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Freedom of the Press and its Constraints:

A Study of Press Regulations in Bangladesh

Abstract

The Indian sub continent state of Bangladesh is just one of a number of developing nations that has yet to come to grips with the concept of liberalism and its co companion a free and open press. Restrictions on press activity in that nation began with the British and the occupation by the East India Company some two centuries ago. Since independence in 1947, there have been waves of freedom for the press and subsequent clamp downs by various regimes under various political stripes. This paper investigates both the history of the press in that part of Asia and documents the behavior of the authorities toward press activity in Bangladesh.

Introduction

South Asian countries have had a variable democratic history since their respective emergences from British colonial rule in the late 1940s. It was reflected in the region's political diversity such as monarchical rule in Nepal, long-running civil war in Sri Lanka, alternating military and civilian regimes in Bangladesh and Pakistan, and India's established democratic system.¹ The wave of democratization that swept across South Asia in late 1980s and early 1990s heralded a resurgence of the debate on press freedom.

As Bangladesh started its democratization process through the transition from military rule to civilian rule in late 1990s, the fundamental relationship between freedom of the press and emerging democracy was realized and integrated in the debates that the growth of democratic institutions depends upon an independent press because it is the press which

can pursue democratic goals and objectives only in the ways that are permitted by the environment in which they operate. Davis asserts that ‘restrictions on the press which hamper the press’s functioning are believed also to hamper the functioning of the democratic system itself’.²

The primary goal of this paper is to focus on the nature and operation of press regulations in Bangladesh. The majority of the regulations used to limit press freedom in Bangladesh have their origins in the colonial period. During the process of decolonization, the major governing instruments were retained and are available to the Bangladesh government for control of the press.

This study is historical and archival in nature and seeks to investigate how these regulations limit media freedom and how they impinge on the media’s roles in advancing the interests of democracy. In this regard, this study examines only key press regulations in Bangladesh. Salam states that press freedom is valued in democracy because of the inherent value it has in safeguarding democracy. There is an intricate link between democracy and press freedom. Legal constraints are presently a tropical issue to the nature and composition of the media fraternity in Bangladesh. Successive governments in the country have moved to consolidate power and to promote policies which were retained from the colonial period in a number of statutes.³

Most of the current laws were passed during the British colonial regime. Hence their intentions are not necessarily suitable for a society striving for democracy. Some laws have a tendency to prevent disclosure of information embarrassing to the government, information that has nothing to do with state security or public order. In this regard,

scholars should not ignore those laws which can in effect perform the function of major press regulations such as Official Secrets Act, The Special Powers Act, The Printing Presses and Publication Act, The Code of Criminal Procedure, The Penal Code and so forth.

Methods of Data Collection & Analysis

I) Document Analysis

This study is based on document analysis in its broader perspective. I applied archival research on the use of secondary sources, sometimes combined with primary sources in order to examine documents such as ordinances, executive orders, Acts, specific amendments, enactments, press or legal review concerning press regulations. I also spent a considerable time in the analysis of government documents, especially those, which relate to the legal doctrine of a free press, the law and the government reports.

II) Textual Analysis

The task of this analysis is to bring out the whole range of possible meanings which could possibly be discovered in certain sections or provisions of each key regulation related to press control. Some theorists like Kracauer (quoted in Jensen & Jankowski)⁴ argue that the content of any text under analysis must be conceived as a meaningful whole and that analysis involves an act of interpretation based on fact. In this regard, the technique involves hermeneutical interpretation in analyzing legal documents which does not need prior knowledge of the subject. Kvale states that hermeneutics is the study of the interpretation of texts.⁵ In this case a text should be understood on the basis of its own frame of reference, by explicating what the text itself states about a theme.⁶ The purpose of the method is to obtain

a common understanding of the meaning of the text. The method will be used to determine what the regulations or texts say with regard to press control.

Radnitzky (quoted in Kvale)⁷ identifies five canons of interpretation. Of most importance to this study is the method which he calls the autonomy of the text. In this case a text should be understood on the basis of its own frame of reference, by explicating what the text itself states about a theme. The method of analysis means that the interpretation should stick to the content of the text. This method of interpretation does not need prior knowledge of the subject.

Another method that Radnitzky discusses involves contextualization of the text. The method of contextualization was adapted to this case because of its relevance to the research questions. In what context were the laws enacted and in what context are they implemented? In the interpretation of legal text, questions have been forwarded, such as whether it is justifiable in the interpretation of law to ask about the intentions of the original lawmakers or whether one should interpret law as it functions today.⁸ In this study the interpretation takes into account both points of view. The study simultaneously focuses on the content of the law and the context of formulating and applying the law. It is essential that in analyzing the present application of the law, its historical meaning should also be treated with respect. Two questions with regard to law are paramount. What was the original intent of the colonial regime when it enacted the law? Secondly, what problems emanate from the use of pre-independence law in a post-independence situation?

