

PRINT MEDIA

Constitutional Provisions

Fundamental rights of the citizens have been guaranteed in the constitution of Bangladesh which is specially mentioned in a separate chapter having a head note as FUNDAMENTAL RIGHTS. The rights guaranteed in this chapter included several others such as freedom of assembly, freedom of association, freedom of thought, conscience and of speech wherein every citizen is free subject to reasonable restriction to assemble or to form an association or union and to express their opinions either in writing or published through press.

However, there is some reverse side also under which the constitution empowered the Government to curtail or suspend certain guaranteed rights and also to prevent citizens, from taking shelter of the court to implement the Fundamental Rights during the emergency. While the President is satisfied that security or economic life of the state or any part thereof is under threat by war or external aggression or internal disturbances, the President may issue a proclamation of emergency and suspend the rights mentioned above.

Location: Articles 33, 37, 38, 39, 43, 78, 141A, 141B, and 141C of the Constitution of the People's Republic of Bangladesh.

Organizing a Publication Office

Business Licence/Permit

To publish newspapers or magazines in Bangladesh everyone shall have to take prior permission, declaration and registration from the government under the Act XXIII of 1973, which is called The Printing Presses and Publication (Declaration and Registration) Act of 1973.

Location: Parts II and III of The Printing Presses and Publication (Declaration and Registration) Act, 1973; and Sections 7 and 12 of the Act referred to.

Operating Licence/Permit

To publish or print a regular newspaper or magazine in Bangladesh, the interested person must apply to the government with his full address and particulars and also disclose the nature of the newspaper or the magazine he intends to operate, and get approval of the same.

Location: Parts II and III of The Printing Presses and Publication (Declaration and Registration) Act, 1973; and Sections 35 and 37 of the Copyright Ordinance, 1962.

Registration of Printing Facilities

No person is allowed to be a possessor of a press for printing of book and papers unless he is allowed by the District Magistrate within whose local jurisdiction such printing press or facilities is available.

The newspaper, periodical or magazine being the first owner of the Copyright may make an application for Copyright to the Registrar of Copyrights.

Location: Parts II and III of The Printing Presses and Publication (Declaration and Registration) Act, 1973; and Section 39 of the Copyright Ordinance, 1962.

Ownership Laws

To be owner of a newspaper or a magazine in Bangladesh everyone shall have to take prior permission, declaration and registration from the Government under The Printing Presses and Publication (Declaration and Registration) Act, 1973 and an appropriate trade licence from municipal authority.

Location: Parts II and III of The Printing Presses and Publication (Declaration and Registration) Act, 1973; Municipal Trade Licence Act; Section 13 of the Copyright Ordinance, 1962; and Section 39 of the Copyright Ordinance.

Employment Laws

1. Wage Laws

The person working in printing Press i.e. newspaper etc. has a special wage protection or privilege. The government is empowered to constitute a Wage Board for fixing rate of wage which shall be mandatory for all the newspapers to follow.

Location: Newspapers Employees (Conditions of Service) Act, 1974.

2. Working Hours

For printing media workers the working hours have been specially mentioned/stated. A worker shall not work more than 48 hours a week.

Location: Section 6 of Newspapers Employees (Conditions of Service) Act, 1974.

3. Industrial Hazards and Safety Laws

These items have been dealt with in Newspapers Employees (Conditions of Service) Act, 1974, Employment of Labour Standing Order Act, Factories Act and Industrial Relations Ordinance.

Location: Newspapers Employees (Condition of Service) Act, 1974; Employment of Labour Standing Order Act, 1965; Factories Act, 1965; and Industrial Relations Ordinance (I.R.O.), 1969.

(1) Employment of Labour Standing Order Act deals with classification of employees, their rights such as leave and holidays, condition of reemployment, retrenchment procedure, dismissal from work, grievance procedure and so on.

Location: Employment of Labour Standing Order Act, 1965.

(2) Factories Act deals with the safety procedure, health and hygiene, welfare, working hours, leave and holidays with wage etc. of the labour.

Location: Factories Act, 1965.

(3) Industrial Relations Ordinance (I.R.O.), 1969 is aimed to amend and consolidate the law relating to the formation of trade unions, the regulation of relations between employers and workmen and the avoidance and settlement of any differences or disputes arising between them. In short, it deals with the trade union rights and remedies etc. of the workers.

Location: I.R.O.—1969.

4. Security/Police Clearance

There is nothing to take clearance from the Police Department for publication of newspapers but one must take authentication of declaration from the District Magistrate before publication of such newspapers.

Location: The Printing Presses and Publication (Declaration and Registration) Act, 1973.

News Production

General Provisions

1. Security of the State

(1) Sedition

By any word or signs or visible representation if any one condemns the creation of Bangladesh or endangers the sovereignty or creates, excites disaffection against the government shall be charged under sedition and shall be punishable in accordance with the law.

Location: Sections 123A and 124A of the Penal Code; and Sections 16 and 18 of the Special Powers Act, 1974.

(2) Secrecy Act

No one is allowed to publish any photograph, sketch, plan or model or document which is a restricted area or place or a confidential document.

Location: Section 3A of the Official Secrets Act, 1983.

2. Libel

He who knowingly publishes defamatory matter will be held strictly responsible whether he will be the originator of it or not. Both civil and criminal action may be taken against the offender. Criminal action may be taken under the the Penal Code while civil action may be taken by bringing a suit for injunction restraining the publication of the defamatory statement and also by instituting a suit for damages for injury to reputation occasioned by the publication of defamatory statements or news.

Location: Section 501 of the Penal Code. Law of Torts.

3. Obscenity

If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the

minds of the persons into whose hands it may come, it will be an obscene publication punishable under law.

Location: Section 292 of the Penal Code; and Sections 3 and 4 of the Indecent Advertisement Prohibition Act, 1963.

Specific Provisions

1. Arrests and Crime Coverage

For any Publication endangering the safety of the country or to excite disaffection against the lawful Government or for causing interruption in judicial proceedings there are Provisions providing Penalties.

Location: Sections 123A, 124A, and 228 of the Penal Code; and The Special Powers Act, 1974.

2. Judicial Proceedings

If it appears to the Government that any newspapers, books or documents contain any treasonable or seditious matter which promotes feeling of enmity or hatred between different sects or classes of citizens the Government may forfeit such books, documents and newspapers which may apply to High Court Division for remedy. On such application there shall be hearing and evidence to be given to prove the nature of tendency of books, newspapers or documents and consequently order shall be passed.

Location: Sections 99A, 99B, 99E, 99F, and 99G of the Code of Criminal Procedure.

3. National Security and Public Order Provision

If any author, editor, printer and publisher or any person produces or makes any prejudicial report or distribution or sells any report of that nature knowing it to be such shall be punished unless he can prove that such documents were made or printed with the permission or under the authority of the government but if the government fears that the publication of such document may interfere in the interest of the security of the country, its relation with foreign states or public order, the government shall before publishing such matters/documents, make order for the printing of such documents by any authority specified and who shall within 72 hours decide whether or not to publish it. And the person affected by such order may appeal to the Government within 7 days

of passing of such order and Government shall refer appeal to District Judge, who after giving the appellant an opportunity of being heard, shall consider the appeal and submit the report along with his recommendations to the Government and the Government shall pass an order according to such recommendations.

