mosque oriented religions of America. They collected names, phone numbers as well as their religious and political belief although the American Constitution gave them the right to religious belief.

The paid informant agents at FBI were sent up with a secret recorded device, where the agent has taken sensitive locations of mosques, locations, homes and business at practicing Muslim including the plaintiff's Fazaga office.

The Imam of Fazaga mosque claimed that the FBI assured them, they were not spying on us but they lied. By this the sacred Muslim community was shaken to its case.

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<sup>37</sup> *Union of India v. Association* (2002) AIR 2112

<sup>38</sup> *FBI V Fazaga* (2022) U.S. 595

In the court of appeal it was issued that Muslims were targeted unlawfully and it is a violation of religious belief by hampering Right to Privacy and security of the Muslim citizens of America.

As the civilized states around are well aware of the human rights of all their citizens, we should also follow the virtues of their laws. In other words, the BTRC's draft regulation needs to be reviewed and repealed.

## **5.2 Conclusion:**

In the age we live in now, most of the people are connected online. Therefore, everyone must adhere to the proper online usage guidelines. A particular, fair regulation is required to ensure that no citizen is harassed online. Nowadays, everyone has access to the internet and online security for citizens has raised in importance. However, it is undesirable for any person to misuse their freedoms.

The draft regulations seek to implement a content governance framework devoid of adequate judicial oversight, clarity and predictability, and integration of human rights and due process which is not desirable at all for the citizens of Bangladesh.

However, the draft regulations fail to define some contexts, vague regulations need to be clarified. Therefore, the draft regulation should be made accordingly while adhering to recognized best practices, respecting international human rights requirements, and trying to provide a fair, secure online environment without violating anyone's rights.



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