Theoretical Discussion

The concept of a 'free press' has gained new momentum in the new climate in Bangladesh regarding the role of the media in the process of democratization. As in other locations in the world, the media must become part of a national public discourse which can act as agenda-setters by bringing to the fore issues that affect people's lives and trigger public debate. The debates on press freedom in Bangladesh revolve around the concept of democracy and the law. They are centered around expectations on what the media can and should do in the democratization process. Press freedom, it has been argued, is an important ingredient in the democratization process. The state should be accountable to society by being transparent in its activities. Democracy has been dominated by liberal ideas regarding the distribution of information by various forms of media through throughout its development and these have been influential to the late 20th century nature of democratic theories.

I) The Liberal Free Press Theory

One of the earliest known and most famous defenses of liberty of the press was John Milton's speech to the English Parliament in 1644. In this speech, known as *Areopagitica*, Milton attacked the Licensing Order of 14 June 1643. In his speech, he argued against the use of censorship on the grounds that man is provided with reason and talents to choose between good and evil. He also used strong arguments against the institution of censorship and prohibition of the press and insisted that restrictions of the right to print should be considered evil.⁹

The doctrine of press freedom as practiced today is a product of classical liberal political philosophies that began to emerge in 17th century Western Europe and later in the United States, in particular in the early 19th century. Milton's *Areopagitica* (1644) offered major arguments for freedom of the press. The press was seen as an extension of man's ability to think and express his thoughts.¹⁰ *Areopagitica*, according to Negrine¹¹ was intended as a reply to those who maintained that granting the press its freedom would pose threats to the stability of the state. It was part of the arguments against the powers of the state over what could be published and what ideas would be tolerated. Milton's views in favor of freeing the press from state or any other forms of control were based on the idea that censorship and control of ideas inevitably resulted in a loss of an element of truth. He found free debate essential to religious truth. Individuals could only choose between truth and falsehood if they had access to both. He also affirmed that free and human government results only from "free writing and free speaking".¹² Milton was however not in favor of full freedom of the press from state regulation.

Other theorists such as Jeremy Bentham similarly argued that "liberty of the press has its inconveniences, but the evil which may result from it is not to be compared to the evil of censorship".¹³ In his *Two Treatises on Government* (1690), Locke drew attention to the advantages of making political decisions in an atmosphere of public disagreement. The philosophy behind Locke was the public debate rationale for press freedom.¹⁴ Thomas Jefferson (1804) also argued that of all instruments responsible discovering the truth in any given situation, the most effective is freedom of the press. Smith¹⁵ states that Jefferson was one of those persons advocating the marketplace of ideas concept - the proposition that truth

naturally overcomes falsehood when they are allowed to compete.

John Stuart Mill's famous treatise *On Liberty* (1859) also continued with the classical liberal arguments on the benefits of freedom of speech and the press on the discovery of truth.¹⁶ Mill expanded the liberal tradition found in Milton and Locke into a broader concept of freedom of the press. Freedom of the press derived from his concept of individual liberty when he described 'liberty of thought, from which it is impossible to separate the cognate liberty of speaking and writing'.¹⁷ Mill, like Milton, had a great influence on the debate on press freedom.

Classical writings provided much of the theoretical foundation for the development of the twentieth-century theory of freedom of the press. Their influence extended to contemporary theorists like Robert Picard (1985), James Curran (1991), Judith Lichtenberg (1990), John Keane (1991), and a host of other Western thinkers. . Picard argues that 'a free press is essential to permit individuals to freely exchange ideas and information in order to promote the public interest'.¹⁸ He also argues that the developmental process of press freedom is continuous in the democratization process. The right to freely discuss public issues and public officials is regarded by Curran (1991)¹⁹ and Lichtenberg (1990)²⁰ as a core to democracy. They collectively advance the concept that the function of press freedom is to give citizens opportunities for participation in decision-making through the process of open discussion.

Hossain argues that it is high time that the legislators in Jatiya Sangsad (Bangladesh Parliament) discuss and review the laws that concern the press. In this regard, freedom of the press should not be subject to the whims of a particular political party that happens to

govern any one country at any one given time in history.²¹ In addition, Ahmed (30) notes that the most dangerous threat to freedom of the press in Bangladesh and in the region of South Asia is the social intolerance. When the truth starts biting somebody or a group of people, they too often resort to violent methods in seeking remedy. This happens far too regularly as a democratic culture has not yet taken firm root in Bangladesh. Unfortunately most of the violence seems to emanate from the nation's political parties. Unless Bangladeshi society is completely transformed into a democratic society, this threat will continue to mount constant threats to the press.²²

Bangladeshi media scholars Gaziul Hoque (245)²³, Golam Kibriya (21-22)²⁴, and Mahfuz Anam (24)²⁵ have noted that successive regimes of various ideological stripes willingly kept most of the colonial press regulations for controlling the press to serve their own vested interests. Alan T. Wood argues that citizens / journalists in Bangladesh are for the most part free to express views with which the government disagrees. However, they must constantly live under the specter of an official crackdown. The animosity which exists between the two dominant political parties has poisoned Bangladesh politics and set back the progress of stable democratic institutions in Bangladesh for a number of years.²⁶ In the minds of most democratic activists, a free and open press is critical to the question of national institutional growth. They remind themselves of the words of John Street who, like many other Westerners, contends that a free press is defined as medium which allows for a diversity of ideas and opinion. The media are 'free' precisely in the sense that they are not subject to centralized control. Any control of content represents a loss of freedom.²⁷ In Bangladesh, this freedom is precious and certainly unstable.