Location: Sections 2(d), 2(f), 2(g), 16, 17, and 18 of The Special Powers Act, 1974; and Chapters VI, VIII, XIV, and XV of the Penal Code.

4. Public Morals

If any person sells, lets and hires, publicly exhibits or in any manner puts into circulation for public exhibition any obscene objects, photographs, songs or publishes any proposal and pays any sum or delivers any goods as lottery without Government approval or offers prize in connection with any trade is called act against the public morals.

Location: Sections 292, 295A, 499, and 501 of the Penal Code.

5. Privileged Communication and Privacy

The Constitution provides that no person shall be liable and prosecuted in any Court in respect of publication by or under authority of Parliament of any reports, papers or proceedings.

Location: Article 78(4) of the Constitution of People's Republic of Bangladesh. Law of Torts.

6. Regulation of the Press

(1) Business Laws

To be the owner of a press to publish newspapers or magazines, the owner must have permission from the District Magistrate under The Printing Presses and Publication (Declaration and Registration) Act, 1973.

Location: Parts II and III of The Printing Presses and Publication (Declaration and Registration) Act, 1973; and Section 39 of the Copyright Ordinance, 1962.

(2) Municipal Regulation

To be owner of a press one must have a trade licence from the local municipal authority after paying proper fees to the Government.

Location: Municipal Laws.

(3) Taxes

Owner of a press must pay taxes regularly as per provision of the tax laws of the country.

Location: Income Tax Provisions; Municipal Laws.

(4) Unfair Practices

One who is aggrieved in the publication of any news item or article whether direct or indirect the concerned individual can apply to the press council or a file defamation suit or cases against the publisher and printers for adequate reliefs.

Location: Section 12 of the Press Council Act, 1974; and Sections 499 and 501 of the Penal Code. Law of Torts.

ADVERTISING

Constitutional Provisions

Nothing is mentioned specifically in the constitution.

Location: Nil.

Organizing an Ad Agency

No provision but certain formalities to be observed to organize an Ad Agency such as:

1. To obtain a Trade Licence from Dhaka Municipal Corporation to establish an Advertising Agency.
2. To enlist with newspapers.
3. To pay a security deposit with Newspaper Publishers and Owners Association.

Location: Nil.

General Limitations on Messages/Content

1. Obscenity

Location: As mentioned in the printing media.

2. Public Morals

Location: As mentioned in the printing media.

3. Consumer Protection

Location: Nil.

4. Marketing Restriction

Location: Nil.

5. Advertising Code

Location: Nil.

BROADCAST MEDIA

Since there is no Broadcast Media in Bangladesh in Private Sector, information is nil.

FILM

Constitutional Provisions

If not restricted otherwise, every citizen shall have the right to enter upon any lawful profession or occupation or to conduct any lawful trade or business.

Location: Article 40 of the Constitution of the People's Republic of Bangladesh.

Organizing a Film Company

No specific provisions.

Location: Nil.

Limitations on Content

1. Security of the State

(1) Sedition

(b) Secrecy Acts

Location: As printing media.

2. Libel
Location: As printing media.
3. Obscenity
Location: As printing media.
4. Copyright
Location: As printing media.
5. Public Morals
Location: As printing media.

Coverage of Cultural Minority Groups

No specific provisions.

Location: Nil.

Consideration Regarding Culture and Tradition

No specific provisions.

Location: Nil.

PART B

A COMMENTARY ON MASS MEDIA LAWS AND INDUSTRY CODES

Historical Perspective of Media Laws

In this subcontinent, which now comprises Bangladesh, India and Pakistan, the name Mr James Augustus Hicky is remembered as the founder of newspaper. Mr Hicky used to introduce himself as "the Printer to the Honourable Company", i.e. the East India Company. His two-sheet newspaper, *Bengal Gazette* or *Calcutta General Adviser*, criticized the servants of the East India Company in abusive language. He did not even spare Warren Hastings—the Governor General—and his wife. Of course, he had to suffer a lot for his abusive criticism of the Company servants published in his newspaper. He was deprived of the privilege of circulating his newspaper through the General Post Office. He was also prosecuted in a number of libel cases.

After Hicky, a few persons published several newspapers but all of them had to assure the Governor General that they would never go against the regulations of the Company. Pre-censorship was imposed on *Madras Gazette* by the Military Secretary and free postage facilities were later withdrawn when it protested against pre-censorship. Thereafter, Bombay and Madras newspapers didn't dare oppose the Government. Mr William Duane, editor of the *Bengal Journal*, was sent 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 the line to deport the recalcitrant editors or to deny postal facilities to them as punishment for incurring the displeasure of the Governor General.

For a long time there was no law or regulation in respect of publishing newspapers. It was in 1799 that regulations were first made

asking the newspapers to print the names of the publisher and the editor and to submit the printing materials for a prior scrutiny. Deportation was made the punishment for violation of the regulation. But Lord Hastings abolished the pre-censorship and made the editor liable for any publication found injurious to the public interest or affecting the authority of the Government.

During this period James Silk Buckingham proved himself a valiant fighter for the freedom of the press. Lord Hastings was convinced to some extent by the tireless campaign of Mr Buckingham and relaxed some of the existing restrictions.

Raja Ram Mohan Roy in his three papers also continuously advocated for the freedom of the press. John Adam who became Governor General of India after Lord Hastings, took a different view and issued an ordinance requiring that everything be printed under licence from the Governor General. The proprietor or editor was asked to file applications for the licence, furnishing the name or names of the printer and publisher, their places of residence, location of the press and the name of the newspaper. If there were any changes, a fresh application was to be submitted. The Governor General could revoke the licence. Publication of the newspaper without licence was made punishable. Under the regulations, the magistrate had the power to attach and to dispose of the unlicensed printing press. Penalties were prescribed for non-compliance of the regulations.

During the period of Lord Bentinck and Sir Charles Metcalfe, a more liberal attitude was shown to the press. Sir Metcalfe was an ardent advocate of the liberty of the press. Consequently, the Bengal Regulations of 1823 and Bombay Press Regulations of 1825 and 1827 were repealed. A new act was passed in 1835, which was made applicable to all the territories of the East India Company. Under the new act, the editor, printer and publisher were to give only a declaration on the place of the publication. Since the passing of the new act, the press in India, particularly in Bengal, Bombay and Madras, developed rapidly. It is said that Sir Charles Metcalfe liberated the press in India.

Lord Ellenborough, faced with a peculiar problem, directed that "official documents and papers were in no case to be made public or communicated to individuals without the previous consent of the Government to which they belong". He thus restrained the officials from disclosing the official secret, and the Official Secrets Act came into existence.

