

Implementation of Press Law for Protecting Human Rights in Bangladesh

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Abstract

The right of freedom of press is not treated merely as a technique but it is increasingly perceived as an individual's tool to play due role in democratic process in a more effective manner aimed at fostering welfare of the common people. Presently a significant number of print and electronic media are in operation in Bangladesh. At the same time several laws exist in the country for prohibiting the disclosure of official documents and such laws stand as significance barriers for both print and electronic media in the free flow of information as well as protecting human rights of the common people. Few of those laws create a legal regime for the administration to conceal truth and facts of public importance from the people. The combined effects of these provisions create considerable scope for "administrative discretion" to camouflage both the acts of omission and commission. The immediate past Caretaker Government promulgated the Right to Information Ordinance 2008 to ensure people's right aimed at getting necessary information from the state. This study examined the laws in Bangladesh, to see how they limit press freedom in the interests of state and individual rights to reputation. This also examined whether the legal limitations are justified in a democracy or not. The analysis shows that due to the historical origins, original intentions and their practices, the laws in Bangladesh directly or indirectly restricts press freedom. Further analysis revealed that the successive governments retained some elements of authoritarianism in the media field. All the successive governments, particularly military regimes were not committed to develop democratic institutions but rather considered the laws as useful in dealing with its opponents. The study also showed that the government is aware of the restrictiveness or shortcomings in the laws relating to the media but is not willing to offer genuine and comprehensive reforms. However, with the adoption of a strong freedom of information law, Bangladesh will very soon be able to join a long list of nations towards guaranteeing this important right,

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which can eventually add values in achieving the targets of the MDGs by the year 2015. The study also recommends some suggestions for media personnel and the concerned authority with a view to make some changes in press law for benefiting cross section of people.

Keywords: Press Law, Human Rights, Media, Press Council.

Introduction

The media can pursue democratic roles only in the ways permitted by law. Their basic existence depends on law. If the media are restricted by law, they cannot be free even if the political and economic climate is good. Press freedom has been described as an indispensable element of democracy. The vigilant and dauntless media, endowed with investigative abilities, duty bound to be informative and structurally organized to be representative, is a requisite in modern democracy. Yet the media today are faced with legal obstacles strewn across their ways which restrict their roles in democracy, justifiable or unjustifiable. The Press which is called “Fourth State” has a significant role in a democratic state as the state mechanism or democratic system is being influenced by the freedom of press. According to Greek Emperor Napoleon, “Your hostile newspapers are to be feared than a thousand bayonets.” So the necessity of freedom of press is vital for protecting human rights, maintaining social stability and establishing justice in society.¹

According to the proposal of the parliamentary report of the Royal Commission on the press of Great Britain, “We, the undersigned commission, having been appointed by Royal Warrant with the object of furthering the free expression of opinion through the press and the greatest practicable accuracy in the presentation of news, to inquire into the control, management and ownership of the newspaper and periodical press and the news agencies, including the financial structure and the monolithic tendencies in control and to make recommendations thereon.”²

At present, the media is not working due to the enactment of some press related laws hampering freedom of the journalists who are responsible for publishing reports of human rights violation. Those laws are also affecting the media personnel in various ways either directly or indirectly while discharging their social responsibility and barring them from playing active role in this regard.³

¹ ABM Mafizul Islam Patwari, *Manobadhikar O Aingot Sahayatadaner Mulneeti*, (Humanist and Ethical Association of Bangladesh, Dhaka, 2001), P. 256.

² Report of The Royal Commission on the Press, (London, 1949).

³ ABM Mafizul Islam Patwari, *Manobadhikar O Aingoto Sahayatadaner Mulneeti*, (Humanist and Ethical Association of Bangladesh, Dhaka, 2001), P. 256-258.

Referring to the necessity of positive press law, the first Press Commission of India opined about a section of newspaper owners saying, “Some of the persons at present owning or controlling newspapers, have had no previous connection with or training in journalism. There are others, who while conducting newspapers, are primarily interested in other activities. There are some who are generally reputed to have indulged in anti-social activities.”⁴

The right to Freedom of Information emerges as a dominant ideology countering the old dogma that state activities are the secret domain of governments in protecting human rights. Such aspect has repeatedly been recognized by different international organizations including the United Nations. According to Philosopher John Locke, “Truth can only be discovered in the market place of ideas through clash of freely expressed adversary concepts.”⁵

The right of freedom of information is not treated merely as a technique but it is increasingly perceived as an individual’s tool to play due role in democratic process in a more effective manner aimed at fostering welfare of the common people. Several laws still exist in Bangladesh for prohibiting the disclosure of official documents and such laws stand as significance barriers for both print and electronic media in the free flow of information. The Press Foundation of Asia introduced a new thought about two decades ago saying, “The Press and Journalists of underdeveloped and developing third world countries have to play a special role of informing people about various types of plans and purposes of different projects. Referring to the objectives of development journalism, a manual for News Agency Reporters of the Indian Public Relations Office says, such type of journalism changes attitude of the people to involve themselves with government activities.”⁶

The Right to Information Ordinance 2008 in Bangladesh is an epoch making influence in building a well disciplined, creative and knowledge based society, free from corruption and terrorism and it can play a very positive role in establishing human rights in the society.

Media in Bangladesh

In Bangladesh the traditional sources of media are not being used now due to increasing emphasis and shift towards new media sources like the Internet and mobile phones.

⁴ Report of the First Press Commission of India, (New Delhi, 1952).