In absence of any thing like a Freedom of Information Act or Access to Information Act in Bangladesh, democracy stands thwarted and transparency proves meaningless. Freedom of the press is guaranteed under Article 39(1) of Bangladesh Constitution.²⁸ If the information itself is restricted, then the significance of freedom of expression is diminished. To fully examine the existing law pertaining to the media in Bangladesh let me employ a legal perspective.

II) Legal Theories and Free Press

There is little doubt that classical liberal political philosophy had an influence in the development of media law. The influence can be seen in the constitutions of most Western countries. The doctrine of press freedom and freedom of speech embodied in the First Amendment of the Constitution of the United States (1791) which reads; “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press” and in Article 11 of the Declaration of Rights of Man and Citizens of the French Constitution of 1789 and other European constitutions was a product of classical political liberal philosophy.²⁹ In Britain, the dispensation with state licensing of the press in 1694 was a result of Enlightenment thought spread by the liberal and capitalist middle classes.³⁰ Nelson and Teeter argue that prior to this dispensation English printers presented their copy to church and state authorities before setting it in type. Censors approved, disapproved or modified the manuscript.³¹

Legal thought and practice ushered press freedom into the arena of human rights issues. Press freedom became part of the bundle of fundamental rights that defined true

liberty. The question of press freedom later became one of weighing an individual's rights against government perception of the public interest. In Bangladesh, no tangible steps have been taken by any government to free the press, except for lifting of censorship imposed by the various stripes of military regimes. Successive governments echoed kind words about exercising freedom of the press but often turned the other way when things were published that irritated the ruling classes and consequently they reprimanded the press. The restrictive regulations, which govern the press, still exist in Bangladesh.

The Present Media Situation in Bangladesh

I) Press & the successive governments

Bangladesh (formerly East Pakistan) became independent on December 16, 1971 and Bangabandhu Sheikh Mujibur Rahman became the President of the country. He started to rebuild the war-torn country depending largely on a sense of dynamic leadership and political charisma. At the beginning of his regime (1972-73), the Bangladesh press enjoyed considerable freedom. But by 1973, the picture began changing. Mujibur replaced the 1961 Pakistani Press Ordinance with the Printing Presses and Publications (Declaration and Registration) Act. Under this new Act, newspapers were subject to licensing. Other influential journals were confiscated by the regime.

The assassination and overthrow of Bangabandhu Sheikh Mujibur Rahman in August 1975 brought a brief respite for the troubled press. The new government under President Khondakar Mushtaque Ahmed reversed the confiscation process and returned the *Daily Ittefaq* and the *Daily Sangbad (News)* to their owners along with gradually permitting

others to resume publication. Yet another military coup toppled Mushtaque within months, and a new government came to power with General Zia Rahman in control. This military ruler instituted authoritarian rule for a decade and a half. Some of newspapers returned to government management and others were under constant dictation through official orders.³²

After the assassination of General Zia in 1981, the process leading to martial law was reinforced in March 1982 by General Hossain Mohammad Ershad. He ordered the suspension of a number of newspapers. With the return of a democratically elected government in 1991, the situation changed a little. The interim government introduced some amendments to the Special Powers Act and Printing Presses and Publications Act which relaxed some of the boundaries on the press. Later the Khaleda Zia and Sheikh Hasina governments did not fulfill their ‘Three-Alliance Framework’ to repeal or amend the regulations which infringed on freedom of the press. It worthwhile to note here that Sheikh Hasina government formed a Committee on the Autonomy of Bangladesh Radio and Television as part of a commitment under the stated Framework, but the report of the committee has not yet been implemented.

II) Media Organizations

The Bangladesh Federal Union of Journalists (BFUJ) and Dhaka Union of Journalists (DUJ) have been looking at the working relationships of practicing journalists and their employers. The primary objective of these bodies is to improve the working conditions of journalists and to fight for the removal of barriers in the execution of their duties. These barriers include laws that relate to the gathering and dissemination of

information in and around Bangladesh. The Press Institute of Bangladesh, popularly known as PIB, is an institute set up by the government to provide professional training to working journalists. The National Institute of Mass Communication (NIMCO) is another institute set up by the government for the training of journalists, those employed mainly in television and radio. The Bangladesh Centre for the Development of Journalism Commission (BCDJC) is a non-government organization which works with media research and journalism training organizations. Mass-line Media Centre (MMC) is another non-governmental organization that works on the issues of human rights, good governance and local press in the coastal districts. These organizations provide civil society support for the development of a free and independent press.