In 1857, Lord Canning introduced Act XV of 1857 to regulate the

establishment of printing presses and to restrain the circulation of printed books and papers. Under the new act any observation or statement impugning the motives or designs of the British Government either in England or in India or anything tending to bring the said Government into hatred or contempt or excite disaffection were prohibited. In 1872, the drama *Neel Darpan* was staged. This drama disclosed the reign of terror unleashed by the indigo planter. The Government, to protect the interests of the indigo planter, passed the Dramatic Performance Act of 1876 restricting the performance of drama.

In 1878, the Vernacular Press Act was passed to bring the publishing of newspapers in the local languages of the subcontinent under "better control". The Vernacular Press Act, however, could not subdue the local language press. The newspapers took the role to oppose the Government and the Government measures to curtail the liberty of the press. Consequently, Mr Gladstone felt it better to repeal the Act. The Government of India, by notification dated 25 June 1891, further restrained the rights of the press, even in Indian states. The said notification prohibited the publication of newspapers in a native state without the permission of the political agent. The political agent could drive away an editor from the native state and could prohibit his re-entrance without the written permission of the political agent for defying the notification. At once the Indian National Congress protested against the said notification.

In 1908, the Newspapers (Incitement to Offences) Act was passed. This empowered a magistrate to seize a printing press if he was convinced that the newspapers printed any material therein which contained any incident relating to incitement to murder or to act of violence or to an offence under the Explosive Substance Act. The result of this Act was that several newspapers which were sympathetic to terrorist activities ceased publication. The Indian Press Act was passed in 1910. The Indian Press Act of 1910 required a security deposit by every person having a printing press. Further there was provision by forfeiture of the deposit in all cases where there was anything published directly or indirectly, by inference or suggestion or by implication to incite to murder or to any offence under the Explosive Substance Act of 1908 or to any act of violence, or to induce any officer from his allegiance of his duty, to encourage or incite any person to interfere with any administration of law or with the maintenance of law and order. Once the security deposit of a

person had been forfeited, if he wanted to make a fresh declaration, he was required to deposit a higher amount than the previous one. If the offence was committed again, the security money, the printing press and all copies of the newspaper were forfeited. Section 5 of the Press and Registration of Books Act of 1867 also provided that the printer and publisher had to make a declaration, otherwise the newspaper printed and published in India could not be transmitted by post. There was mild agitation among the patriotic people against the Indian Press Act of 1910. Mr Gokhale and Mr R.N. Mudholkar, members of the Select Committee of the Legislative Council, expressed their note of dissent against the Act. They severely criticized the Indian Press Act of 1910. After the bomb attack on Lord Hardings, the provisions of the 1910 Act were further tightened and fresh declarations were demanded for various minor reasons, which led in turn to a demand for the repeal of the Indian Press Act. In the case of *New India* edited by Mrs Besant, the Madras High Court remarked: "Section 3(1) imposes a serious disability on persons desiring to keep printing presses." Lord Chelmsford used the Indian Press Act to chastise the editors. Mrs Besant, the editor of *New India* was prohibited from entering the Bombay presidency. The Criminal Law Amendment Act of 1913, and the Defence of India Regulations were used to silence any agitation and criticism.

Mr Horniman, a leader of the Press Association, was deported. Of course, later he was permitted to resume publication under censorship and with a security of a few thousand rupees. The situation was so intolerable that in 1921 a Press Law Committee was appointed under the Chairmanship of Sir Tej Bahadur Sapru. The Sapru Committee, after taking the evidence of the journalists, made a recommendation to repeal the Acts of 1908 and 1910 and to amend the Registration of the Press and Books Act.

In 1931, the Indian Press (Emergency Power) Act was passed, in which the local Government was empowered to forfeit the security and where no security had been deposited, to declare the press to be forfeited. Power was also conferred on the postal and the customs authorities to seize articles in the course of transmission if it was suspected that the package may contain articles, inciting to or encouraging commission of any offence of murder or offence involving violence.

In the early 1940s, there was the August movement of 1942 in India and also the mass uprising in 1945 and 1946 against British

imperialism, which encouraged the press to be more vocal and free. After the partition of India, although it was expected that the press would enjoy more freedom, in fact, the press of Pakistan in the late 1940s was pro-Government. In 1965, the Pakistan Government promulgated the Defence of Pakistan Ordinance restricting the freedom of the press altogether. The *Daily Ittefaq*, the *New Nation Press* were penalized for criticizing the Government. The history of media law traces its origin to the last part of the 18th century when media laws were introduced to protect the interests of the British rulers and thereafter, the Pakistani rulers. In Bangladesh, the situation is no better as will appear from the passages that follow.

Socio-political and Economic Aspects of the Media Laws

The media laws in this subcontinent were first introduced to restrict the liberty of the press and to protect the interest of the East India Company and its corrupt staff and officers in India. The East India Company in India had also in their service many unscrupulous persons and fortune seekers who came to India to build their own fortunes. Even many petty employees of the East India Company used to think of themselves as masters. Their main concern was to collect by any means, even resorting to oppression. They used to live pompous scandalous lives on the profits of corrupt practices. Mr James Augustus Hicky was the first man to stand against the corrupt officers and their scandalous social life. In his two-sheet newspaper *Bengal Gazette*, Mr Hicky severely attacked these corrupt officers. Not so much for the love of the Indian people but to save his own society from the grip of the corrupt officers, Mr Hicky lashed out at the corrupt officers of the company. But the corrupt officers, with the help of the Government machinery, hit back and Mr Hicky was subjected to a number of punitive actions. He was deprived of the privilege of circulating his newspaper through the General Post Office. Various suits were started against him and he was almost made a pauper. William Duane, editor of the *Bengal Journal*, also had the same fate. He was deported to England for his defiant attitude against the corrupt officers of the East India Company. It may be said here that there were no press laws as such in this country during the later part of the 18th century. The first regulations were passed in 1799 requiring newspapers to print the names of the printer, publisher and editor and to submit all materials to the Government. Any breach of these

regulations was made punishable with the maximum sentence of deportation from India. Pre-censorship was introduced for irresponsible criticism in the newspapers of subjects related to military topics, and attacking of Hindu and Muslim beliefs.

But, pre-censorship came to an end when Heatly, the editor of *Morning Post*, could not be touched for refusing to exclude certain portions from his newspaper because he was an Indian by birth. So Lord Hastings abolished pre-censorship and made the editor responsible for publishing anything affecting the authority of the Government or anything injurious to the public interest. However, Lord Hastings was of the view that the most effective safeguard for the Government was to permit full freedom of discussion by the press as this would help in detecting the weakness of the administration, resulting in strengthening the hands of the administration.

During this period two other persons also played an important part in the fight for the freedom of the press. One was Mr James Silk Buckingham and the other was Raja Ram Mohan Roy. Raja Ram Mohan Roy's papers *East India Gazette* and *Brahman* carried on an incessant fight against the orthodox Hindu social and religious beliefs. He left no stone unturned to fight the superstitions of the Hindu community. His tireless campaign convinced many eminent personalities, both in India and in England, that the newspaper by its disclosure of lapses in administration and its constructive criticism of Government policies could perform a useful function for society.