⁵ Partha Chattyapadhy, *Sangbadikata O Sangbadpatra Bhabna*, (Kolkata, 1988), P.102.

⁶ Anupam Adhikari, *Sangbad O Sangbadikata*, (Patra Book House, Kolkata, 1993),P.53.

A significant number of print and electronic media now exist in Bangladesh, a country of around 150 million people. Over one hundred daily newspapers including national dailies are being published from different districts of the country.

Bangladesh Betar and Bangladesh Television, few private FM Radio Stations (Radio Today, Radio Foorti, One O One rtc); and Satellite TV channels namely ATN Bangla, ATN News, Bangla Vision, Boishakhi, Channel I, Desh TV, Diganta TV, ETV, Islamic Television, Mohona TV, My TV NTV and RTV are currently operating in Bangladesh including few are in the pipeline. Referring to the necessity of different media, eminent writer David Wen Wright says, “Journalism is information. It is Communication. It is the events of the day distilled into a few words, sounds or pictures, processed by the mechanics of communication to satisfy the human curiosity of a world that is always eager to know what’s new.”⁷

Important Press Laws

No democratic government can survive without accountability and transparency and the basic postulate of accountability is that the people should have information about the functioning of the government. A good newspaper of any state wants to go to the doorsteps of the people with different attractive news following the principles of honesty and sincerity. Every media has to be more cautious about publishing or broadcasting any baseless news reports by maintaining rules and regulations in this regard.⁸

There are many laws prohibiting the disclosure of official documents and stand as significance barriers in the free flow of information as well as protecting human rights in Bangladesh. The important laws which control the freedom of press include: the Printing Presses and Publications (Declaration and Registration) Act 1973, the Press Council Act 1974, the Special Powers Act 1974, the Officials Secret Act 1923 and the Right to Information Ordinance 2008. Several provisions of those laws are very much related with freedom of press. Moreover, Special Powers Act of 1974, Official Secrets Act of 1923, Copyright Act, Contempt of Court Act, Children Act, Criminal Procedure Code, and so on exert influence upon the working of the newspapers in one way or the other.⁹

⁷ Sudhangshu Sekhor Roy, *Sangbadikata, Sangbadik O Sangbadpatra*, (Dhaleswari Prakashani, 1994), P. 16.

⁸ Muhammad Jahangir, *Sangbadikata*, (Mowla Brothers, 1991), P. 68-69.

⁹ ABM Mafizul Islam Patwari, *Manobadhikar O Aingoto Sahayatadaner Mulneeti*, (Humanist and Ethical Association of Bangladesh, Dhaka, 2001), P. 257-258.

1. The Printing Presses and Publications (Declaration and Registration) Act 1973

After the emergence of Bangladesh the Printing Press and Publication Act came into force in 1973. It gave a district magistrate the power to grant permission to publish newspapers. The Printing Presses and Publications (Declaration and Registration) Act of 1973 specifies the responsibilities of the newspapers. Clause 3 of this act lays down that the names and places of the presses and publishers should be printed clearly on all printed newspapers. Clause 4 says that the declaration of the press must be submitted to the magistrate. Clause 6 says that each copy of the newspaper must bear the name of the publisher. Clause 7 specifies that the printer and publisher of the newspaper must submit a declaration to the district magistrate and the newspaper must be published within three months of that declaration. A new declaration was required in case a daily newspaper has been banned for three months and other newspapers for six months.

Clause 10 stipulates that the declaration specifying the place, duration and language of the newspaper will be cancelled if the newspaper is published from a different place, for a different duration and in a different language.

This section, however, will not apply if the changes are made on temporary basis for a period not exceeding 30 days and are communicated to the district magistrate within 72 hours. Clause 11 lays down that if the printer or the publisher of the newspaper lives outside Bangladesh for a period exceeding six months, the name and consent of the person who would perform the responsibility in their absence should be submitted in writing to the district magistrate before he leaves the country. Otherwise the declaration for the newspaper will be cancelled. Clause 12 gives the magistrate the power to refuse certification.

In order to certify the declaration, the magistrate will have to be satisfied to the effect that the owner of the printing press and the publisher of the newspaper are citizens of Bangladesh, that no other newspaper bears the proposed name, that neither the owner of the press nor the publisher of the newspaper has been convicted on the ground of moral turpitude within last five years, that they are not insane, that they have the required financial solvency, and that the editor has the requisite qualification as well. Clause 20 provides the magistrate with the power to cancel the certificate. Clause 20(a) lays down that the government can ban a newspaper if anything morally unacceptable is published in it. This also gives the government the power to seize any uncertified newspaper.

According to clause 26, all newspapers must provide the government four complimentary copies of each.¹⁰

2. The Press Council Act 1974

The Press Council was established with the objective of maintaining freedom of the press and improving the quality of news and those who present them. The Press Council Act was promulgated in February 1974. In accordance with this act, the Press Council was established on 18 August 1979. It consists of 15 members and can be chaired only by a judge of the Supreme Court or anyone having such qualification and is nominated by the President of Bangladesh. Of the 14 other members 3 will be working journalists, 3 will be editors of news agencies and 3 owners or top executives of news agencies. The panel of experts will consist of three members of which one member will be nominated by the University Grants Commission, one by the Bangla Academy, and the other by the Bangladesh Bar Council. Two members of parliament are to be nominated by the Speaker. The Press Council Act of 1974 entrusted Bangladesh Press Council with the following responsibilities:

- To adjudicate complaints against a newspaper, news agency or a journalist. The council can also, on its own initiative, investigate an offence arising from the violation of the principle of journalism and rebuke or give warning to the guilty person or organisation;
- To help maintain freedom of the press and of the people engaged in the profession of journalism;
- To formulate from time to time the code of conduct for the newspapers, news agencies, and journalism in the light of high professional standard;
- To ensure that the news agencies or journalists should be conscious of their rights and obligations in addition to maintaining a high professional quality in their jobs;
- To create a sense of duty as well as motivation for public service among those who are engaged in journalism;
- To ensure presentation and transmission of news in the interest of the masses and make sure that there is no obstacle in this respect;
- To watch if any agency connected with a newspaper and the news world takes financial assistance from any foreign source;
- To undertake research on national and foreign newspapers and their influence;

¹⁰ *The Printing Press and Publications (Declaration and Registration) Act 1973.*

- To make arrangement for research on instruction and training for those engaged in the profession;
- To assure technical and other kinds of research;
- To make effort to establish professional contacts among those engaged in the management of newspapers and news agencies; and
- To take steps to accomplish these activities.¹¹

While performing its duties the Press Council enjoys some rights and jurisdiction of the civil court on such matters as summon, presentation and deposition of the witnesses. It can also summon documents and compel them to be presented, to take witness through affidavit, to summon public records from the offices, and to commission for testing the deposition of witness and its documents. However, it cannot compel any newspaper, news agency, journalist or editor to disclose the sources of their news. It enjoys powers of a civil court. Hence, anybody giving false witness before the Press Council will be committing a crime and can be punished. The judgment of the Press Council is final and there can be no appeal against it. No case can be filed in this regard. All judgments made by the Press Council have to be attested by its Chairman and all warrants signed by its Secretary. The Press Council Act has given the government the power to make rules on certain matters, which have been made accordingly. The law gives the council power to formulate certain regulations for its activities.¹²

The former Chairman of Bangladesh Press Council Justice Kazi Ebadul Haque while addressing a seminar on Media Laws in Dhaka once said: "The Press Council cannot fulfill the expectations of journalists and people due to legal barriers, although the organization has been running its activities over the two decades." "Many doubt whether the organization is being able to play its role properly in the backdrop of socio-economic and political changes," he added.¹³

3. The Special Powers Act 1974

The Special Power Act 1974 was enacted on February 2, 1974. Bangladesh Federal Union of Journalists (BFUJ) in their reaction on February 19, that year said through this Act new restrictions were imposed on the journalist and the press. Terming it as a black law, the BFUJ called upon the government to scrap the Act as soon as possible.¹⁴

¹¹ Press Institute Bangladesh, *Journal Nirikhya*, (118th Edition, January 2004), P. 38-39.

¹² The Press Council Act 1974.

¹³ English Daily, The Financial Express, (Dhaka, May 04, 2008).

¹⁴ Press Institute Bangladesh, *Journal Nirikhya*, (125th Edition, August 2004), P. 14-15.

According to Article 16 of the Special Power Act 1974:

1. No person shall a) do any prejudicial act or b) make, print, publish, possess or distribute any document containing or spread by any other means whatsoever, any prejudicial report.
2. The author, editor, printer or publisher of and any person who otherwise makes or produces, any person who distributes or sells any report of that nature knowing it to be of such nature, shall be deemed to have contravened the provision of this section.
3. If any person contravenes any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

Article 18 of this Act refers to the regulation of publication of certain matters saying where the government is satisfied that in the interests of the security of Bangladesh, friendly relations of Bangladesh with foreign states or public order, it is necessary so to do, it may, by order addressed to a printer, publisher or editor, or printers publishers or editors generally require that all matters relating to a particular subject or class of subjects affecting the security of Bangladesh, friendly relations of Bangladesh with foreign states or public order shall, before being published in any document or class of documents, be submitted for security to any authority specified in the order, who shall, within 72 hours of its submission, either approve of or prohibit its publication whereof has been so prohibited shall be published.¹⁵

4. The Officials Secret Act 1923

Under clause 3 of this act any person can be convicted of criminal offence if that person goes to a restricted place or proceeds toward that place or makes a map or sketch of that place or collects confidential information about that place or publishes that information. Under section 3(a), nobody can publish any photo, sketch or map of a secret place. Under clause 4 collection of news or information in collaboration with any foreign agent is not permissible. Under clause 5, information collected secretly cannot be published. If a newspaper publishes secret news, the reporter, editor, printer and publisher will be guilty of committing an offence. Any connivance in this matter will be treated as a criminal offence.

The Official Secret Act makes all disclosure and use of official information a criminal offence. Section 5 of the act lays down that if any person possessing any document or information which has been entrusted to him in confidence by any government official, or which he has obtained as an official,

- a. Willfully communicates it to any unauthorized person,
- b. Uses it for the benefit of foreign power,

¹⁵ The Special Power Act 1974.

- c. Retains it in breach of duty,
- d. Fails to take reasonable care so as to endanger its safety, he shall be guilty of an offence.

