

Beyond the Lens: Assessing Media Trials and Privacy Rights in Bangladesh

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ABSTRACT: The growing number of media trials in Bangladesh is threatening the protection of human rights, especially the right to privacy. This ubiquitous phenomenon intertwines with the fundamental fabric of societal dynamics in this nation. The media's vilification of an individual before trial threatens their right to privacy, demonstrating the reciprocal nature of media trials and the judicial process. A qualitative method is used to critically assess media trials' impact on basic rights. The research examines the complex interplay between media trials and the right to privacy. This article thoroughly investigates how media infiltration violates private rights. It also talks about finding the balance between protecting the media's valued independence and putting reasonable limits on them, as required by local laws and global policy frameworks. Key findings show that privacy and media freedom are constitutionally protected. The study notes that extensive media trials influence public opinion, throw doubt on justice, and invade privacy. Media freedom and privacy must be balanced within the nation's emerging democracy. The paper suggests setting specific digital media rules, creating a social media regulating agency, and restricting police information sharing during investigations to prevent prejudiced media trials. Journalistic integrity and impartiality must be promoted, and government regulatory authorities should be reinforced to regulate media outlets. In the changing democratic landscape of Bangladesh, this article takes on the difficult job of looking into ways to find a balance between media freedom and the inalienable right to privacy.

KEYWORDS: Media trails, right to privacy, Fair trial, Excessive media effects, Legal instruments, Balancing.



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I. INTRODUCTION

The media is a formidable instrument and holds a position of utmost significance within the global landscape. Various media forms, including newspapers, television channels, electronic media platforms, and similar mediums are colloquially referred to as the "fourth estate." In contemporary society, it is irrefutable that the media stands as the paramount instrumentality for the widespread propagation of information and opinion.¹ The idea of "media trials," which gained popularity in the 20th century, refers to the media's propensity to conduct independent investigations concurrently with court procedures to influence the public. The right to privacy must be considered when deciding on media cases.² TV stations, newspapers, news websites, et cetera., all start reporting their version of events to appease viewers' and readers' cravings for sensational stories. The practice commonly referred to as investigative journalism is recognized as a lawful activity under the jurisdiction of Bangladesh. The term "Media Trial" or "Trial by media" pertains to the detrimental consequences of media portrayal on an individual's reputation in Bangladesh, wherein the public is influenced to form opinions on their guilt or innocence prior to the pronouncement of a court verdict.³

In democratic nations, the media undoubtedly plays a significant role, but too much media influence can be detrimental to the legal sector. It is a well-established observation that the amplification of sensitive matters through various media channels, such as television, newspapers, and social media, tends to exert an adverse influence on the progression of extant legal proceedings.⁴ It creates hurdles throughout the entire legal process. This paper will examine the excessive media trials that impact court procedures and violate people's human and constitutional rights. This research will try to find a probable solution to this critical situation.⁵ Human rights are being violated due to the unusually high number of media trials occurring daily in

¹ Isha Tyagi & Nivedita Grover, "Media Trials And The Rights Of The Accused", (16 January 2015), online: Academike <<https://www.lawctopus.com/academike/media-trials-and-the-rights-of-the-accused/>>.

² Ibid.

³ Gk Today, "Media Trial", (2017), online: <https://www.gktoday.in/media-trial/#google_vignette>.

⁴ Khaled Saifullah Nokib, Effect of Trial by Media in Bangladesh: A Critical Analysis Daffodil International University, 2023) [unpublished].

⁵ Ibid.

Bangladesh. The media is frequently used by law enforcement to expose the accused. Both the right to a fair trial and press freedom are guaranteed by Article 39 of the Bangladeshi Constitution.⁶ However, in Bangladesh, where the right to a fair trial is an unabridged and absolute one, and the freedom of the press is subject to reasonable constraints, both are regarded as fundamental rights.⁷ Bangladesh is legally required to uphold freedom of expression as a fundamental right because it is a democratic nation. However, it is imperative to acknowledge that the wanton exploitation of media freedom in Bangladesh has resulted in a recurrent transgression of the sacrosanct principle of a fair trial within the realm of criminal law. The right to a fair trial, an indispensable cornerstone of the legal system, is consistently compromised as a consequence.⁸ People can be easily persuaded, which is why media attention is employed in several sensational cases.⁹

The considerable influence of the media on the legal system has recently come to light. As internet news sources increase quickly, the situation only gets worse. Additionally, media uses various social networking sites like Facebook, Twitter, et cetera., to disseminate information. Therefore, news items are shared quickly with a extensive audience. Individuals tend to form judgments about the accused or the victims without prior knowledge of the incident's specifics, sometimes due to the influence of captivating headlines. It is a serious violation of both the victim's privacy and the accused's rights.¹⁰ The free press and fair trial debate grew tense and created barriers to the administration of justice as communication increased thanks to printing and other technologies.¹¹ Ensuring the freedom of the judiciary is severely hampered by media trials. Checks and balances on the press must be established as soon as feasible.

⁶ Fahim Uddin Raihan & Hossain Sazzad, "Media Trial and its effect over Judicial Proceedings", (2021), online: NILS Bangladesh <<https://nilsbangladesh.org/media-trial-and-its-effect-over-judicial-proceedings/>>.

⁷ Fariha Anjum, "The conundrum of free media vs fair trial", *The New Age* (17 January 2021), online: <<https://www.newagebd.net/article/127372/the-conundrum-of-free-media-vs-fair-trial>>.

⁸ Gyan P Agarwal & Shyam Lal College (Evening), eds, *Media and the new world order* (Delhi: Wisdom Publications, 2012).

⁹ Shaikh Rezanul Haque, "Pre Trial Media Perception: Bangladesh's Perspective", *The Daily Sun* (13 October 2019), online: <<https://www.daily-sun.com/printversion/details/431126/Pre-Trial-Media-Perception:-Bangladesh%E2%80%99s-Perspective>>.