Governor General John Adam was in favour of curtailing the liberty of the press. He issued an ordinance directing that all matters, excepting matters of a commercial nature, should be printed under licence from the Governor General and the application for the licence should contain the name of the printer, publisher, proprietor and editor, their places of residence, the location of the press and the name of the newspaper as well. If any publishing was done without the requisite licence, there were provisions for penalties and they were imposed for non-compliance with these regulations.

With the advent of the Hindu Renaissance, there was growing pressure on the administration for liberalization of the press. Consequently, Governor General Sir Charles Metcalfe took a liberal attitude towards the press in India and a new act, named Metcalfe Act of 1835, was passed. Under this act, the press in India particularly in three provinces of Bengal, Bombay and Madras developed rapidly. The directors and the powerful officers of the East India Company,

however, were opposed to the liberty of the press. In this connection, the observation made by Mr Edward Thomson may be noted:

It was not the Indian press that he liberated but the British press in India, which existed under a cat and mouse regime in its first days under James A. Hicky in Warren Hastings' time. Physical violence was the main check in its scurrility and irresponsibility. Calcutta society, highly tolerant of immorality and indecorum, disliked frank commentary on its doings, and Hicky was frequently assaulted. As the century ended, Lord Wellesley presiding over a great crisis which permitted the intervention of no scruples and complications (luxuries in any case not much in his time) tightened up control. Journalists had leave to write what he approved; if they worked otherwise, they left India...

It was our policy in those days to keep the natives of India in the profoundest possible state of barbarism and darkness, a policy which, operated outside the Company's own territory...

In India, Metcalfe liberated the press as Governor General and it angered the directors and that powerful immovable mass, the retired officials.

In the first part of the 19th century, the language newspapers devoted themselves to campaigning against the caste system, the suttee system, polygamy and repression by indigo planters and advocating for widow remarriage. The influence of native newspapers was very considerable in the society. The liberty granted under the Metcalfe Act of 1835 helped the native press in their fight against other orthodox ideas and beliefs of Hindu society. But the freedom granted under the Metcalfe Act was withheld after the introduction of Act XV of 1857 by Lord Canning, which regulated the establishment of printing presses and restrained the circulation of printed books and papers in India. The main reason for the introduction of this Act was to restrain the newspapers and the presses—English or vernacular—from circulating anything in favour of the Sepoy Mutiny.

The rapid growth of the local language press irritated the Government. So, the attitude of the officials was hardened towards the language presses. Consequently, in 1878 the Vernacular Press Act was passed. It is said the Vernacular Press Act was passed only to give the Government effective power to suppress seditious writings. But the result was quite the opposite. Instead of taming the presses, the

act enraged Indian feelings. The newspapers, as a whole, went against the Government, at least the tone of press was one of the opposition to the Government. The Act was repealed after only two years by Mr Gladstone, who could feel the pulse of the Indians correctly.

In the later part of the 19th century, India experienced some peasant movements, santal movements, etc. The Indian National Congress came into existence in 1885. On 25 June 1891, by a notification, the Government restricted the rights of the press in Indian states. For the first time, a political party, the Indian National Congress, protested against the action of the Government.

In 1897, the *Times of India*, an Anglo Indian press, committed gross contempt of court in connection with the famous Tilak trial. But the Government showed extreme discrimination by letting off the *Times of India* with a warning only. This discriminating attitude of the British Government was sharply criticized by Gokhale who said: "The terms of race arrogance and contempt in which some of these newspapers constantly speak of Indians, and specially of educated Indians, cut into the mind more than the lash can cut into the flesh."

The beginning of the 20th century was marked by the emergence of terrorist activities in India. In 1907, the Government promulgated the ordinance to control public meetings, this was followed by the Newspapers (Incitement to Offences) Act of 1908. Under the latter act, the magistrate was empowered to seize the printing press if he was convinced that the newspaper had printed any matter inciting murder or acts of violence or an offence under the Explosive Substance Act. The magistrate was even empowered to take an *ex parte* decision. The result was that several newspapers which expressed sympathy with patriotic movements ceased publication in 1908. The Indian Press Act was passed in 1910 requiring a security deposit by every person keeping a printing press and directing the forfeiture of the deposit in all cases where there was any tendency directly or indirectly to oppose Government action. Needless to say public opinion was very high against the harsh provisions of this Press Act. After the bomb attack on Lord Hardings in 1912, the provisions of the Indian Press Act of 1910 were made more harsh and rigid for minor lapses or causes fresh declaration was demanded. But there were protests against those provisions and there were continuous demands for the repeal of the said act. It may be said here that the growing protests clearly indicate the growing influence of the political activities of the Indian National Congress and terrorist organizations as well. The

greater the repression, the louder were the voices raised against it. The Indian National Congress at once urged the Government to repeal immediately all the repressive acts such as the Defence of India Act, the Indian Press Act and the Criminal Law Amendment Act.

The Government crippled the press by using the Criminal Law Amendment Act of 1913 and the Defence of India Regulations. The provisions of these two acts and regulations were used to stop criticism and silence agitation. Press securities were forfeited in many cases by executive order. Many publications were proscribed and presses were closed. Protests had practically no effect on the mind of the rulers. The matter was further aggravated by the legislation based on the recommendation of the Rowlatt Committee. There were agitations throughout the whole of India. Protests were made this time in the form of *Satyagraha*, which included copying, reading and distributing openly the proscribed literature and courting arrest by defying the law.

The situation was tense. In 1921, the Press Law Committee under the chairmanship of Sir Tej Bahadur Sapru recorded the evidence of journalists and recommended the repeal of the 1908 and 1910 acts.

Even after the recommendations of the Sapru Committee, the situation did not change. Section 4 of the Indian Press (Emergency Power) Act of 1931 provided authority to demand the security and to declare the press forfeited if it appeared to them that any press was used for the purpose of printing and publishing any newspaper containing any words, signs or visible representations which

1. incite to or encourage or tend to incite to or encourage the commission of any offence of murder or any cognizable offence involving violence, or
2. directly or indirectly express approval or admiration or any such offence or of any person, real or fictitious also has committed or is alleged or represented to have committed any such offence.

It may be noticed here that the British Government introduced more repressive press laws only to thwart the growing national movement for independence. But the introduction of repressive press laws could not prolong the British rule in India, which ended in August 1947 with the partition of India. On 14 August 1947, Pakistan came into being but there was no change in the press laws. The laws created in the British regime to cripple the press and curtail the liberty of the newspapers were allowed to continue. The 1952 State Language

Movement directly hit the concept of the unitary form of government. With the State Language Movement, the demand for provincial autonomy came to the forefront. In the 1950s, there was agitation throughout East Pakistan demanding autonomy for the province. In 1958, martial law was promulgated to silence the agitation. In 1965, war between India and Pakistan broke out. The military government of Pakistan promulgated the Defence of Pakistan Ordinance. The Defence of Pakistan Ordinance of 1965 and the Defence of Pakistan Rules were issued by the military rulers to suppress the newspapers nakedly. The publication of the *Daily Ittefaq* was stopped under the Defence of Pakistan Rules. The *New Nation Press* was also forfeited by the Government.