In 1974, the Bangladesh Press Council was formed for the purpose of encouraging press freedom and preserving what little of it existed as well as working for the improvement of the standards for newspapers and news agencies in Bangladesh. It was founded on the principle that the media are fundamental to the existence of democracy. RSF (Reporters Sans Frontières), a Paris-based watchdog in its Network Mission Reports noted that the Press Council was created to defend the ethics of the journalism profession. But for the last twenty years, the Press Council has not taken a bold stance against governmental interference. Transformed into a tool controlled by successive regimes, and incapable of enforcing any of its infrequent decisions, the Press Council has protected neither the country's press, nor its citizens. Khaleda Zia's administration has done nothing to safeguard the institution's independence and credibility.³³

Pre-Independence History of Press Laws & Regulations

a) British Period (1757-1947)

The history of media laws and regulations in the Indian Sub-continent which now comprises Bangladesh, India and Pakistan, started with the English in the days of the East India Company. It was in the second half of the eighteenth century that the Anglo-Indians and Europeans began to found their journals. Their objectives focused on the two pillars of information and amusement. Not surprisingly, the initial journals contained lengthy extracts from newspapers and journals published in England or Europe.³⁴

In 1776, Mekenly, the editor of the Telegraph, displeased the authorities by publishing an article in which he made certain allegations against some Government servants. In the same year, the editor of the Calcutta Gazette was censured for having referred to certain communications which had passed between the Court of Directors and the French Republic.³⁵

The Bengal Gazette was started as a weekly in 1780 by James Augustus Hicky who used to introduce himself as "the Printer to the Honorable Company", i.e. the East India Company. From the very outset, management of the journal came into conflict with Warren Hastings who was then Governor General of Bengal. The journal criticized Hastings and his general policies. Almost predictably, Hicky became the subject in several libel suits. The first action was launched to deprive him of the privilege of circulating his newspaper through the General Post Office. It would appear that the unfortunate Hicky spent more time in courts facing serious litigations proceedings in a number of libel cases than he did in

his own newsroom. The East India Company also subjected him to various forms of pressure but in the final analysis, he refused to bend. As Ahuja notes, he became a lasting symbol in the continuing war of ideas between the press and the authorities.

Mr. Hicky considers the liberty of the press to be essential to the very existence of an Englishmen and a free Government. The subjects should have liberty to declare their principles and opinions, and every act which tends to coerce that principle is tyrannical and injurious to the community.³⁶

After Hicky, a few other newspapers were founded evidently because all of them assured the Governor-General that they would abide by the regulations made by his Government. The Military Secretary imposed pre-censorship on the Madras Gazette and free postage facilities were later withdrawn when it protested against pre-censorship.³⁷ Thereafter, Bombay and Madras newspapers did not oppose government edicts. William Duane, editor of the Bengal Journal, was deported back to England together with a few other editors who had been found “inconvenient” to the government. Since there was no press law, the government took steps to deny postal facilities to journalists as punishment for incurring the displeasure of the Governor General.³⁸ Protests against pre-censorship put the press in difficult situation. The colonial administration was not about to let control over information slip from its grasp. It exercised its power to enact a bunch of laws and regulations to consolidate control over press. Those laws and regulations are documented below.

Table 1: The British colonial rule: press laws and regulations (1799-1947)

Period	Traits	Nature of Press Laws and Regulations
1799-1947	Incorporation of British laws to suppress and control the press.	<ol style="list-style-type: none"> 1. First Censorship Law (1799) 2. Censorship Law Modifications (1813) 3. Censorship Law Modifications (1813) 4. Regulations for Registration (1823) 5. Metcalfe’s Act of 1835 (Registration of the Press Act) 6. New Regulations on Printing Presses (1857) 7. Indian Penal Code (1860) 8. Press and Registration Act 1867 9. Vernacular Press Act (1878) 10. Criminal Procedure Code (1898) 11. Newspapers (Incitement to Offences) Act (1908) 12. Indian Press Act (1910) 13. Official Secrets Act (1923) 14. Indian Press (Emergency Power) (1931)

Table 2: Pakistan rule (1947-71): Press laws and regulations

Period	Traits	Nature of Press Laws and Regulations
1947-1971	<p>1. The successive Pakistani governments perpetuated authoritarian rule keeping the colonial British press laws.</p> <p>2. The laws were suppressive, anti-freedom.</p>	<p>1. Security of Pakistan Act 1952</p> <p>2. Martial Law promulgation 1958 (October 7)</p> <p>3. Presses and Publications Ordinance 1960 [this ordinance was the combined form of Press and Registration Act 1867 & Indian Press (Emergency Power) 1931]</p> <p>4. Presses and Publications (Amendment) Ordinance 1963</p> <p>5. National Press Trust 1964</p> <p>6. Defense of Pakistan Ordinance 1965</p> <p>7. Defense of Pakistan Rules 1965</p> <p>8. Martial Law promulgation 1969 (March 25)</p> <p>9. Promulgation of ML Rules 6, 17 & 19 in 1969 (March 26)</p> <p>10. Promulgation of Martial Law rules 110 in 1971 (March 1)</p> <p>11. Official Secrets Act (1923)</p>

The British colonial government introduced more repressive laws, primarily to thwart the growing national movements for independence. But these repressive press laws did not prolong British rule in India, which ended in August 1947 with the partition of the country. On 14 August 1947, Pakistan came into existence but there was no change in the press laws. Successive Pakistani governments perpetuated authoritarian rule by keeping the colonial British press laws. The laws created in the British regime to cripple the press and

curtail the liberty of the newspapers were allowed to continue.