¹⁰ Faiqa Tahjiba, "Shortcoming from media trials in Bangladesh", (22 January 2022), online: *Jus Corpus Law Journal* <<https://www.juscorpus.com/shortcomings-of-media-trial-in-bagladesh/>>.

¹¹ Shaikh Rezanul Haque, *supra* note 9.

The paper of Saifullah Nokib (2023)¹² analyzes the shifting relationship between media coverage and Bangladeshi justice. The author correctly points out that public focus on dramatic crimes and media coverage might affect public image and legal justice. Nokib skillfully illustrates the problems of media sensationalism and prejudice by setting these findings in media ethics and constitutional principles. A potential improvement for the study would be to provide more detailed suggestions or strategies for addressing the problems brought up by media experiments. He points out the flaws and presents excellent suggestions for minimizing media sensationalism, but additional specific answers would make the article more practical. Herzig and Abmann (2014)¹³ explore the larger impact of media on society, highlighting its historical position as a key source of knowledge. They shed light on how the media may affect public opinion and impact individual characterizations outside of judicial verdicts, which is especially crucial in the context of media trials. In his article, Haque (2022)¹⁴ examines the alarming deterioration of press freedom in Bangladesh, emphasizing the challenges that media organizations may face in preserving objectivity in the face of corporate and political influences. This highlights the critical equilibrium that must be maintained between media autonomy and external forces.

The lack of comprehensive research and methods for adequately tackling the widespread problem of media trials and protecting private rights is a shared flaw across all studies. This paper examines the complex interaction between media trials, privacy rights, and legal procedures in Bangladesh while addressing international norms. This research contributes to media freedom and privacy discussions in developing democracies like Bangladesh by recommending regulatory solutions and stressing journalistic ethics and government monitoring.

¹² Khaled Saifullah Nokib, *Effect of Trial by Media in Bangladesh: A Critical Analysis* Daffodil International University, 2023) [unpublished].

¹³ Bardo Herzig & Sandra Aßmann, "How to define media in a mediatized society? a media pedagogical proposal inspired by theoretical ideas of castells, Luhmann and Peirce" (2014) 24 *MedienPädagogik: Zeitschrift für Theorie und Praxis der Medienbildung* 18–29.

¹⁴ Emdadul Haque, "Declining trends of press freedom in Bangladesh", Prothom Alo (13 May 2022), online: <<https://en.prothomalo.com/opinion/declining-trends-of-press-freedom-in-bangladesh>>.

II. METHODS

This research adopts a qualitative technique to analyze the Media Trials and the Right to Privacy in Bangladesh. The main purpose of this research is to assess the current state of the law and practice regarding media trials. The influence of such a trial load on the exercise of democracy will also be explored. The selection of the qualitative approach was based on its ability to facilitate an in-depth examination of human perspectives and personal observations, enabling researchers to explore the complicated and frequently left-out dimensions of the subject matter. This research uses secondary data from different journal articles, newspaper articles, books, thesis papers, and reports on the official websites of many institutions, as well as essential law blogs. The primary focus of this study is to analyze domestic laws and practices, with additional consideration given to international laws and practices to gain a comprehensive understanding of the research subject.

III. CONCEPTUAL AND THEORETICAL FRAMEWORK

The media assumes a pivotal and indispensable function within the framework of a democratic nation.¹⁵ The phrase "trial by media" gained prominence during the latter part of the twentieth century and at the beginning of the twenty-first century. It serves as a descriptor for the impact exerted by televised and print media coverage on an individual's standing,¹⁶ thereby generating a pervasive perception of culpability detached from any official legal adjudication.¹⁷ In every democratic society, a vigorous debate ensues between proponents of a predominantly unrestricted free press and advocates who prioritize other considerations.¹⁸ This chapter will analyze the

¹⁵ Vhaishali, "Media Trial In Context To Jessica Lal Murder Case", online: Legal Service India <<https://mail.legalserviceindia.com/legal/article-10967-media-trial-in-context-to-jessica-lal-murder-case.html>>.

¹⁶ Seema Yadav, "Media Trial Effects upon Human Rights and Judiciary" (2019) 5 World Wide Journal of Multidisciplinary Research and Development 18, online: <<https://wwjmr.com/archive/2019/7/1223/media-trial-effects-upon-human-rights-judiciary>>.

¹⁷ Raihan & Sazzad, *supra* note 6.

¹⁸ Seema Yadav, *supra* note 13.

keywords of media trials and privacy as a human right. This analysis will be the conceptual and theoretical framework of the chapter.¹⁹

A. Background of Media Trial

The history of Media Trials dates back to the twentieth century, despite the expression being introduced somewhat recently. Its significance can be traced to the case of Roscoe "Greasy" Arbuckle in 1921, who was initially acquitted by the court. However, after the media declared him "liable," he lost his status and prominence in society. In the 1995 renowned case of O.J. Simpson, the media propelled the case and had a dramatic effect on the audience, regardless of the court's position. The media has a huge influence on the public's perspectives.

The media acts as a mirror and presents the public with facts they must be aware of. The media serves as the voice of society. Media has a good role in a nation. Media can affect anyone. It can alter a person's perspective. In many situations, the media deserves respect, particularly when it exposes fraud, scandals, deceit, and corruption. The broader public only learned about these things because of the media. Media plays a significant role in eradicating many harmful behaviors, such as child labour and child marriage. Due to the media, it is easier for people to know what is going on in the world. But the media also has a bad side, which this paper discusses.²⁰

B. Media trials and infringing people's rights

The concept of "Media Trial" refers to the influence exerted by television and newspaper coverage on an individual's reputation, resulting in the formation of a widely held perception of feeling guilty, irrespective of any court judgment.²¹ The presence of dedicated media is crucial in the pursuit of truth; nevertheless, when it surpasses its limitations, it may become a source of distress. Individuals residing in the subcontinent, including Bangladesh, exhibit a notable inclination towards certain subject matter,

¹⁹ Gifty Oommen, "Privacy as a Human Right and Media Trial in India" (2014) 3:3 *Age of Human Rights Journal* 102–121, online: <<https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/2128>>.