Bangladesh fought a bloody war and on 26 March 1971, the sovereign People's Republic of Bangladesh was born. A concise reference about the ownership of newspapers and periodicals in Bangladesh and the laws respecting it is appropriate here. In 1972, four daily newspapers and a periodical were found abandoned and their ownership vested with the Government under P.O. 16 of 1972. In June 1975, the Newspaper (Annulment of Declaration) Act was passed annulling the declaration of all the newspapers in Bangladesh but four. For the management of those four papers, a Management Board was constituted under the Government Owned Newspaper (Management) Act of 1975. Thus, Bangladesh stood free of newspapers and periodicals, except those owned and managed by the Government. Fortunately, these two laws were repealed soon and the newspapers, etc. started functioning. Two dailies and two weeklies are, however, still managed by trusts created by the Government.

Present Mass Media Laws

Constitutional Provisions

The fundamental rights of a citizen are granted in the Constitution of the People's Republic of Bangladesh. Freedom of the press is also a fundamental right of a citizen. Article 26 of the Constitution made all existing laws inconsistent with the provisions of the fundamental rights void. Any person or citizen aggrieved as a result of an infringement of any fundamental right may seek remedy before the High Court Division of the Supreme Court under Article 102(1) of the Constitution. Article 102 of the Constitution provides the means of enforcement of the fundamental rights granted by the Constitution.

Of the articles, the most important one touching the press is Article 39. Article 39 of the Constitution runs as follows:

- 39(1) Freedom of thought and conscience is guaranteed.
- (2) Subject to any reasonable restrictions imposed by law in the interest of the society 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 to freedom of speech and expression; and
 - (b) freedom of the press are guaranteed.

From the language of Article 39 of the Constitution, it is clear that, although freedom of thought and conscience is unlimited in Bangladesh, freedom of speech and expression and freedom of the press suffer from some restrictions. While Article 39 guarantees limited freedom of the press, Article 49 provides protection of home and correspondence to the citizen. 43)

It is obvious that while mediemen have freedom of expression, a citizen has a constitutional protection of his home and privacy, correspondence and communication. Mediemen have no right to enter anybody's home for collection of news, nor can they pry into a citizen's secrets. Mediemen also have no right to put a tape recorder into the office of a political party.

Reference should also be made to Article 33, which empowers the Government to detain anybody, including journalists, in prison, without trial for six months initially.

This Article provides immunity to the Government against wrongful confinement of a citizen. The Government may detain any mediemen for six months without trial in prison, and there is no denying the fact that the Government is doing it under the Special Powers Act.

Mr Justice Muhammad Shafi, interpreting Article 8 of the Constitution of Pakistan of 1956, which is almost identical with Article 39 of our Constitution, observed:

The purpose of the Constitution is that there should be as few restrictions on the freedom of the press as in the light of the conditions prevailing in a country are absolutely essential. In fact, no restriction should be placed on the freedom of the press except

in time of grave emergencies, such as war, civil commotion on a large scale, and even then only in respect of matters involving the security of the state.

Mr Blackstone has answered the question about the extent of the freedom of the press in the following words:

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restrictions upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiment be pleaded before the public; to forbid this is to destroy the freedom of the press; but if he published what is improper, mischievous and illegal, he must take the consequences of his own temerity. . . . To publish (as the law does at present) any dangerous or offensive writings, which when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of the peace and good order, of Government and religion, the only solid foundation of the civil liberty.

However, in Article 39 of the Constitution, we find that unrestricted freedom of thought and conscience and right of freedom of speech and expression and freedom of the press limited under reasonable restrictions exists side by side. The Indian Supreme Court has observed:

Putting restraint on the freedom of wrongdoing of one person is really securing the liberty of the intended victims. Therefore, restraints of liberty should be judged not only subjectively as applied to a few individuals who come within their operations but also objectively as securing the liberty of a far greater number of individuals.

Of course, the language of Article 39 presupposes the restrictions referred to can be imposed only by law. Without legislative authority the executive cannot impose any restriction and freedom of the press, freedom of speech and expression cannot be put to any limitation. So, in order to impose a restriction, the legislature must make a law solely for the purpose.

Unfettered or absolute rights of freedom of the press do not and cannot exist in any modern state. Mr Ghazi Shamsur Rahman, an

eminent scholar of Bangladesh, has said, "The very existence of a legal right requires that the rights of all persons who possess such right should be equally maintained; it follows, therefore, that nobody can be allowed to so exercise his legal right as to prejudice the exercise of a similar right belonging to another individual. This inherent limitation of a legal right extends to fundamental rights as well." It is true that a citizen can exercise his fundamental rights in a normal situation but there may arise abnormal situations which may create compelling circumstances to depart from the normal working of the administration.

Part IXA of our Constitution deals with the abnormal situation/emergent situation. If the President is satisfied that a grave situation is prevalent in the country and the security or the economic life of the country is threatened by war or external aggression or by internal disturbances, he may proclaim emergency. When the proclamation of emergency is issued, generally, the fundamental rights are suspended. Article 141A of the Constitution speaks of issuance, period and revocation of the emergency. Article 141B of the Constitution talks about the suspension of fundamental rights and Article 141C of the Constitution deals with the suspension of enforcement of fundamental rights during emergency. During emergency, the executives become all powerful. They can take any executive action regardless of fundamental rights since the operation of fundamental rights remain suspended during emergency.

Besides the proclamation of emergency, other restrictions are also found out in the language of Article 39(2) of the Constitution. Article 39(2) of the Constitution clearly says that the right of every citizen for freedom of speech and expression and freedom of the press are guaranteed but such freedom is not available to endanger the security of the state or the friendly relations with foreign states or public order or to affect decency or morality or to do contempt of court, defamation or incitement to an offence. It may be noted here that there are provisions in general laws prescribing the penalty for committing such acts or offences.

No citizen is allowed, by any act, to endanger the security of the state. Similarly, no citizen can do anything which may disturb Bangladesh's friendly relations with the foreign states. There are special provisions in law for dealing with the offences of endangering public order, committing contempt of court, defamation, incitement to an offence and doing anything affecting decency and morality. The Penal

Code, Special Powers Act and the Contempt of Courts Act prescribe the punishment for those offences. So, it is clear that although under Article 39(1) freedom of thought and conscience is guaranteed, freedom of speech and expression and freedom of the press have been put under reasonable restrictions.

Another Article of the Constitution deserves reference. Article 78 prescribes the privileges and immunities of Parliament and its members. Rules made by Parliament provide that mediemen may enter Parliament only upon due permission and not otherwise and that the Speaker alone has the authority to authorise publication of papers, documents and reports placed or submitted in Parliament and that no mediaman has any right to take any document out of Parliament without the permission of the Speaker. Contempt of Parliament, which consists of hurting the prestige of the Parliament or its committees and insulting its members in any way, is a punishable offence. //

Salient Aspects of Laws and Industry Codes

Laws relating to National Security

No state can allow any persons to do or to express anything which may endanger the national security, or public peace or the public safety. So there are laws prohibiting, restricting such acts and prescribing punishments for the commission of such acts.