Analysis of Major Press Regulations

I) Official Secrets Act

In Bangladesh there are laws which actually permit public officials to decline to divulge information to the media. The most notorious of these is the Official Secrets Act [Chapter XIII & Act No XIX] of 1923. The Act has a British colonial inheritance which is the exact replica of the (English) Official Secrets Act 1911. Sections 3, 3(1), 5, 5(2), 14 set out the prohibitions and offences which pertain to journalistic performance. According to these provisions:

Any person who has in his possession or under his control any secret official code or password or any model, article, document or information which-

(a) relates to or is used in a prohibited place or relates to anything in a prohibited place; or

(b) has been made or obtained in contravention of the provisions of this Act; or

(c) has been entrusted in confidence to him by a person holding an office in the service of the state; or

(d) he has obtained or to which he has had access owing to his position as a person who holds or has held office in the service of the State or as a person who holds or has held a contract made on behalf of the state or a contract the performance of which in whole or in part is carried out in a prohibited place or as a person who is or has been employed under a person who holds or has held such an office or contract; and who-

(e) communicates such code, password, model, article, document or information to any person, other than a person to whom he is authorised to communicate it, is liable to prosecution.³⁹

The primary purpose of the legislation is to protect the secrets of the state which include matters related primarily to defence and economic interests. Though the intention of the legislation is seemingly justifiable in any modern state, the composition of the Official Secrets Act in Bangladesh super cedes any democratic principles. The Act makes it an offence to communicate to the media any information no matter how trivial it may be even if

information in question as no impact on national security or public order. It is tempting for government departments to use the Official Secrets Act to prevent publication of information merely because any kind of disclosure could be potentially embarrassing .

Mr. Justice K. M. Subhan supports the thesis that the Official Secrets Act of 1923 has too often been used by various administrations to suppress the freedom of the press. He had found it regrettable that the press behaviour has not been empowered in law or given special privileges in regard to accessing official information or public documents . In the final analysis, he draws the conventional line that the right to information is recognised in Western countries and is considered as a human right in a democratic setting.⁴⁰

Critique

As the Official Secrets Act stands, government officials cannot pass information to the media without authorization. When the media need information from specific departments they have to put their questions in writing and these questions have to be sent to the Ministry of Information which in turn forwards them to concerned departments. As per government rules no official can give information to the journalists excepting the minister or secretary of any ministry. The process as one might gather, is quite restricting.

II) Special Powers Act

Sections 16, 17 and 18 of the Act, in the name of prohibition of prejudicial acts, is another agent which in effect curtails liberty of the press. This version of the Special Powers Act was passed on 9 February 1974 (Act No. of XIV of 1974). Act XVIII of 1991 has modified this Act up to the 26th February 1991.⁴¹

The above sections of the Act provide that media personnel responsible in the view of the authorities for prejudicial reports shall be punishable with possible imprisonment for five years. These statutes further provide that the government shall have the power to prohibit publication of newspapers or periodicals containing prejudicial reports (any report, true or false, of a prejudicial act). The Act further allows the government to impose pre-censorship on any publication. Government has the power to pre-censor or prohibit any publication and place the editor or the publisher of the publication in jail. Even reports that are true, should they offend the ruling authorities are subject to these provisions. The Special Powers Act is a very repressive law.⁴²

Bhuiyan and Gunaratne argue that Sections 16 (prohibition of prejudicial acts, etc), 17 (proscription of certain documents) and 18 (regulation of publication of certain matters) of the Act enables the government to harass journalists and close down newspapers, thereby curtailing severely the liberty of the press. They hold the view that application of these provisions in peaceful times violates the provisions of the national constitution which guarantees fundamental rights. The Act also empowered the government to detain without trial, to pre-censor or prohibit publications, and to jail editors or publishers for prejudicial reports, whether true or false. Such ‘offences’ were also non-bailable.⁴³

So how widely are these laws enacted. On October 1, 1998, Interior (Home) Minister Major Rafiqul Islam informed the Bangladesh National Assembly that some 692 people have been arrested under the Special Powers Act (1974) and confined to different jails in various parts of the country.⁴⁴ He noted that constitutional limitations on the right to liberty had been supplemented by specific legislation namely the Special Powers Act

(1974) that provided for preventive detention.