²⁰ Parul Sardana, "Media trial: boon or bane", (1 October 2020), online: Ipleaders <<https://blog.ipleaders.in/media-trial-boon-or-bane/>>.

²¹ Aditya Pratap & Aditi Dixit, "Are Media Trials Violating Fundamental Rights?", (29 April 2021), online: Law Zilla <<https://lawzilla.in/world-of-law/current-affairs/are-media-trials-violating-fundamental-rights/>>.

rendering them unable to sustain their composure among fierce debates.²² In the absence of any substantiation from the source, the individuals proceed to independently undertake a trial and ascribe the designation of "guilty" to one of the accused parties.²³ In conjunction with social media, it is imperative to acknowledge that news media cannot be regarded as entirely objective.²⁴ At times, the method in which news is presented lacks a substantive objective, instead aiming to depict someone as a purveyor of defamation against their reputation.²⁵ For many years, newspapers were the principal source of public knowledge in Bangladesh. Considering the prevailing circumstance of widespread illiteracy among the populace during that age, it may be posited that newspapers exerted a somewhat constrained influence, even within that context. The current situation has changed due to increased public consciousness, improved literacy rates, and, notably, the proliferation of visual and electronic media, which has facilitated an unparalleled revolution in information dissemination. The film star is no longer the sole individual occupying the public limelight.²⁶ Various individuals, including politicians, business experts, media workers, professionals from other fields, and proponents of socialist ideologies, employ the media as a means to further their interests and advocate for their respective agendas. The act of publishing an individual's life narrative without their agreement, beyond the boundaries of public record, would be considered a violation of their right to privacy. Individuals possess the entitlement to safeguard their privacy, as well as that of their family, marital union, reproductive activities, parental responsibilities, child-rearing education, and related matters.²⁷ It is impermissible for any party to disseminate information pertaining to these aspects without obtaining explicit consent from the concerned individual. A person's right to privacy is, however, subject to the following restrictions: first, if the information has become public record, the right to privacy ceases to exist. Therefore, while exercising their constitutional right, the media must

²² Nokib, *supra* note 4.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Nasir Shikder, "Right to privacy and modern media", *The Daily Star* (5 November 2013), online: <<https://www.thedailystar.net/news/right-to-privacy-and-modern-media>>.

²⁷ *Ibid.*

equally respect the individual's right to privacy, which is not adequately following the media.²⁸

C. Media Trial & Contemporary Bangladesh

The expression trial by media has become well-known around the globe. In reality, many are subjected to media trials in several nations, including Bangladesh.²⁹ Media Trial is the process wherein the media takes a case and makes it public by stating whether or not the accused is guilty. In the majority of instances, the media plays a vital role in a fair trial. The media trial is the most talked-about issue currently. Prior to initiating legal proceedings and announcing the verdict in a court of law, it is observed that the general public tends to pass judgment on social media platforms. When an individual is acquitted by the legal system of our nation, the media of our country plays a significant role in shaping public perception by portraying the acquitted individual as either a heroic figure or a malevolent entity. It can also be denoted as a "media trial."³⁰

Notably, a media trial is roughly defined as when the media takes a matter into its own hands and deems a person guilty or innocent before or after the court's judgment. Consecutively, the phenomenon occurs when the media intentionally or unintentionally proclaims an individual as guilty or innocent or creates a pervasive perception of "guilt or innocence,"³¹ either before or after the court's verdict.³² Since Bangladesh has chosen a common-law system, no one may be found guilty until their guilt is established in a court of law.³³

Constitutionally, the Supreme Court's only responsibility is to conduct a fair trial.³⁴ But the reality in Bangladesh, the presentation of the accused to the media following his arrest sparked an uproar. The manner in which they are exposed to the media without legal action establishes a presumption of

²⁸ Ibid.

²⁹ Amir Sayem, "Regarding media trial in Bangladesh", *The Eastern Herald* (18 August 2021), online: <<https://www.easternherald.com/2021/08/18/media-trial-in-bangladesh/>>.

³⁰ Abir Hasan Suzon, "Stop Media Trial for Protect the Human Rights", *The Daily Asian Age* (18 July 2022), online: <<https://dailyasianage.com/news/290009/stop-media-trial-for-protect-the-human-rights>>.

³¹ Sruhwamsi Musunuri, "Trial by Media, Is it fair?", online: *Civil Service India* <https://www.civilserviceindia.com/subject/Essay/trial-by-media6.html#google_vignette>.

³² Amir Sayem, *supra* note 27.

³³ Noru Tsalic, "Unpacking the Israeli judicial reform", *The Times of Israel* (22 March 2023), online: <<https://blogs.timesofisrael.com/unpacking-the-israeli-judicial-reform/>>.

³⁴ Raihan & Sazzad, *supra* note 6.

guilt in the public eye, which constitutes serious defamation. In 2012, a High Court division ordered law enforcement agencies not to reveal any suspicions in the media prior to the case against him being proved in court. In the past two years, Bangladesh's high court has prohibited the release of photographs of criminal suspects before their trial. However, even though all parties had been abiding by the ban for several days, no one is now. This is a severe infringement of human rights. Every individual has the right to life, liberty, and security. This privilege cannot, in any manner, be compromised.³⁵

In a recent case of a student at Dhaka University who was accused of rape, the suspect (Majnu) was brought before the media after he was arrested. The media endeavored to establish the veracity of the claim that "Majnu was the actual perpetrator of the sexual assault." The media initiated a subsequent inquiry and said that the first allegations against the defendant were found to be inaccurate, precipitating significant tumultuous circumstances throughout the trial. People were split into two groups: those who wanted to hang him and those who thought he was innocent. This led to confusion and disorder in the community. In another recent case, "Sushanta's death is still a mystery." Police are still looking into it, but the news has talked about how his girlfriend may have had something to do with his death.³⁶ The news coverage has made people angry at his girlfriend, and now people see her as the person who killed him. The impact of the media goes beyond a media trial; it also contributes to the dissemination of false information about the victim's age and identity and that of the accused. Media activism is on the rise in Bangladesh, but it is vital to note if it is only satisfying the public's demand for entertainment or calling a spade a spade.³⁷

D. Media trial and right to privacy

Privacy is a basic human need that cannot be removed. It helps people keep their independence and sense of self.³⁸ The right to privacy is not a new phenomenon; nonetheless, it has become a sensitive topic in the digital age,

³⁵ Ibid.