The Penal Code 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 of the Penal Code 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 of the Penal Code provides punishment for furnishing false statements in connection with an election. Sections 292 and 293 of the Penal Code prescribe punishment for obscenity and immoral acts. Similarly Sections 499, 501 and 502 of the Penal Code deal with the offences of defamation and libel.

The Criminal Procedure Code of 1898 was introduced to lay down the procedure relating to investigation and trial of criminal offences. Section 99A of the Criminal Procedure Code details the procedures of forfeiture of seditious books, pamphlets etc.

The Post Office Act was passed in 1869 and the Telegraph Act in 1885. Section 27B of the Post Office Act empowers any authorized officer of the post office to detail any postal article which he suspects to contain seditious matter. Similarly, Section 5 of the Telegraph Act empowers the Government or any officer authorized by the Government to suspend the transmission of any message on the grounds of public safety.

The Dramatic Performance Act of 1876, which has now application all over Bangladesh except Dhaka City, was passed to stop the performance of a drama which was directed to show the repression by the indigo planters and East India Company officers, although it is said in the preamble that the Act was passed to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene. But, in practice, the Act was aimed at prohibiting any performance of drama which was anti-East India Company or their corrupt officers and the indigo planters. It is strange to know that although the British rule ended in 1947, yet the Act passed to perpetuate their rule has been kept alive till today.

The Foreign Relations Act of 1932 was introduced to prohibit the publication of statements likely to prejudice the maintenance of friendly relations between the Government and the Government of certain foreign states. After the liberation of Bangladesh, this Act has been allowed to continue. Under this Act, Sections 99A to 99G of the Code of Criminal Procedure and Sections 27B to 27D of the Post Office Act of 1898 shall apply in the case of any book, newspaper or other document containing matter which is defamatory of a head of state.

The Official Secrets Act of 1923 consolidates the law relating to official secrecy. Section 3 of the Act provides penalties for spying. A person who, for any purpose is prejudicial to the safety or interest of the state—

- (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited places; or
- (b) makes any sketch, plan, model or note which is calculated to be

or might be or is intended to be, directly or indirectly, useful to an enemy; or

- (c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan or model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

shall be considered guilty of an offence under this section. Punishment has been prescribed for violating the provisions of this Act. Section 3A prohibits the making of any photograph, sketch, plan, etc. of any prohibited area. The Act makes it a punishable offence if any person voluntarily receives any secret official code or passes over and publishes any official secret in a newspaper.

The Contempt of Court Act came into existence in 1926.

Any writing calculated to bring a court or judge of the court into contempt or to lower his authority is a contempt of court ... Further, any writing calculated to obstruct or interfere with the due course of justice or the lawful process of the court is a contempt of court.

Article 108 of the Constitution of the People's Republic of Bangladesh is as follows:

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power, subject to laws to make an order for the investigation of or punishment for any contempt of itself.

Freedom of the press does not necessarily mean a free licence to write anything abusive, false and malicious to assassinate the character of a person and to lower his prestige in the society. No one can have the privilege to write and publish anything wrongly or falsely to the prejudice of others. It must be remembered that judges by reason of their office cannot be made a subject of criticism in the press for administration of justice. Any such act by the press shall amount to interference with the administration of justice and an act of contempt of Court.

Apart from the Contempt of Court Act, there are certain provisions in the Criminal Procedure Code, in the Penal Code and in the Civil

Procedure Code which prescribe punishment for contempt of Court. Sections 480 and 485 of the Criminal Procedure Code and Sections 172 to 175, 178 to 181 and 228 of the Penal Code and Order 39 Rule 2 of the Civil Procedure Code deal with and prescribe punishment for a contempt of Court and violation of the Court's order.

The object of the Contempt of Court Act of 1926 and other provisions in the Criminal Procedure Code, Penal Code and Civil Procedure Code prescribing punishment for a Contemner is not only to protect the Judges personally from Imputations but also to protect the people from the mischief they would incur if the sanctity and the authority of the Court is impaired. Needless to say that the maintenance of the dignity, prestige and authority of the Courts is a mark of Civilized Society and as such, a public concern. So also it must be ensured that the course of justice is not obstructed in any way because the confidence of the public in the Courts of Law must be maintained unimpaired. If the Courts or the Judges administering Justice are made the subjects of ridicule and disrepute and if the confidence of the public in them is shaken the fabric of the society would crumble. So freedom of press and expression cannot be permitted to go to such a length as to bring the Judges or the Courts of Law into contempt. Consequently, necessary restrictions have been imposed under the Contempt of Courts Act and other laws.

The Censorship of Film Act was passed in 1963. In the preamble of the Act it is said that the Act has been enacted to provide for the censorship of cinematograph films and for the decertification of certified films in the interest of law and order or in the interest of the local film industry or any other national interest and matters incidental thereto or connected therewith. From the preamble, it is clear that the Act was passed for two reasons; firstly, to protect the local film industry and secondly, to restrict the exhibitions of cinematograph films which would appear to the film censorship board as anti-Government or otherwise not liked by the authorities. Section 4 of the Act empowers the authority to issue and to refuse the certificate for the exhibition of films. Even the District Magistrate has been given wide powers to suspend the exhibition of a film if he is of the opinion that a certified film should not be exhibited within his local area. Section 7 of the Act empowers the Government to decertify any certified film on the grounds of public interest, and law order situation. By this Act, a filmmaker cannot make a film criticizing directly or indirectly any lapse or misdoings of the Government. His

freedom for making films has been put under restrictions under the Act. If he makes a film not suited to the likings of the authority, the film may not be certified and if certified exhibition of film runs the risk of being suspended by District Magistrates and consequently decertified by the Government. The Cinematograph Act of 1918 provided for regulating exhibitions by means of cinematograph under licence from the proper authority.

The Indecent Advertisement Prohibition Act was passed in 1963. In the Act, the word "indecent" is defined as whatsoever may amount to any incentive to sensuality and excitement, impure thought in the mind of ordinary man of normal temperament and has a tendency to deprave and corrupt those minds and which is deemed to be detrimental to public morals and calculated to produce pernicious effect. The Act prohibits the publication of any advertisement which is indecent. It is needless to say that the Act was passed to save society from the influence of indecent and immoral publicity.

The Special Powers Act was passed in 1974. It is stated in the preamble of the Act that it was enacted to provide for special measures for the prevention of certain prejudicial activities, for more speedy trial and effective punishment of certain grave offences and for matters connected therewith. The Special Powers Act provides for detention without trial. Sections 16, 17 and 18 of the Act, in the name of prohibition of prejudicial acts, curtail the liberty of the press. Further, an offence under this Act is non-bailable. Provisions of the Special Powers Act need slight elaboration. "Prejudicial act" means any act which is intended or likely, among other matters, to prejudice the economic or financial interest of the state. "Prejudicial report" means any report, true or false, of a prejudicial act. The Act provides that mediemen responsible for prejudicial reports shall be punishable with imprisonment for five years. The Act further provides that the Government shall have the power to prohibit publication of newspapers or periodicals containing prejudicial reports. The Act further allows the Government to impose pre-censorship on any publication. It will thus appear that the Government has the power to pre-censor or prohibit any publication and get the editor or the publisher of the publication in jail on the ground of publication of a true report which subjectively, the Government thinks to be prejudicial. It goes without saying that the Special Powers Act is a repressive law.