Critique

The use and abuse of the SPA in the name of protecting security interests has resulted in a steady pattern of human rights violations. The expansive definitions of "prejudicial acts" allow considerable scope for their abuse. Many scholars have also echoed the view that this Special Powers Act legislation contains some undemocratic clauses which hinder freedom of expression and the press and are thus an impediment to democracy itself. They have underscored the urgency to reform this restrictive legislation. . Section 15 of the Act dealt with sabotage and sections 16, 17, 18 dealt with curbing press freedom. Section 19 and 20 curtailed the freedom of association and these provisions the Government was authorized to impose control over such associations which would act in a manner or be used for the purpose of prejudicial to the maintenance of public order. The main objective of the Act was the preventive detention of those who violated the above provisions and were considered to be hostile to the state and its agencies.

III) Printing Presses and Publications Act

The introduction of licensing system for the newspapers in the subcontinent dates back to British colonial rule as do most other acts dealing with various aspects of freedom and democracy or lack thereof. It was John Adam; the acting governor general of India who introduced the system in March 1823. Adam intended no one should publish a newspaper or a periodical without having obtained a license from the Governor-General-in-Council, signed by the Chief Secretary.⁴⁵ Six Indians, including Dwarka Nath Thakur and

Rammohan Roy, filed a petition in the Supreme Court in an attempt to block Adam's initiative. But the court rejected the appeal in April 1823, saying: 'India was not an independent country, so the laws and rules consistent with an independent state cannot be applicable in India.'⁴⁶ As a result, the Adam's regulation, known in the history of sub-continental journalism as Adam's Gag, became law.

Moving into more modern times, we see that the Printing Presses and Publications (Declaration and Registration) Act, 1973 (Act No. XXIII of 1973) was passed to provide for the legality of keeping of printing presses, and the printing and publication of newspapers and for registration of books.⁴⁷ The 1973 law has vested the authority of issuing the licence, or if need be the canceling the license as well. The legislation empowers the District Magistrates in Section 20 of the Act to cancel the authentication of the declaration and under Section 20A the Government may declare certain publications forfeited and to issue search warrants to enforce such activity.

This Act was a crude imitation of an ordinance promulgated by the head of the erstwhile military ruler of Pakistan, General Ayub Khan. The government of Sheikh Mujibur Rahman scrapped Ayub's law but retained the old licensing system for printers, publishers and editors of any book, newspaper or irregular sheets as stipulated in Ayub's ordinance against which Bengalis fought for about a decade.⁴⁸ Ullah recorded that parliament debated the Printing Presses and Publications Bill on 19 September 1973 and passed the bill on the same day on a voice vote acceptancing of a minor amendment from the Treasury Bench and rejecting Opposition demands to solicit public opinion. Although the ruling party the Awami League was committed to scrapping the old press law the new

one was in essence a duplication of the old and it had Ayub Khan's imprint all over it.⁴⁹

Using the provisions of the Presses and Publications Ordinance 1973, the government closed down the weeklies *Mukhapatra*, *Spokesman*, *Lalpataka*, *Haq Katha*, *Charampatra*, *Desh bangle*, *Swadhikar*, *Swadhinata* and *Nayajug*.⁵⁰ Distressed by this action, an independent Member of Parliament, Abdullah Sarker said:

“It is nothing but another black law. The journalists will not be able to express their independent opinion. There will be only a blue print filled in with the praises for the government. The aim of the present Presses and Publications Bill will be to publish news directly by the Government.⁵¹”

Critique

There have been some deviations in the application of the Printing presses and Publications (Declaration and Registration) Act, 1973. These deviations are customarily made, generally to serve the purpose of the executive branch of government and others who may be exercising administrative powers. It should be noted here that under Section 12 of the Act, the District Magistrate holds power to authenticate any declaration and he is the sole and final authority in this respect. But now in Bangladesh in practice, any application is sent to the Ministry of Home Affairs which decides after police enquiry whether a declaration shall be authenticated and the newspaper be permitted to be published. Undoubtedly, this is a gross deviation from the provisions of existing laws. It can be argued with some credibility that decisions are made on political as opposed to professional considerations. In other words, a friendly attitude to the person or persons signing a declaration is a good thing to have. In the final analysis, this kind of activity clearly supports the trend of limiting the publication of newspapers and periodicals by the government.

IV) Penal Code

The Penal Code of 1860 (Act No. XLV of 1860) prescribes punishment for offences committed within and beyond Bangladesh which endanger the national security, the public peace and the public morale. Offences under Sections 123A and 124A are now being tried exclusively by the Special Tribunal under the Special Powers Act of 1974. These two sections of the Penal Code deal with offences endangering the security of the state. Sections 153A and 153B of the Penal Code provide that expressions promoting enmity between classes or inciting students to take part in violent political activity call for penal action. Section 295A of the Penal Code provides punishment for expressions which hurt religious feelings of the citizens of Bangladesh. Section 171G provides punishment for furnishing false statements in connection with an election. Sections 292 and 293 prescribe punishment for obscene publications. Similarly Sections 499 and 501 deal with the offences of defamation and libel.