³⁶ Amir Sayem, *supra* note 27.

³⁷ Ibid.

³⁸ Sadiya S Silvee & Sabrina Hasan, "The right to privacy in Bangladesh in the context of technological advancement" (2018) 1:2 International and Comparative Law Journal, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3298069>.

particularly due to the difficulty of protecting rights in the digital age.³⁹ Although the fourth amendment of the U.S. Constitution⁴⁰ is regarded as the genesis of the notion of the right to privacy, allusions to the concept may also be found in the Qur'an, the Bible, Jewish law, the Code of Hammurabi, and ancient China. In reality, countless eminent thinkers have tacitly but indirectly addressed the subject in their writings. The right to privacy is considered a fundamental entitlement afforded to the residents of the People's Republic of Bangladesh.⁴¹ Multiple provisions under Part III of the Constitution of the People's Republic of Bangladesh, alongside internationally recognized human rights instruments such as the Universal Declaration of Human Rights (UDHR), address various aspects of human rights.⁴²

E. Media trial effects on the privacy of human rights

During a media trial, not only the suspects and accused suffer from undue exposure and breach of their rights, but also the victims. When the media unilaterally undertakes an undercover operation, it breaches the privacy of a third party and exposes itself to legal liability.⁴³ An ongoing discourse has emerged wherein proponents of media trials contend that such proceedings serve to safeguard the rights of the aggrieved parties and contribute to the effective dispensation of justice. Critics argue that media trials are responsible for infringing on individuals' rights and the emergence of various negative consequences. Nevertheless, the ongoing discourse revolves around a contentious deliberation of the entitlements, encompassing both the rights of the aggrieved parties and the rights of the media.

The Salman Shah case exemplifies the negative impact of media trials on both the accused and the victims' relatives. The abrupt and unexpected death of Dhallywood megastar Salman Shah, exacerbated by media scrutiny, typifies this scenario. After an extensive inquiry, the Police Bureau of

³⁹ Ibid.

⁴⁰ Sadiya S Silvee, "The Right to Privacy Regime in India: A Controlled and Authoritative Approach" (2023) 10:2 CMUJASR, online: <https://cmuj.cmu.ac.th/asr/journal_de.php?id=254>.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Gk Today, supra note 3.

Investigation (PBI) determined Salman Shah's death was suicide.⁴⁴ The PBI found that Salman Shah committed suicide owing to an extramarital connection with Shabnur, strained relations with his wife Samira Haq,⁴⁵ family strife, and psychological sorrow. Though actress Shabnur denied any intimacy and extramarital relationship with Salman Shah, his wife said the opposite.

Even though Salman died 28 years ago, his wife and her family still have to deal with unfair hatred from fans. Yet, the investigation is not complete. One of the accused, Rabeya Sultana, through videos on social media, claimed that Salman's wife was the main culprit behind his death.⁴⁶ It is important to note that they have not been charged with a crime yet. Surprisingly, in the suicide note, Salman did not mention anyone's name behind his suicide.⁴⁷

In Bangladesh, media trials affect the privacy of humans. When a case arises and a person is accused of a crime and court proceedings begin, they are presumed innocent until otherwise proven guilty by the court. However, the media often prematurely publishes news suggesting the person will be convicted, violating their privacy. The media should not be allowed to break any more human rights. It is the responsibility of the media to educate all members of society about the choices it makes on various news stories without promoting any misinformation. Due to its vast audience, it can educate, influence, convince, amuse, and motivate the country's citizens.⁴⁸ In Bangladesh, people are familiar with organizations like the United Nations, governments, and NGOs in relation to human rights. The media also has an important impact. The media can increase awareness of human rights concerns, expose transgressions, and encourage individuals to take action. The media may also have adverse effects on human rights. Whether the

⁴⁴ Report TBS, "Salman Shah committed suicide for feud over Shabnur: PBI", The Business Standard (24 February 2020), online: <<https://www.tbsnews.net/entertainment/salman-shah-was-not-murdered-he-committed-suicide-pbi-47345>>.

⁴⁵ Ibid.

⁴⁶ "'Salman Shah didn't kill himself, he was murdered', an accused said", The Daily Sun (7 August 2017), online: <<https://www.daily-sun.com/post/246259>>.

⁴⁷ TBS, supra note 45.

⁴⁸ Palaksinha, "Human Rights and Media Trial", (2020), online: Legal Desire <<https://legaldesire.com/human-rights-and-media-trial/>>.

media has a favorable or detrimental effect, its function should be understood.⁴⁹

F. Jurisprudential Justifications

In a contemporary state, the rule of law and the function of law both play a significant role in the lives of its citizens. In addition to recognizing some rights and freedoms, the law also imposes certain responsibilities and places restrictions on the enjoyment of those rights. According to Immanuel Kant, "Rule is the collection of circumstances under which the will of each individual may coexist with the will of others, in accordance with the universal law of liberty." Kant said that the law itself is concerned with the exterior practical relationships between individuals. Kant's Rule is the whole of conditions under which the arbitrariness of one man is compatible with that of others in accordance with the universal law of freedom. According to the classical concept of liberty, the government is justified in intervening with behavior that threatens the liberty of others.⁵⁰

The law governs people's lives to create a society where individuals can enjoy their liberties without interruption. Hobbes says, "The purpose of laws, which are just rules, is not to stop people from doing what they want to do, but to keep them from hurting themselves through their wants, rashness, or lack of judgment, just as hedges are put up not to stop travelers but to keep them on the path."⁵¹ In this situation, it helps to know that people who are involved in a "media trial" should know that their legal freedom is not limitless and that they need to act within reasonable limits to make sure they do not interfere with the rights of the average person, who has some of the same rights. One of the downsides of a media trial is that it can hurt a person's dignity and freedom in their quest to get all the attention. In this situation, it is important to remember that the Preamble to the Universal Declaration of Human Rights talks about a human family where everyone has equal and unchangeable rights and dignity. "Media Activism" often takes away people's freedom and violates their dignified attempt to be too active

⁴⁹ Emmaline Soken-Huberty, "What's the Role of the Media in Protecting Human Rights?", (2021), online: Human Rights Careers <<https://www.humanrightscareers.com/issues/whats-the-role-of-the-media-in-protecting-human-rights/>>.