The Copyright Ordinance of 1963 makes the infringement of copyright a punishable offence under Section 66 of the Ordinance. Section 13

of the Ordinance defines the first owner of the copyright. Section 57(i) defines what shall not constitute an infringement of copyright. The section lays down that it is not infringement of copyright if there is a reproduction in a newspaper, magazine or similar periodical of an article on current economic, political or social or religious subjects unless the writer or owner of the copyright reserves the copyright of such article and right of reproduction to himself.

The Children Act was passed in 1974. Section 2 of the Act defines "child" as one who is under the age of 16 years. Section 17 of the Act prohibits the publication of reports in any newspaper, magazine or newsheet disclosing any particulars of any case or proceeding in any court in which a child is involved and which leads directly or indirectly to the identification of such child. Even the publication of the picture of the child is prohibited by the Act.

The Printing Presses and Publication (Declaration and Registration) Act of 1973 was passed to provide for the declaration and registration of printing presses and the printing and publication of newspapers and for registration of books. Under Section 4 of the Act, the keeper of the press is required to make a declaration in a specific form before the District Magistrate. Section 6 of the Act requires the name of the editor to be printed on the newspaper. Under Section 7 of the Act, the printer and publisher of the newspaper are required to appear in person or by agent authorized in their behalf in accordance with the rules before the District Magistrate within whose local jurisdiction such newspaper shall be printed or published and are required to make a declaration in a specific form. If the District Magistrate refuses to authenticate the declaration, the person may refer an appeal to the Government, whose decision thereon shall be final. Section 20 of the Act empowers the District Magistrate to cancel the authentication of the declaration and under Section 20A the Government may declare certain publications forfeited and to issue search warrant for the same. The Court also may, by order in writing, declare the press responsible for publishing unauthorized newsheets and unauthorized newspapers to be forfeited to the Government. In Part VII of the Act, penalties for violating provision of the Act are prescribed.

The Press Council Act of 1974 was enacted to establish a press council for the purpose of preserving the freedom of press and maintaining and improving the standard of newspapers and news agencies in Bangladesh. It is provided in Section 11(2) of the Act that the Council may, in furtherance of its objectives, perform these functions—

- (a) to help newspapers and news agencies to maintain their freedom;
- (b) to build up a code of conduct for newspapers and news agencies and journalists in accordance with high professional standards;
- (c) to ensure, on the part of newspapers and news agencies and journalists, the maintenance of a high standard of public taste and to foster a due sense of both the rights and responsibilities of citizenship;
- (d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism;
- (e) to keep under review any development likely to restrict the supply and dissemination of information of public interest and importance;
- (f) to keep under review cases of assistance received by any newspaper or news agency in Bangladesh from any foreign source including such cases as are referred to it by the Government or are brought to its notice by any individual, association of persons or any other organization;

Provided that nothing in this clause shall preclude the Government from dealing with, in any manner it deems fit, any case of assistance received by a newspaper or news agency in Bangladesh from any foreign source;

- (g) to undertake studies and research of national and foreign newspapers, their circulation and impact;
- (h) to provide facilities for proper education and training of persons in the profession of journalism;
- (i) to promote technical or other research;
- (j) to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or in the running of news agencies;

Provided that nothing in this clause shall be deemed to confer on the Council any function in regard to dispute to which the Industrial Relations Ordinance, 1969 (XXII of 1969) applies;

- (k) to do such other acts as may be incidental or conducive to the discharge of the above functions.

It appears from the above that the Press Council's duty is not only to preserve the freedom of the press, to help newspapers to maintain their independence, and professional standards but also to build up a code of conduct for the journalists to maintain a high professional standard. The Press Council is interested in playing a significant role in maintaining the freedom of the press and building up a high journalistic ethic. So, on receipt of a complaint, the Press Council can

hold an inquiry and if it is satisfied that a newspaper or news agency has offended the standard of journalistic ethics or an editor or a working journalist has committed any professional misconduct, it may warn, admonish or censure the newspaper, the news agency, the editor or the journalist. The Press Council has been enacted to fulfil the purpose of the unwritten requirement of the Constitution about the fundamental rights of the citizen against an unscrupulous, irresponsible newspaper, news agency or journalist.

As regard the freedom of the press, the Act ensures the rights of the journalist about the disclosure of the source of information. Newspaper agencies or journalists cannot be compelled to disclose the source of any news or information published by that newspaper or reported by any news agency, editor or journalist. In this connection, it must be stated that the Press Council Act contains no provision empowering the Council to take any action against the Government for their alleged encroachment into the area of guaranteed freedom of the press. Neither does it appear that the Government even cares to have recourse to the forum of the Press Council before taking any action against newsmen. There have been demands that the Press Council should be armed with powers of interference against Governmental excesses, if any.

It must further be stated that the country was under martial law for the last three decades with intermittent breaks of democratic rule and accordingly, martial law regulations had been issued curtailing the freedom of the press. Martial law is no longer in force and so it is not necessary to describe the regulations.

Law of Defamation—Defamation is a Tort and a defamed person can sue a person who defames in a Civil Court for injunction for damages. It is also a criminal offence and a defamed person can start a criminal proceeding against a person who defames and the offender is liable to be punished under the Penal Code. So a defamed person has two civil remedies:

1. a suit for injunction under Section 54 of the Specific Relief Act of 1877 for restraining the publication of a defamatory statement; and
2. a suit for damages for injury to reputation occasioned by the publication of the defamatory statement.

Similarly, a defamed person can take the shelter of a Criminal Court against a person who defamed him. Sections 499, 500, 501 and

502 of the Penal Code prescribe punishment for defamatory statement and libel.

Employment Laws

The Employment of Labour (Standing Order) Act I of 1965 was passed for regulating conditions of service, employed in shops and commercial and industrial establishments and for matters connected therein.

Section 3 of the Ordinance says: "In every shop or commercial or industrial establishment of workers and other matters incidental thereto be regulated in accordance with the provisions of the Act— Provided that any shop or commercial or industrial establishment may have its own rules regulating employment of workers or any class thereof, but no such rules shall be less favourable to any worker than the provisions of this Act."

The Industrial Relations Ordinance of 1969 was promulgated to amend and consolidate the law relating to the formation of trade unions, the regulation of relations between employers and workmen and the avoidance and settlement of any differences or disputes arising between them.