Furthermore, the punishment prescribed for this type of offence has been made more severe by requiring a sentence of two years to seven years. By amending Section 505 and by introducing Section 505A the Penal Code has the following provisions:

505A. Prejudicial act by words etc. Whoever (a) by words either spoken or written, or by signs or by visible representations or otherwise does anything, or (b) makes, publishes or circulates any statement, rumour or report, which is likely to be prejudicial to the interests of the security of Bangladesh or public order or to the Maintenance of friendly relations of Bangladesh with foreign states or to maintenance of supplies and services essential to the community, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.⁵²

Critique

The amendment of the above noted section of the Penal Code also put restrictions on

freedom of press. The theoretical purpose of the Penal Code is to protect the safety or interests of Bangladesh. Punishment for the violation of the law is a maximum imprisonment for seven years, or a substantial fine or both. Some provisions of the criminal procedure code of 1898 as A to G of Section 99 and Section 80, also Sections 499, 500 and 501 of the Penal Code of 1860 are deterrents to press freedom as well.

The only difference between this set of procedures and that under Section 32 of the Special Powers Act, 1974, there was an embargo on the matter of granting bail. Whereas under the amended Code of Criminal Procedure and Penal Code no such restriction has been imposed. Further, the government also amended the Printing Presses and Publications (Declaration and Registration) Act, 1973, and established the "Press Appellate Board", whose decision shall be final in matters of authentication and cancellation of authentication of publication. Through the amendment of the Printing Presses and Publications (Declaration and Registration) Act, 1973, in establishing the Press Appellate Board, some limited freedoms of the press were intended. However, the amendment of the Code of Criminal Procedure and the introduction of Section 505A of the Penal Code has the potential to negate such freedom.⁵³

V) Code of Criminal Procedure

The Code of Criminal Procedure, 1898 (Act No V of 1898) was introduced to define acceptable and workable procedures relating to the investigation and eventual trial for criminal offences. The government has amended the Section 99A of the Code of Criminal Procedure as well as 99B, 99D and Schedule II of the Code of Criminal Procedure under the

Code of Criminal Procedure (Third Amendment) Ordinance, 1991.⁵⁴

Critique

Section 99A of the Criminal Procedure Code empowers the government to forfeit newspapers containing seditious matter or matters which promote feelings of hatred between classes or outrage the religious feelings of the citizens and to issue search warrants for seizing them. The penalty for breaking this law is a maximum jail-term of 2 years or a fine or both.

VI) Newspapers (Annulment of Declaration) Ordinance

This ordinance was passed on 13 June, 1975. It annulled all the newspapers but four. It came into force on the 17th June 1975. Sections (2) and (3) of this Ordinance⁵⁵ read as follows:

(2) **Annulment of declaration of certain newspapers** – Notwithstanding anything contained in the Printing Presses and Publications (Declaration and Registration) Act, 1973 (XXIII of 1973) (hereinafter referred to as the said Act), or any other law for the time being in force- (a) the declaration made and subscribed the said Act in respect of any newspaper, except the newspapers mentioned in the Schedule, shall, upon the commencement of this Ordinance, stand annulled; and (b) after the commencement of this Ordinance, no declaration under the said Act for the printing and publication of any newspaper shall be made and subscribed except by or on behalf of the Government or with the permission of the which may be granted subject to such conditions as it may deem necessary in the public interest to impose.

(3) **Cancellation of Declaration for breach of conditions** – Where a declaration in respect of a newspaper has been made with permission under section 2(b), the Government may, by order, cancel the declaration for the breach of, or failure to comply with, any condition subject to which the permission was granted.

This action prohibited the publication of 29 dailies and 138 weeklies and periodicals. Only two English and two Bangla newspapers were allowed to continue under direct government control. Of the four the Bangladesh Observer and the Dainik Bangla were already under

government control. The other two newspapers were the Bangladesh Times and the Bangla daily Ittefaq. Al-Helal Printing and Publishing Company Limited, Dainik Pakistan Limited, National News Publications Limited and Janata Printing and Publishing Limited were closed under this Act.⁵⁶ The event did not go unnoticed. The International Press Institute (IPI) report on press freedom summarized the action in this fashion.

‘The suspension on June 13 of all newspapers except for the government dailies marked the end of the last vestiges of press freedom in the country. Thus, in three short years, the press passed from the virtual freedom of 1972 to total government suppression...it was Sheikh Mujibur Rahman who promised press freedom in 1972. And it was Sheikh Mujibur Rahman who snuffed out the last of the country’s privately owned free press in 1975’.⁵⁷

VII) Martial Law Orders

President and Chief Martial Law Administrator Sayem put the press under a tough martial law regime known as Section (15) of the Martial Law (Seventh Amendment) Regulations, 1976. It states that the :

Penalty for criticizing Martial Law – Whoever by word, either spoken or written or by signs or visible representation or otherwise criticizes the imposition, operation or continuance of Martial Law or brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Chief Martial Law Administrator or any other Martial Law authority shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.⁵⁸