⁵⁰ Gifty Oommen, *supra* note 16.

⁵¹ Thomas Hobbes, *Leviathan: or the matter, forme and power of a commonwealth ecclesiasticall and civil* (Lexington, KY: Seven Treasures Publications, 2009).

without being aware of the consequences. This can happen by accident or on purpose. This is a sign of danger, but there is no denying that the media has played a significant part in some cases.⁵²

IV. DOMESTIC STANDARDS OF MEDIA TRIALS

The Bangladesh constitution protects both the freedom of the press and the right to a fair trial as fundamental rights, based on constitutional law, international human rights law, and examples from Bangladesh.⁵³ As a democratic nation, Bangladesh is required by law to protect the fundamental right to freedom of expression.⁵⁴ In contrast, the right to a fair trial is a basic aspect of Bangladeshi criminal law that is frequently disregarded due to the abuse of media freedom.⁵⁵ In Bangladesh, the media infringes on people's rights, compromising their privacy thereby violating their human rights.⁵⁶ This study will analyze the legal framework for media trial and privacy as a human right, as well as talk about the related laws in Bangladesh and international laws.⁵⁷

A. Constitutional Mandate for Media Trials & Fair Trials

In Bangladesh, the right to a fair trial and freedom of the press are constitutionally enshrined. Bangladesh being a democratic nation is constitutionally bound to protect freedom of expression as a fundamental right. It is a constitutionally mandated right outlined in Article 39, which expressly⁵⁸ stipulates provisions regarding journalistic freedom.⁵⁹ The right to a “fair trial” is also included in Article 35 of the Constitution of

⁵² Ibid.

⁵³ Hussain Mohammad Fazlul Bari, “Legal Aspects of Media Trial in Bangladesh: Free Press versus Fair Trial Dilemma” (2013) 13:1 & 2 Bangladesh Journal of Law 89–104, online: <<https://www.biliabd.org/wp-content/uploads/2021/08/Hussain-M.-Fazlul-Bari.pdf>>.

⁵⁴ Ibid.

⁵⁵ Zahid Rahman, “Media trial’s impact on judicial proceedings”, Daily Observer (18 October 2021), online: <<https://www.observrbd.com/news.php?id=335921>>.

⁵⁶ Ibid.

⁵⁷ Furqan Ahmad, “Human Rights Perspective of Media Trial” (2015) 1:1 Asia Law Quarterly 47–62, online: <https://www.klri.re.kr/cmm/fms/FileDown.do?atchFileId=FILE_000000000008489QgVRx&fileSn=0&stat=journal¶m_gubun=D&data_no=14>.

⁵⁸ M F Hussain & Ishrat Zerin, “An overview of the new Contempt of Court Act”, The Daily Star (20 April 2013), online: <<https://www.thedailystar.net/news/an-overview-of-the-new-contempt-of-court-act>>.

⁵⁹ Sabina Yeasmin & Khan Ferdousour Rahman, “Implementation of press law for protecting human rights in Bangladesh” (2012) 4:1 Society and Change 7–28.

Bangladesh.⁶⁰ Article 35 (3) of the Constitution of Bangladesh recognizes⁶¹ the right to a fair trial,⁶² stating that every person accused of a criminal offence is entitled to a speedy, public trial by an independent and nonpartisan court or tribunal established by law.⁶³ A fair trial is a defining feature of a democratic government based on the rule of law. The right to a fair trial and the freedom of the press are regarded as fundamental rights in Bangladesh, but the former is total and unrestricted, and the latter is subject to reasonable limitations. Although media activism plays a crucial part in ensuring a fair trial, biased and unrestrained interference by the media can have a negative impact on the administration of justice.⁶⁴

B. The Right to Privacy in the Constitution of Bangladesh

In Bangladesh, the right to privacy is a fundamental right. Article 43 of the Constitution of Bangladesh has recognized the right to privacy. This paper already discussed in chapter three the constitutional rights of the right to privacy. Due to the location of Article 43 in Part III of the Constitution,⁶⁵ which contains the Basic Rights protected by Article 26 of the Bangladesh Constitution, the rights stated in Article 43 are consequently fundamental.⁶⁶ Exercising one constitutional right, such as freedom of the press, may sometimes infringe on the right to privacy of others. If an individual asserts that he has a basic right to keep his private life private, the question arises as to whether the right to privacy is a conclusive fundamental right. Article 43 of the Bangladeshi Constitution stipulates that⁶⁷ every citizen has the right to the privacy of his correspondence and other forms of communication.⁶⁸

⁶⁰ Fariha Anjum, *supra* note 7.

⁶¹ Mohammad Zubair, "Right against Self-Incrimination: Bangladesh's Position compared with the USA and India" (2020) 18:1 & 2 Bangladesh Journal of Law 149–151, online: <<https://www.biliabd.org/wp-content/uploads/2021/08/M.-Zubair.pdf>>.

⁶² Sadiya S Silvee, "Article 35: Does it ensure Right to Fair Trial or Resemble?" (2018) 4:2 Journal of Governance and Innovation at 35.

⁶³ Sakin Tanvir, "Whether Article 35 of the Constitution of Bangladesh Contravenes with Section 53 of the Penal Code" (2021) SSRN Journal, online: <<https://www.ssrn.com/abstract=3939603>>.