The Industrial Relations (Regulation) Ordinance of 1982 was promulgated to regulate industrial relations with a view to achieving higher national productivity and maintaining industrial peace and discipline. Section 2 of the Ordinance says that all words and expressions used in this Ordinance shall, unless the context otherwise requires, have the meaning assigned to them in the Industrial Relations Ordinance of 1969. It may be noted here that subject to the other provisions of the Newspaper Employees (Conditions of Service) Act of 1974, the provisions of the Industrial Relations Ordinance of 1969 have been made applicable to or in relation to, newspaper employees as they apply to or relate to workers within the meaning of the Ordinance.

Further, the provisions of the Employment of Labour (Standing Orders) Act of 1965 has also been made applicable to every newspaper establishment when 20 or more newspaper employees are employed or were employed on any day of the preceding 12 months as if such newspaper establishment or industrial establishment to which the aforesaid Act applies and as if newspaper employees are workers within the meaning of that Act.

Newspaper Employees (Conditions of Service) Act of 1974 was passed to regulate certain service conditions of newspaper employees. Under this Act the trade union right of the newspaper employees and their right to seek remedy in the labour court have been guaranteed.

Section 3 of the Act provides that the provisions of the Industrial Relations Ordinance of 1969 shall apply to or in relation to newspaper employees as they apply to, or in relation to workers within the meaning of that Ordinance. Section 15 of the Act lays down that the provisions of the Employment of Labour (Standing Orders) Act of 1965 shall, subject to the provisions of the Act, apply to every newspaper establishment wherein 20 or more newspaper employees are employed or were employed on any day of the preceding 12 months if such newspaper establishment were an industrial establishment to which the aforesaid Act applies under subsection (4) of Section 1 thereof and as if a newspaper employee was a worker within the meaning of that. Besides, in this Act, the provision for wage board, leave for working journalists, hours of work of newspaper employees, the constitution of provident fund, etc. have been provided.

The Bangladesh Sanghad Sangstha Ordinance of 1979 was promulgated for the establishment of a national news agency for undertaking and promoting news agency services in Bangladesh, news and for matters connected therewith and incidental thereto. It is needless to say that the main function of the Sangstha is to carry out the responsibility of a national news agency of Bangladesh by securing news for home and abroad, disseminating the same to the people of Bangladesh in general through mass media and organizing transmission of national news abroad. So, this Ordinance also indirectly encourages the building up of a news agency with a high standard of journalistic ethics.

Deviation between Laws and Codes Enacted and in Practice

It is understood very well that although Article 39 of the Constitution of Bangladesh guarantees freedom of thought and conscience, the freedom is not an unfettered one. It is subject to some 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. But sometimes the law creating restrictions is applied unreasonably, which amounts to negation of the fundamental rights.

The creation of the Special Powers Act of 1974 and its random application by the executives has acted always as a threat to fundamental rights of the citizens. Sections 16, 17 and 18 of the Special Powers Act 1974 have placed restraint on the freedom of the press. In fact, no restriction should be placed on the freedom of the press except in times of grave emergencies, such as war, civil commotion on a large scale and even then only in respect of matters involving the security of the state. But this Act is applied for political purposes by the party in power even for honest criticism. Moreover, the Penal Code already provides such restrictions. Therefore, this Act need not be used for restricting the press. There are instances when journalists were harassed and newspapers were closed under this Act for their honest discharge of duties. Certainly, the creation of the Special Powers Act of 1974 and its application in a peaceful time is a gross deviation from the constitutional provisions relating to fundamental rights.

Besides these statutory deviations, there are deviations in practice in the application of other laws. Section 7 of the Printing Presses and Publications (Declaration and Registration) Act, 1973, provides the legal formality to be observed by the printer and publisher of every newspaper for publication of the newspaper. The printer and the publisher shall have to appear in person or by an authorized agent before the District Magistrate within whose local jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate originals, a declaration in Form B. Under Section 12 of the Act the District Magistrate shall authenticate the declaration and he is the sole and final authority in this respect. But in practice, now in Bangladesh the application is sent to the Ministry of Home Affairs which decides after police enquiry whether the declaration shall be authenticated and the newspaper shall be permitted to be published. Undoubtedly, it is a gross deviation from the provisions of existing laws as instead of taking into consideration the genuineness of journalist or publisher, political consideration is the factor for authentication.

Similarly, although on 20 January 1978 it was notified by a circular from the Ministry of Education of Bangladesh that the certificate issued by the Bangladesh Drama Censor Committee at Dhaka shall be valid for the whole of Bangladesh, the local administration outside Dhaka insists on the local police certificate.

Sections 292 and 293 of the Penal Code and the Indecent Advertisement Prohibition Act, 1963, among others prohibit and make the selling, distributing and public exhibition of obscene books, drawings, painting representation and any other obscene object whatsoever a crime. But, obscene films and advertisements are being shown under the certificate of the Film Censorship Board: So, there are deviations from laws in many respects and the deviations are made, generally, to serve the purpose of the executives and others exercising administrative powers.

Trends and Prospects

The mass media laws in Bangladesh have an overall trend to curtail the liberty of the press, particularly so far as the enactment of the Special Powers Act is concerned and its continuance. The deviation made in practice, in respect of authentication of declaration under the Printing Presses and Publications (Declaration and Registration) Act of 1973 also shows the trend of limiting the publication of newspapers and periodicals by the Government.

Mass media can thrive properly under a democratic system. Democracy plays a vital role in the growth of mass media laws beneficial to the people. In Bangladesh, the prospects of mass media cannot be said to be blurred since the people, the journalists and all are striving for a democratic rule.

In the materialisation of golden expectations the Superior Courts in Bangladesh can play a vital role, as they have demonstrated previously. The Constitution of the People's Republic of Bangladesh has guaranteed freedom of press, speech and freedom of expression. Although often the rulers, in their own interest, try to throttle the right of expression, the Superior Courts are there to protect the fundamental rights of the citizens. The High Court Division of the Supreme Court of Bangladesh, under Article 102 of the Constitution upon an application by an aggrieved person, can declare any arbitrary act and oppressive order of any authority performing function in connection with the affairs of republic, as unlawful and without lawful authority. Reference may be made to two decisions of the High Court Division of the Supreme Court of Bangladesh. In Writ Petition No. 298 of 1980, the High Court Division held that "if a person making a declaration can satisfy that the requirements contained in

clauses (a) to (h) of sub-section (2) of Section 12 of the Act, have been fulfilled, the District Magistrate has no other option but to authenticate the declaration without referring the matter to the Government". Consequently the District Magistrate's memo expressing the inability of the Government to grant permission to authenticate the petitioner's declaration in respect of *Daily New Nation* was declared without any lawful authority and the District Magistrate and the Secretary of the Ministry of Home Affairs of the Government of Bangladesh were directed to authenticate the declaration of the petitioners as printer and publisher of the *Daily New Nation*. Similarly in Writ Petition No. 547 of 1980 the High Court Division declared the opinion of the Deputy Inspector General of Police that the declaration in respect of Banglar Bani could not be authenticated, to be illegal and without any lawful authority.

So it may not be a wild dream to expect the growth of mass media in Bangladesh free from all shackles and bondage in future.