Moreover, clause (2) of section 5 provides that it will be punishable offence if any person voluntarily receives any secret official information knowing or having reasonable ground to believe that such information is communicated in contravention of this act.¹⁶

Other Press Related Laws

There are several other press related laws affect freedom of information as follows:

1. The Copyright Ordinance 1962

Copyright means absolute ownership or right. Anybody writing something innovative by dint of his work and expertise is entitled to its copyright. However, the owner of the newspaper or magazine holds the copyright of whatever is published in it at a contractual fee or whatever is published by someone during the period of his apprenticeship in that newspaper or magazine. Otherwise the writer has the copyright to it.¹⁷

Plagiarism is regarded as a violation of copyright. According to the Copyright Act, the publication, playacting, adaptation, translation or dramatization are prohibited without prior permission from the owner or without license. However, copyright is not violated if these are used as quotation, transcript, reproduction, translation and fair and appropriate use for the purpose of criticism, research and review.¹⁸

2. The Contempt of Courts Act 1926

According to Article 99(A), any newspaper or book as defined in the Printing Presses and Publication (Declaration and Registration) Act 1973 or any document wherever printed, appears to the government to contain any treasonable or seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of Bangladesh or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say any matter the publication of which is punishable under section 123 (A) or 124 (B) or 153 (A) or section 295 (A) of the Penal Code, the government can declare every copy of the issue of the newspaper to be forfeited.¹⁹

¹⁶ *The Official Secret Act 1923.*

¹⁷ Press Institute Bangladesh, *Journal Nirikhya*, (127th Edition, October 2004), P. 36.

¹⁸ *The Copy Right Ordinance 1962*

¹⁹ *The Contempt of Courts Act 1926.*

3. The Post Office Act 1898

As per Article 27 (B) of the Act, the government shall cause the contents of any suspected postal articles to be examined and may pass orders to the disposal of the article and its contents as it may deem proper. The concerned person interested in any article detained may, within two months from the date of such detention, apply to the government for release of the same.²⁰

4. The Code of Criminal Procedure

Under clause 99(a), (b), (c), (d), (e), and (f) the government may confiscate all copies of a newspaper if it publishes anything subversive of the state or provoking an uprising or anything that creates enmity and hatred among the citizens or denigrates religious beliefs. The magistrate can send police with a warrant to the place where these newspapers are found. The aggrieved person can take the matter to the notice of the high court.

Under clause 108 of Code of Criminal Procedure (CrPC) a magistrate can ask for an undertaking from a person who has made an attempt to express anything seditious or create class-conflict or threaten judge. Under clause 144 of CrPC a magistrate can prevent a journalist from going to his specified place of work.²¹

5. The Children Act 1974

Under Children Act 1974 anybody below 16 years is regarded as a 'child'. This Act prohibits a newspaper from publishing name, address or school by which a child can be identified, without prior permission. According to Article 17 of the Act relating to the prohibition on publication of report disclosing identity of child involved in cases saying that no report in any newspaper, magazine or newsheet nor any news giving agency shall disclose any particular or any case or proceedings in any court in which a child is involved.²²

6. The Newspaper Employees (Conditions of Service) Act 1974

It was enacted in 1974. It repealed the Working Journalists (Condition of Service) Ordinance of 1960. Clause 2 of this Act states that any periodical that publishes public news or expresses comments on them are also called newspapers. The government can declare any other periodical as newspaper through a gazette notification. The newspaper employees here refer to (1) the working journalists; (2) the administrative personnel; and (3) the persons engaged in printing the newspapers. Clause 3 lays

²⁰ *The Post Office Act 1898.*

²¹ *The Code of Criminal Procedure (CrPC) 1898.*

²² *The Children Act 1974.*

down that Industrial Relations Ordinance XXII of 1969 will be applicable to the newspaper employees. Clause 4 makes it obligatory for an employer to specify the nature of job as well as the date and conditions of appointment at the time of offering employment.²³

The Newspaper Employees (Condition of Service) Act of 1974 laid down rules for ensuring rights and privileges of the journalists and the employees in the newspapers. It also gave birth to the Bangladesh Press Council that had been working for freedom of press and improvement of the quality of news since 1979.

7. The Bangladesh Sangbad Sangstha Ordinance 1979

The Bangladesh Sangbad Sangstha (BSS) was established on January 1, 1972. Ordinance No. XX formulated in 1979, provides for the establishment of the Sangstha, and defines its nature and scope of activities. Its responsibilities include collection of domestic and international news on politics, diplomacy, business, commerce and economics, culture and sports and make arrangement for sale of news, pictures and features at home and abroad. Under clause 7 all activities of the Sangstha will be conducted by a board. This board consists of a Chairman nominated by the government, one Managing Director, one Director from the Ministry of Information, one Director from the Ministry of Finance, one Director from the Ministry of Telephone and Telegraph, five Directors from among editors of the newspapers, and one Director from among the employees of the Sangstha.²⁴

8. The Government Owned Newspapers (Management) Act 1975

The purpose of this Act is to provide for the management and developed of government owned newspapers and for the dissolution of certain companies established mainly for carrying on the business of publication of newspapers or printing.²⁵

9. The Newspaper (Annulment of Declaration) Act 1975

According to Article 2 of the Act, 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 Government which it may be granted subject to such conditions as it may deem necessary in the public interest to impose.²⁶

10. The Printing Corporation (Vesting) Order 1972

As per Article 3 of the Order, the entire undertaking of any printing corporation shall stand transferred to, and vest in the Government. All officers and other employees of the Printing Corporation shall stand

²³ *The Newspaper Employees (Condition of Service) Act of 1974.*

²⁴ *The Bangladesh Sangbad Sangstha Ordinance 1979.*

²⁵ *The Government Owned Newspapers (Management) Act 1975.*

²⁶ *The Newspaper (Annulment of Declaration) Act 1976.*

transferred to the Government on such terms and conditions as the Government may determine.²⁷