⁶⁴ *Ibid.*

⁶⁵ Quazi Omar Foysal, "The 'International Crimes' Exception to the Fundamental Rights Regime of the Bangladesh Constitution" in *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary* (Springer, 2023) 229.

⁶⁶ Silvee & Hasan, *supra* note 36.

⁶⁷ Md Zahidul Islam & Asma Jahan, "Right to Privacy: Is It a Fundamental Right in Bangladesh Constitution?" (2015) 1:1 Journal of Asian and African Social Science and Humanities 1–7.

⁶⁸ ABM Hamidul Mishbah, "Bangladesh steps into the data protection regime", *The Daily Star* (8 April 2019), online: <<https://www.thedailystar.net/opinion/human-rights/news/bangladesh-steps-the-data-protection-regime-1726351>>.

Some provisions of the People's Republic of Bangladesh have discussed privacy indirectly. This paper is saying that right to privacy is a fundamental right. Nonetheless, the right to privacy and the freedom of the press seems to be derogable rather than non-derogable within the scope of Bangladeshi law. The deduction, as mentioned above, is supported by the constitutional provisions, specifically Article 141B, which grants the government the authority to curtail or postpone certain fundamental rights enumerated in Part III of the Constitution (fundamental rights), including privacy and freedom of the press, in times of crisis to confront economic or security threats. Furthermore, Article 141C bestows upon the President the power to temporarily halt the use of legal measures to uphold certain rights in times of emergency. These clauses suggest that privacy rights may be restricted in extraordinary situations, in line with the definition and characteristics of rights that can be limited. Although international human rights standards support privacy as a fundamental right, the particular legal framework and emergency provisions in the Bangladeshi Constitution indicate that privacy rights may be restricted during crises to uphold public order and security. Thus, from the Bangladeshi point of view, privacy rights can be limited or restricted under specific conditions outlined in the Constitution. This paper will discuss how media trials infringe on the right to privacy of humans, which is stated in the Constitution of Bangladesh.⁶⁹

C. Other statutory laws

Trial by media, which disrupts public order, can be a barrier to a fair legal trial. Contempt of court is a charge levelled against any person or authority whose actions interfere with court proceedings. Section 2 (8) (a), (b) of the "Contempt of Court Act of 2013" defines⁷⁰ the idea of contempt of court (c), particularly Article 2 (8) (b) & (c), which states that any act, symbol, or sound, whether written or spoken, that manifestly or likely interferes with or impedes judicial procedures constitutes contempt of court. In Bangladesh, there are many ways that the media infringes on people's rights. In accordance with Section 25 of the Evidence Act of 1872, remarks made while in the custody of a police officer are inadmissible as evidence

⁶⁹ *ibid.*

⁷⁰ Hussain & Zerin, *supra* note 51.

against the accused.⁷¹ Only a statement made before the Magistrate that meets the standards of section 164 of the Criminal Procedure Code will be admissible in court. A media report containing many statements from the accused gives the public the impression that the accused has admitted to his guilt, hence, he must be punished. This type of media coverage also heightens the possibility of bias and affects the trial judges' sense of impartiality. The Code of Conduct, 1993 (Rule 16) states: When a journalist is reporting on an under-trial case, he or she must abide by the professional ethics enshrined in that document. However, a journalist must wait until the verdict is revealed before publishing any comment or opinion that could affect a matter still in court.

According to the Suppression of Oppression of Women and Children Act, 2000, Section 14(1) states: In Bangladesh, the publication of the name of a victim of a sexual offence is forbidden by law. Failure to comply with this subsection will result in a maximum two-year prison sentence, a fine of no more than two lac taka (Bangladeshi Currency), or both.

The Children Act of 2013 contains a unique provision for children, Section 28 places restrictions on newspapers that disclose any details of any case or action in which a child is involved and which directly or indirectly leads to the identity of such a kid.⁷² Right to Information Act, 2009, section 7(h) states: by giving someone the go-ahead not to divulge any information that might violate their right to privacy in their personal lives.⁷³

⁷¹ Saira Rahman Khan, "The Use and Abuse of the Laws of Confession in Bangladesh" (2007) Special Issue, Bangladesh Journal of Law 79.

⁷² Md Tuhin Mia et al, "An Analysis of Regulatory Framework of Child Protection in Bangladesh" (2022) 8:1 JAASH 44–58, online: <<https://aarcentre.com/ojs3/index.php/jaash/article/view/260>>.

⁷³ Nasir Shikder, *supra* note 24.

V. INTERNATIONAL STANDARDS OF MEDIA TRIAL

Certain rights recognized by the 1948 Universal Declaration of Human Rights should also be noted. The right of an accused person to a fair and public hearing⁷⁴ by an independent and impartial tribunal in determining his rights and obligations and the validity of any criminal charge against him is covered under Article 10.⁷⁵ The right to be presumed innocent is covered by Article 11, which states: "Every individual accused of a criminal offense possesses the entitlement to be deemed innocent until such time that their guilt is confirmed beyond a reasonable doubt. Article 12 of the document pertains to the fundamental right of an individual to maintain their privacy. According to Article 12, individuals are protected against unwarranted intrusion into their private, family life, residence, or communication, as well as from any defamation or harm to their reputation."⁷⁶ All individuals also have the right to get legal protection from such invasions and attacks.

The right to a fair trial by a judicial body established by law that is competent, independent, and impartial. Article 14(1) ICCPR: Article 14 affirms and defends the right to a fair trial and justice. Article 14.1 lays forth the ground rules: all parties must be treated equally before the courts, and all hearings must take place in open court before a competent, independent, and impartial tribunal, with any verdict or ruling being made public.⁷⁷ Article 17 of the 1976 (ICCPR) requires the State to make sure that people are protected by the law⁷⁸ from "arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor and reputation."⁷⁹

Article 16 of the Convention on the Rights of the Child (CRC) provides⁸⁰ that a state that has ratified the convention is positively required

⁷⁴ Bahma Sivasubramaniam, "The Right of an Accused to a Fair Trial: The Independence of the Impartiality of the International Criminal Courts" (2013).