In 1982, the Chief Martial Law Administrator (CMLA) General Ershad once more gagged freedom of the press and put journalists under severe control. Section 15 of his Martial Law Regulations made penalty provisions for criticizing Martial Law or writing against Martial Law. His regulations read as follows:

Penalty for criticizing Martial Law – Whoever by word, either spoken or written, or by signs or visible representation or otherwise criticizes the imposition, operation or continuance of Martial Law or brings or attempts to bring into hatred or contempt or excites or attempt to excite disaffection towards the Chief Martial Law Administrator or any Zonal Martial Law Administrator or any other Martial Law Authority shall be punishable with

rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.⁵⁹

Discussion

Most of the Acts discussed in this paper are not compatible with the changed environment in Bangladesh. This study has shown that the majority of the laws that pertain to the media to a great extent inhibit press freedom in Bangladesh. This paper points to a number of factors that affect the relationship between the media and democracy and they should not be forgotten in the on-going debates on the role of the media in the democratization process.

This paper has discussed the phenomenon that the Official Secrets Act and some other laws are restrictive and they limit the access to information in Bangladesh. That the width and scope of the Official Secrets Act go beyond what is permissible in a democracy is obvious. But then, the country does not have a strong democratic tradition and the laws that now prevent the maturing of the political climate have emerged from a historical background which was authoritarian rather than democratic. For example, the Official Secrets Act was never really meant to deal with what can normally be called official secrets. But rather it was a mechanism of control of information which was unfavourable to the regime. It resulted from a desperate effort by the regime to prolong its repressive rule and to shield itself from its opponents. Some of the Acts are restrictive in that there is little defence available for the media. The punishment prescribed for the offence under this legislation has been made quite severe by requiring sentences of anywhere from two to seven years,. As we have seen, this came into force when the government amended Section 505 and by

introducing Section 505A into the Bangladesh Penal Code. It goes without saying that Imprisonment of journalists for media offences is a serious impediment to press freedom.

Our findings show that the Special Powers Act contains many undemocratic clauses which hinder freedom of expression and the press. The use and abuse of the Special Powers Act (SPA) in the name of protecting security interests has resulted in a steady pattern of human rights violations. The findings also show the trend of limiting the publication of newspapers and periodicals by the government. With the existence of these restrictive laws governing media, it is difficult to support any contention that the press is free in Bangladesh. The analysis also demonstrates that military governments have gagged the freedom of the press during the several episodes of military regimes.

Most governments in the Indian Sub-continent have retained a plethora of laws from the British colonial era to tame or silence the press. Official Secrets Acts and other similar laws have been used effectively in countries such as Bangladesh, India and Pakistan. So, the media's democratic role of "watchdog" and "public informer" is certainly hampered by these kinds of restrictive legislations.

In an emerging democratic society, the media should empower social groups by acting as a public sphere where all interests interact with one another in seeking to establish agreement about the direction of society. Critics of the liberal theory assert that for the media to fulfill the democratic requirements of participation and representation, the media should be highly accessible to all citizens, including groups within civil society.⁶⁰ This approach can be quite contentious when competing interests collide with each other.

Debates in Reform

In 1996, the government made a commitment to repeal and amend laws that inhibit press freedom. It constituted the Law Commission to review the existing legislation. While there is optimism that the government will reform media laws and that positive steps have already been taken in that direction, pessimists are warning the media fraternity that the reforms might, in fact, mean more circumscription of press freedom. Their views cannot be dismissed given government's history in dealing with the media. Some journalists argue quite effectively that history can repeat itself.

Access to information depends on the openness of government ministries. There should be media law reform which would not circumscribe the media's investigative and watchdog powers. Ideally amendments to the Official Secrets Act on access to information should be drafted in such a way that it does not create offences or potential offences which have nothing to do with the interests of security, defense, international relations and crime prevention. It should be drafted to genuinely promote free flow of information.

Conclusion

The above discussions reveal that some of the provisions of these various Acts violate the Universal Declaration of Human Rights and arguably also violates the Constitution of Bangladesh. It goes far beyond what is expected of a democracy in protecting its vital interests. Some provisions of these Acts are incompatible with democratic values and those provisions in various degrees impinge upon press freedom.

In a democracy, public officials are expected to be tolerant of criticism from the

public and the media both of whom need to on guard against abuse of powers by officeholders. Law should not be composed in such a way as to curtail the role of the media in criticising those in government or in any other facet of legal activity in the state..

It can then be concluded that though some of the Acts have not been used overly frequently on the media, the mere existence and presence of such legislation has the potential to circumscribe press freedom. It can be argued effectively that the Acts also violate the constitutional guarantee of freedom of expression and arguably go further than what is reasonably justifiable. Now that British colonialism has ended , it follows that the Acts should be streamlined in its scope to protect genuine state interests.

Finally I would say that the watchdog role is the central premise in both the legal and liberal political traditions. So, a watchdog media is needed in Bangladesh, in particular to sniff out corruption, mismanagement and so forth in government and private sector.

End NOTES

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