11. The Industrial Relation (Regulation) Ordinance 1982

The main purpose of this Ordinance is to regulate industrial relations with a view to achieving higher national productivity and maintaining industrial peace and discipline. As per Article 4 of the Ordinance, there shall not be any election for determination of collective bargaining agents under the Ordinance. The declaration of the Registrar shall be final and shall not be in question by or in any court.²⁸

12. The Employment of Labor (Standing Order) Act 1965

This Act is to repeal and with certain amendments, re-enact the Industrial and Commercial Employment (Standing Order) Ordinance 1960. As per Article 3 of the Act, every shop or commercial or industrial establishment, employment of workers and other matters incidental thereto shall be regulated in accordance with provisions of this Act.²⁹

13. The Indecent Advertisement Prohibition Act 1963

This act is to prohibit indecent advertisements including whatsoever may amount to any incentive to sensuality and excitement of impure thought in the mind of an ordinary man of normal temperament, and has the tendency to deprave and corrupt those whose minds are open to such immoral influence, and which is deemed to be detrimental to public morals. According to Article 3 of the Act, no person shall take any part in the publication of any advertisement which is indecent.³⁰

14. The Telegraph Act 1885

This Act provides power for the government to take possession of licensed telegraphs and to order interception of messages. Under clause 5 of the Telegraph Act 1885, the government can hold any news or report from publication.³¹

15. The Transfer of Property Act 1882

This Act is applicable to transfer of printing machinery as a movable property. Under the Act, any person willing to transfer printing machine should have three qualities including 18 years of age, sound and legal ownership.³²

16. The Registration Act 1908

This Act has been enacted in terms of registration process being conducted for buying or selling any property.³³

²⁷ *The Printing Corporation (Vesting) Order 1972.*

²⁸ *The Industrial Relation (Regulation) Ordinance 1982.*

²⁹ *The Employment of Labor (Standing Order) Act 1965.*

³⁰ *The Indecent Advertisement Prohibition Act 1963.*

³¹ *The Telegraph Act 1885.*

³² *The Transfer of Property Act 1882.*

³³ *The Registration Act 1908.*

17. The Sale of Goods Act 1930:

The Act controls the sales of different immovable goods being used in the process.³⁴

18. The Penal Code

According to the Contempt of Court Act of 1926, if any publication tries to influence the trial of a case it will be charged with contempt of court. An editorial of a newspaper will come under contempt of court if it crosses irresponsibly the limits of objective criticism concerning a judgment of the Supreme Court or tries to destroy trust in the judicial system, detracts the judges from performing their duties, creates obstacle towards enforcing the fundamental rights, and creates dissention through activities inconsistent with the constitution.³⁵

Any material published in a newspaper will undoubtedly defame court if it spreads scandals regarding its chief justice and other judges, expresses views to the effect that the people have lost trust in the judicial system or that judges act under foreign influence or under any other consideration not connected with the process of law as a result of which there cannot be any justice.

19. The Evidence Act, 1872

Sections 123 and 124 of the Evidence Act protect from the disclosure of documents and communications, which are considered to be privileged. According to section 123, no one is permitted to give evidence derived from unpublished official records relating to 'Affairs of State', except with the permission of the departmental head who may either give or withhold the permission.³⁶

20. The Rules of Business 1975

Rules of Business are framed by the competent authorities for the purpose of allocating as well as transacting government business. Section 26)(1) of the Rules of Business prohibits government servants to communicate information, acquired directly or indirectly from official documents or relating to official matters, to the press, to non-officials or even officials belonging to other government offices.³⁷

21. The Government Servants (Conduct) Rules, 1979

The rules are made applicable to all government servants whether on duty or on leave within or outside Bangladesh serving in a civil capacity in

³⁴ *The Sale of Goods Act 1930.*

³⁵ *The Penal Code.*

³⁶ *The Evidence Act 1872*

³⁷ *The Rules of Business 1975.*

respect of the government of Bangladesh. The rules are very elaborate, thirty-two in number, imposing restrictions and prohibition upon the government servant in specific areas of activity. Broadly, the rules fall under three categories. Section 19 of the Act provides that a government servant shall not disclose the contents of any official document or communicate any information of official nature, directly or indirectly to government servants of other ministries, divisions or departments or to non-official persons or to the press.³⁸

Challenges of Existing Press Laws

The regulation concerning newspapers in this subcontinent was passed for the first time during the rule of the Governor General Lord Wellesley in 1799. It stated that every newspaper must bear the name of the owner of the printing press, the publisher and the editor. By virtue of an Ordinance of 1823 Governor General Adams introduced licensing for the newspapers. This was annulled in 1835 but reintroduced in 1857. The Penal Code was enacted in 1860, which included the subjects of defamation and obscenity. The subjects of sedition and the act of creating class-enmity were incorporated into this law in 1870 and 1898 respectively.

The Press and Registration of Books Act of 1867 introduced the convention of registration and preservation of all newspapers and books. Vernacular Press Act of 1878 empowered the government to take action against any seditious writing. A number of provisions in the CrPC of 1898 touched the operation of newspapers. The Newspapers Incitement to Offences Act of 1908 gave a magistrate the power to seize a newspaper if it published anything malicious. The Press Act of 1910 gave government the power to ask the concerned press for a deposit if it published material instigating crimes, such as sedition and killing or homicide. The Press and Registration of Books Act, Customs Act and Post Office Act were amended in 1922 and at the same time the Acts of 1908 and 1910 were annulled. The Official Secrets Act of 1923 prohibited publication of any official secret as news. The absolute freedom of press is being hampered due to imposing different types of restrictions utilizing those press related laws.³⁹

Everyone has the right to freedom of opinion and expression including the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. Such freedoms are increasingly seen as composite concepts of freedom of expression, which is essential for the orderly growth of human personality. The pluralistic approach to the freedom of information is commensurate with the holistic idea of individual liberty. Through liberal

³⁸ The Government Servants (Conduct) Rules 1979.