⁷⁵ David Weissbrodt, *The Right to a Fair Trial Under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights: Articles 8, 10 and 11 of the Universal Declaration of Human Rights* (BRILL, 2021).

⁷⁶ *Ibid.*

⁷⁷ Sadiya S Silvee, "The right to a fair trial", *Dhaka Tribune* (18 February 2018), online: <<https://www.dhakatribune.com/opinion/op-ed/139348/the-right-to-a-fair-trial>>.

⁷⁸ Ilina Georgieva, "The right to privacy under fire foreign surveillance under the NSA and the GCHQ and its compatibility with Art. 17 ICCPR and Art. 8 ECHR" (2015) 31 *Utrecht J Int'l & Eur L* 104.

⁷⁹ *Ibid.*

⁸⁰ Martin D Ruck et al, "The United Nations Convention on the Rights of the Child: Its Relevance for Adolescents" (2016) 26:1 *Journal of Research on Adolescence* 16–29.

to pass legislation safeguarding a minor from any unauthorized intrusion on their right to privacy.⁸¹ The provision of the right to privacy was also adopted in Article 8 of the European Convention on Human Rights,⁸² stating: Although the courts and tribunals have not formally recognized the right, since the 1960s, when the courts have chosen to restrict the scope of the right to privacy inside 'constitutionally protected regions,' the issue of privacy has drawn increasingly more attention.⁸³

A. *The English court*

The English judiciary has established that pre-trial publicity has infringed against the right to a fair trial through the use of the "presumed prejudice" test. According to Collins (year), in the case of *Attorney-General v. Guardian Newspapers Ltd.*, the courts are required to assess whether a breach has occurred by evaluating the immediacy and severity of the prejudice risk associated with the publishing. The courts must consider "the nature of the published material and its presentation, the timing of the publication, the likelihood of its coming to the attention of jurors or potential jurors, the likely impact on the jury, and the jury's ability to comply with any judicial directions intended to neutralize any bias." To ensure a just and equitable legal process, the English jurisdiction⁸⁴ has implemented measures to limit the dissemination of information. According to the Contempt of Court Act of 1981,⁸⁵ the English courts possess the jurisdiction to prohibit or sanction behavior that hinders, biases, or undermines the proper functioning of the judicial system.

B. *Sweden*

In accordance with the constitutional provisions of Sweden, the fundamental right to privacy is duly safeguarded. "The Instrument of Government," "the Act of Succession," "the Freedom of the Press Act," and "the Fundamental Law on Freedom of Expression" collectively serve as

⁸¹ Sonal Makhija, "Privacy & Media Law", (19 July 2011), online: The centre for internet & society <<https://cis-india.org/internet-governance/blog/privacy/privacy-media-law>>.

⁸² William Schabas, *The European convention on human rights: a commentary* (Oxford Commentaries on Interna, 2015).

⁸³ Silvee & Hasan, *supra* note 36.

⁸⁴ Leslie J Moran, "The press and the judiciary: Court and judicial reports in the press in England and Wales" (2014) 9 *Frontiers L China* 131.

⁸⁵ Douglas Ponton & Marco Canepa, "Fair Trial in the Digital Era. English and Italian standpoint" 1 *Media Laws* 1–11.

protective measures that uphold the fundamental right to privacy. The preservation of personal privacy is duly safeguarded by the 1974 Instruments of Government Act. Furthermore, it is worth noting that the establishment of a Press Ombudsman office dates back to the year 1969.

In the past, the Swedish Press Council was responsible for addressing grievances pertaining to violations of journalistic ethics. After the foundation of the Press Ombudsman, the responsibility for addressing complaints was first assumed by the Press Ombudsman, who possesses the jurisdiction to independently examine matters of concern.⁸⁶ Any member of the public may file a complaint with the PO regarding newspaper articles that contravene journalistic ethics. If the complaint is to result in a formal critique of the publication, however, the person to whom the story pertains must offer written authorization.⁸⁷

According to the Swedish Press Council, the average number of complaints per year has increased to between 350 and 400 in recent years, with the bulk of complaints involving coverage of criminal proceedings and infringement of privacy. Furthermore, the Swedish press, radio, and television are governed by a Code of Ethics. The Code of Ethics also establishes privacy rules that must be fulfilled.

C. Indonesia

In Indonesia, while the Constitution does not say anything explicitly about privacy, Article 28G (1) protects people's right to feel safe and respected, which includes privacy. Judgement No. 5/PUU-VII/2010 from the Constitutional Court further upheld privacy rights under this section.⁸⁸ It emphasized the need to limit monitoring powers to stop abuse and protect privacy. The press represents the sovereignty of the Indonesian people,⁸⁹ but its freedom seems to be encountering obstacles, particularly with the implementation of Law Number 27 of 2022 concerning Personal Data

⁸⁶ Sonal Makhija, *supra* note 74.

⁸⁷ *Ibid.*

⁸⁸ Danrivanto Budhijanto, "The Virtual Jurisdiction to Combating Cyberterrorism in Indonesia." (2018) 12:4 *Central European Journal of International & Security Studies*.

⁸⁹ Abdul Haris Nasution, "The Right of Privacy and Freedom of the Press: The Concept of Legal Justice in Indonesia" (2019) 5:1 *Hasanuddin Law Rev* 77, online: <<http://pasca.unhas.ac.id/ojs/index.php/halrev/article/view/1195>>.