³⁹ ABM Mafizul Islam Patwari, *Manobadhikar O Aingot Sahayatadaner Mulneeti*, (Humanist and Ethical Association of Bangladesh, Dhaka, 2001), P. 256-258.

interpretation of the freedom of expression, the court thus played a significant role in shaping the right of access to information.

Information may be an instrument of popular control as only informed people are able to criticize the government's policy by exerting powerful check on the potential or actual misuses and abuse of its power. Again it may be a catalyst of political equality by making congruence between policies and the public's expressed desires. State secrecy, concealment of facts, denial of access to information, exclusion of people from policy formulation negates the essence of open government. Among these, secrecy is considered to be 'sui generis' and others are merely its logical consequences. Strong presence of secrecy laws contributes to perpetuating authoritarian regime that nourishes parochial political culture.

The parameters of official secrecy are increasingly being questioned, and probing revolves around issues of its actual necessity, relevance and scope in the present state of affairs and its abuse. There is a growing perception that official secrecy becomes an instrument of oppression rather than a weapon of state security.⁴⁰

The wide dissemination of information on government policies provides public debate to improve policy design, facilities acceptance and ensures efficient implementation. It is recognized that information may act as a catalyst for achieving political freedom, economic development and social justice.

But concealment of information merely widens the gap between people and government, reduces the efficiency and quality of decision-making process. Freedom of Information can also play a vital role in preventing financial corruption; rampant corruption by misappropriation and unscrupulous use of public funds has become the characteristic feature of our public bodies. To counter this, it is essential that there should be complete transparency in all-public dealings and people should have uninhibited access to information, not only about government expenditure but also about aid by the donors and transactions with lenders.

Sufferings of Media People for the Existing Laws

The above laws create a legal regime for the administration to conceal truth and facts of public importance from the people. The combined effects of these provisions create considerable scope for "administrative discretion" to camouflage both the acts of omission and commission.

In particular, a widespread application of the Official Secrets Act, which is primarily intended for the concern of national security, may only be found in the operation of administrative functions. From the security

⁴⁰ Gazi Shamsur Rahman, *Sangbad Bishayak Ain*, (Bangla Academy, Dhaka, 1984), P. 1-4.

perspective, the Act has lost its relevance as communication technology unleashes huge information transcending national boundary through satellites, Internets, global positioning system (GPS) and databanks.

Moreover, the ambiguity and vagueness in the Act permits wide interpretation against freedom of information and consequently, paves the way for its abuse. There is no denying the fact that the Act has substantially operated to deny the people access to information. According to Article 19(2) of the Indian Constitution, “Nothing in sub-clause (a) clause (1) shall affect the operation of any existing law or prevent the state from making any law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to offence.”⁴¹

How the present state of Press affects in protecting Human Rights

The present state of press affects in many occasions for protecting human rights as it cannot work truly as a mouthpiece for society and reflect people's desires and expectations fully. Sometimes newspaper published confusing reports and electronic media broadcast colorful items which hurt people's democratic rights. As the Press Council could not play its due roll to stop violation of human rights of the common people through media and press. It has to play more responsible role and should be careful enough to fulfill people's expectations and protecting their human rights. At present a section of media and press cannot ensure the rights of the people although the freedom of media is ensured. Besides the press council cannot fulfill the hopes and aspirations of the journalist and people due to some legal barriers and many doubt still prevails whether the organization can able to play its due roll in near future.⁴²

Freedom of Press in International Arena

The United Nations (UN) General Assembly, at its very first session in 1946, adopted Resolution 59(I), which states: Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated. Apart from constitutional mandate, a large number of states have adopted freedom of information regime by amending existing secrecy laws or enacting separate laws. These laws are contributing in evolving norms on freedom of information.

National freedom of information laws have been adopted in a number of countries including India, Israel, Jamaica, Japan, Mexico, Pakistan, Peru, South Africa, South Korea, Thailand, Trinidad and Tobago, and the United Kingdom, as well as most of East and Central Europe.

⁴¹ Partha Chattyapadhy, *Sangbadikata O Sangbadpatra Bhabna*, (Kolkata, 1988), P. 105.

⁴² Gazi Shamsur Rahman, *Sangbad Bishayak Ain*, (Bangla Academy, Dhaka, 1984), P. 221.

Examples may be found in the Official Secrets Act, 1989 in the United Kingdom, the US Freedom of Information Act, 1966 (amended in 1996), the Canadian Access to Information Act, 1982 (amended in 1999) etc. According to the 14th Amendment of the constitution of the US, “In the United States the concept of the freedom of press is considered to be fundamental to the American way of life. Freedom means the capacity to use ones powers of action without restraint or control from outside and with whatever means or equipment the action requires. Freedom means absence of external influence whether to suppress or to constrain. To be free also means to be free to accomplish something and it means command over all the resources, equipment etc. to achieve that end. A free press means a press which is free from the compulsions from whatever sources governmental, social, external or internal. A free press is free for the expression of opinion in all its phases. Freedom of press includes the right to adopt and pursue a policy without government restriction.”⁴³

These countries join a number of other countries which enacted such laws some time ago, such as Sweden, the United States, Finland, the Netherlands, Australia and Canada, bringing the total number of States with freedom of information laws to over 55. A growing number of intergovernmental bodies, such as the European Union, the UNDP, the World Bank and the Asian Development Bank, have also adopted policies on the right to information.

Freedom of Press in Bangladesh Constitution

There are two kinds of restrictions being imposed on the media in Bangladesh. Firstly: the restrictions before publishing or broadcasting and secondly: the restrictions after publishing or broadcasting. Necessary arrangements of some punitive measures exist in different media related laws although the constitution of Bangladesh guarantees the freedom of press.⁴⁴

The constitution of the People’s Republic of Bangladesh in conformity with the Universal Declaration of Human Rights (UDHR) recognizes the freedom of thought, conscience and speech to ensure transparent and accountable democratic governance. In countries where constitution enshrine only guaranty of free expression and do not have laws on freedom of information, national courts are increasingly interpreting such provision to include the right to receive information.

Article 39 of Bangladesh Constitution guarantees freedom of expression in the following terms:

1. Freedom or thought and conscience are guaranteed.

⁴³ *The 14th Amendment of the Constitution of the United States*, (Washington, 1868).

⁴⁴ ABM Mafizul Islam Patwari, *Manobadhikar O Aingot Sahayatadaner Mulneeti*, (Humanist and Ethical Association of Bangladesh, Dhaka, 2001), P. 257.

2. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence-(a) The right of every citizen of freedom of speech and expression; and (b) Freedom of the press, are guaranteed.⁴⁵

The Right to Information Ordinance 2008

The President of the Republic promulgated the Right to Information Ordinance 2008 on the recommendation of the immediate past Caretaker Government (CG) to ensure people's right aimed at getting necessary information from the state. Under such Ordinance right to information were made mandatory for all government, semi-government and non-government institutions and necessary provision of punitive measures (Maximum imprisonment of three months or fine of five thousand taka or both) have been proposed in the Ordinance.⁴⁶

District-wise tribunals were proposed to set up for disposal of cases relating to the crime of right to information and retired District Judge or equivalent status person would be judges of those tribunals. Besides, retired Justice of the Supreme Court or equivalent status person would be the Judge in the Appeal Tribunal and its verdict would be the final as nobody can raise question on it. The tribunal would order the government to provide necessary information.⁴⁷

Under the Ordinance, the government officials were bound to provide information within 20 days following the request of any citizen. If the concerned officials failed to provide the information, he/she would have to inform the citizen about the logical reason of not providing that information. If the information is related to two or more divisions, the concerned officials would get maximum period of 30 days to provide the information. The primary information relating to birth, death, arrest or release from jail would be provided within 24 hours. If the concerned official denied or failed to provide that information, punitive measures to be taken as per rules.⁴⁸

Main Features of the Ordinance

The main purpose of the much-awaited Right to Information (RTI) Ordinance 2008 was to ensure people's right to information. Under the Ordinance, new posts were created in most of the government offices and non-government organizations (NGOs). Officials holding those posts would provide people with the information they seek within 20 days of receipt of applications from them. But in cases of issues concerning a person's life and death, arrest and release from jail, the officials would

⁴⁵ *The Bangladesh Constitution 1972.*

⁴⁶ *Betar Bangla*, (Bangladesh Betar Publications, Dhaka, 2008), P. 18.

⁴⁷ *The Right Information Ordinance*, (Bangladesh Gezette, Dhaka, 2008).

⁴⁸ Website: www.moi.gov.bd retrieved on November 18, 2008.

had to provide primary information within 24 hours. The widely-debated law ensured people's rights to information from organizations run with public money, and the NGOs using foreign funds. The law covered government offices down to upazila level.

The rest of the local government bodies, like union parishads, would be covered by the laws on different local bodies which had provisions for ensuring people's access to information. The RTI ordinance with 36 sections and a schedule of six security and intelligence agencies, which could not be asked for information, had a list of about 20 instances of exemption from disclosure of information, an official said seeking anonymity. The government said the new law would increase transparency and accountability, reduce corruption and establish good governance in government offices and NGOs.

Different rights and journalists forums had welcomed the government move terming final approval of the ordinance a 'historic step'. Under the law, people were required to pay fees for filing application seeking information. But people living below poverty line would be able to apply in white sheets of paper without paying any fees. A three-member Information Commission headed by a Chief Information Commissioner would be formed to properly enforce the law and deal with complaints from the information seekers. One of the two Commissioners would be a woman. The Information Commission, apart from financial liberty, had been entrusted with the authority to punish or fine officials who would fail to provide primary information on life and death, arrest and release of a person from prison within 24 hours.

The president would appoint the Chief Information Commissioner and Information Commissioners on the basis of suggestions from a five-member selection committee. The Chief Justice would nominate a Judge of the Appellate Division of the Supreme Court to head the selection committee. The Speaker would nominate two Parliament Members -- one each from the treasury and opposition benches-- while the government would nominate one from among eminent citizens. The Cabinet Secretary would be the other member of the selection committee.

If any assigned official does not provide information to an information-seeker as per the law, he would have to pay Tk 50 for a day's delay and a total fine not exceeding Tk 5,000, according to a provision of the Ordinance.

Congratulating the government on its approval of the Ordinance, Shawkat Mahmud, President of the Jatiya Press Club, also termed it a historic move. The then Information Secretary said ninety nine percent of the NGOs would be covered by the law. Through this maximum disclosure of information was ensured. If there would be any lapsed in the Ordinance, there would be always a scope to address that. Describing implementation of the law as a crucial job, he said the main tasks include forming the Information Commission, creating information bank and

information dissemination system at offices and training up the staff. Against the backdrop of a longstanding demand, the CG took the initiative to formulate an RTI law as part of its institutional reforms. After an eight-member government-formed body prepared a primary draft in February 2008, opinions from different stakeholders were sought before the information ministry submitted it to the cabinet on June 18.⁴⁹

Implementation of the Ordinance

The government asked all public and private offices covered by the Right to Information Ordinance 2008 to appoint officials within December 19, 2008 for providing information to people seeking it. The Press Information Department issued a reminder in this regard on November 20, 2008. Section 10 of the Ordinance promulgated on October 20 has made it obligatory for all organizations to nominate an officer-in-charge for each information-providing unit within 60 days of the promulgation of the Ordinance.

Apart from different ministries, departments, directorates and offices, all NGOs and private organizations that run on or receive government or foreign funds, work on behalf of the government, and supply goods or provide services on government funds are bound to provide people with information. The much-expected Ordinance came into effect on October 20 but people had to wait 59 days more before availing themselves of the service as the authorities needed to develop mechanism, set up separate cells and appoint officials for the purpose. After appointing the officers-in-charge, each authority would require to inform the Information Commission in 15 days the name, designation, address, fax number and email address of the official-in-charge.

The National Security Intelligence, Directorate General of Forces Intelligence, Defense Intelligence Unit, Criminal Investigation Department of Police, Special Security Force, Special Branch of Police and Intelligence Units of the Rapid Action Battalion and National Board of Revenue had been kept outside the purview of the Ordinance. However, if the information sought is related to corruption and violation of human rights within these agencies, they would be required to provide the information within 30 days. People seeking information would require to apply either in writing or electronically or through e-mail paying fees. The authorities may exempt anyone from paying the fees.⁵⁰

Approving the Right to Information Ordinance in the Parliament

Bangladesh turned from the CG to the democratically elected government after the general election of December 29, 2009. So there was a constitutional need to get the Ordinance passed in the parliament within 30 days of the first session in order to make it a law. Finally the much awaited the Right to Information Act 2009 was passed in the first session

⁴⁹ English Daily, *The Daily Star*, (Dhaka, September 21, 2008).

⁵⁰ English Daily, *The Daily Star*, (Dhaka, November 21, 2008).

of the 9th Parliament and the President of the Republic has signed it on April 5, 2009 by making it a law. This law other than Section 8 (information request), Section 24 (provision for appeal) and Section 25 (provision for complain) has been given retrospect effect from October 20, 2008 and those sections have been given prospective effect from July 01, 2009.⁵¹

Recommendations

The study recommends the followings:

1. Taking immediate measures for ensuring Freedom of Press to protect Human Rights in Bangladesh.
2. Building up a code of conduct for press, news agencies and journalists keeping in view of their professional dignity.
3. Modernization of press related laws and to take necessary measures to make them time befitting.
4. Strengthening power and jurisdiction of the Press Council as a commanding authority on media.
5. Building up social responsibility among the media people by emphasizing objective reporting.
6. Building up professionalism among the journalists with a vision of making Bangladesh a corrupt free country.
7. Ensuring accountability of Journalists and media personnel for publishing report or article.
8. Making awareness of the journalists about their rights as well as responsibilities.
9. Arrangement of necessary training, seminar or workshop for media people on the basic principles of protecting human rights.
10. Government determination of not imposing any direct or indirect restriction or censorship which is contrary to the freedom of press.
11. Necessary arrangement for the successful implementation of Right to Information Ordinance 2008.
12. Reformation and modification o Bangladesh Press Council Act 1974 so that the Council can discharge its responsibilities properly.
13. The necessity for expansion of the jurisdiction of the Press Council to ensure the code of conduct for journalists.
14. Recruiting the Chairman and Members of the Press Council through parliament, balance in service terms of the Chairman and Members and increasing the number of Members.

⁵¹ Bangladesh Gazette, April 6, 2009

15. Protecting the press from economic and political pressure in the context of New Information Order.
16. Establishing the media industry as “Public Utility Service” on the basis of public interest and profession.
17. Formulating a Media Development Commission aimed at protecting interests of the press.

Conclusion

Freedom of Information is linked with core notions of democratic governance like transparency, accountability and check and balance. Democratic governance presupposes people's participation in the decision-making process and choosing appropriate policy for their own welfare. But one can hardly be to participate in political process or to make sound judgment regarding policy choices in a meaningful way if they are denied access to information about the government's day-to-day activities, affecting the most important aspects of public life.

In the conclusion it can be safely pronounced that with the adoption of a strong freedom of information law, Bangladesh will very soon able to join a long list of nations towards guaranteeing this important right, which can eventually add values in achieving the targets of the MDGs by the year 2015. Indian first Prime Minister J Nehru justified the necessity of press freedom saying, “I would rather have a completely free press with all the dangers involved in the wrong use the freedom than a suppressed or a regulated press.” Similar sentiment came from the third President of the United States Thomas Jefferson as saying, “Were it left me to decide whether we should have government without newspaper or newspaper without government, I should not hesitate a moment to prefer the later.”⁵²

⁵² Sudhangshu Sekhor Roy, *Sangbadikata, Sangbadik O Sangbadpatra*, (Dhaleswari Prakashani, 1994), P. 117-118.