Protection (PDP Law).⁹⁰ Although the introduction of the PDP Law is praiseworthy for protecting citizens' privacy rights,⁹¹ it also raises worries about its effect on press freedom. Achieving a nuanced equilibrium between safeguarding personal information and allowing journalists to carry out their vital societal function without unwarranted restrictions or censorship, this legislation includes provisions that protect the privacy of individuals while preserving the freedom of the press.⁹²

Though it came at the cost of infringing on people's right to privacy, the Ferdy Sambo case stands as an example of a media trial. The trial was extensively covered by TV OneNews, which was aired live on YouTube.⁹³ This emphasizes the importance of the media in maintaining accountability and transparency in high-profile cases involving public figures such as top police officers. However because the case's participants' private and legal affairs were made public, there are additional privacy concerns raised by this coverage.⁹⁴ The freedom of the media to cover such situations is crucial for maintaining the rule of law and raising public awareness, but it must be tempered with consideration for the confidentiality and dignity of those concerned. The Ferdy Sambo case highlights the intricate relationship that exists between the freedom of the media, the right to privacy, and the pursuit of justice in the Indonesian judicial system.

⁹⁰ Untung Sumarwan, Arief Hidayat & Lita Tyesta ALW, "The Future of Freedom of Press in Indonesia After the Personal Data Protection Law Era" 8 *Future* 31–2023, online: <<https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1356&context=ilrev>>.

⁹¹ Ananthia Ayu, Titis Anindyajati & Abdul Ghoffar, "Perlindungan Hak Privasi atas Data Diri di Era Ekonomi Digital" (2019) 101 *Pusat Penelitian Dan Pengkajian Perkara, Dan Pengelolaan Perpustakaan Kepaniteraan Dan Sekretariat Jenderal Mahkamah Konstitusi*.

⁹² Sumarwan, Hidayat & ALW, *supra* note 91.

⁹³ Feni Listiyani & Annis Azhar Suryaningtyas, "Ferdy Sambo Trial News onTvOne-News's Youtube Account: Critical Discourse Analysis of Police Image in Virtual Public Conversation" (2023) 3:1 *UMYGRACE* 71–80, online: <<https://prosiding.umy.ac.id/grace/index.php/pgrace/article/view/534/510>>.

⁹⁴ Syafriadi Syafriadi, "Applying Press Law and Online Media Framing in the Case of Brigadier J.'s Murder" (2023) 22:1 *Pena Justisia: Media Komunikasi dan Kajian Hukum*.

D. Japan

The Japan Newspaper Publishers & Editors Association, also known as Nippon Hoso Kyokai⁹⁵ (NHK), was founded in 1946 as an independent and voluntary organization to develop reporting standards to defend and promote media interests.⁹⁶ As part of its mandate, the organization has produced the Canon of Journalism, a set of norms and codes that its members must adhere to. The Canon recognizes the imperative for media organizations to make ongoing decisions about the dissemination and withholding of information, given the widespread accessibility of information in contemporary society. According to the Code, journalists are expected to possess a sense of responsibility and refrain from impeding the welfare of the general public. The Code stipulates that the notion of respecting human rights extends beyond the principles of honesty and fairness, encompassing considerations for human dignity, individual honor, and the entitlement to privacy. The recognition of privacy as an inherent and essential human right is widely acknowledged.

E. Netherlands

Pursuant to the provisions enshrined in Article 10 of the Constitution of the Netherlands, the inviolability of the right to privacy is duly protected. Similarly, it is stipulated within the confines of the aforementioned article that there shall be a requisite enactment of regulations pertaining to the transmission of personal data, as well as the entitlement of individuals to be duly notified in the event that their personal data is being documented. The Code of Conduct for Dutch Journalists was meticulously formulated by the esteemed Dutch Society of Editors-in-Chief with the noble intention of promulgating and solidifying the prevailing reporting norms and standards within the realm of media.⁹⁷ It is imperative to assert that the inviolability of an individual's privacy ought to remain intact in the absence of any prevailing societal imperative. In matters pertaining to individuals of public prominence, the transgression of privacy rights may indeed manifest, albeit

⁹⁵ Kojiro Shiraishi, “12. Is the Japanese press a dinosaur in the 21st century?: the IT revolution and newspapers in Japan” (2004) *Information Technology Policy and the Digital Divide: Lessons for Developing Countries* 247.

⁹⁶ John E Walsh, “Free Press v. Fair Trial in Japan” (1978) 2 *Update on L Related Educ* 18.

⁹⁷ Lieve Gies, “The empire strikes back: Press judges and communication advisers in Dutch courts” (2005) 32:3 *Journal of Law and Society* 450–472.

the entitlement to safeguarding remains paramount, particularly when the information in question lacks public import. It is incumbent upon the media to exercise restraint in disseminating photographs and visual representations of individuals absent their explicit consent.⁹⁸

VI. HOW MEDIA TRIALS IMPACT THE FAIR TRIAL

The impact of media on the perception of time presents challenges to the equitable administration of justice. The concept of a Fair Trial holds significant importance within the realm of criminal law and serves as a fundamental component of a democratic society governed by the Rule of Law. The denial of a fair trial is considered to be a breach of fundamental human rights.⁹⁹ It is a cornerstone of the principle of due process in the law. Janata Adalat, or the media court, allows members of the public to interrupt proceedings. There is no provision for a media trial in our legal system, which is based on the concepts of "presumption of innocence until proven guilty" and "guilt beyond a reasonable doubt." Instead, the media conducts its investigation and sways public opinion against the accused before the court even hears the case. They are meddling with the judicial process by doing this.¹⁰⁰

A just and equitable trial is a judicial process carried out by an unbiased, autonomous, and unburdened adjudicatory body. No one may write anything about the aforementioned subject without its permission, regardless of whether it is true, false, laudatory, or critical. The media acts as a watchdog and as a platform to bring the voices of the people to the attention of society and government. Today, however, they aggressively target the personal lives of the accused and also mention family concerns. It constitutes a breach of¹⁰¹'s constitutionally protected right to life.

⁹⁸ Pamela D Schulz, *Courts and judges on trial: Analysing and managing the discourses of disapproval* (Lit, 2010).

⁹⁹ Nokib, *supra* note 4.

¹⁰⁰ Dr Dipali A Purohit, "Impact of Media trial in fair trial" (2017) 8:7 IRJMSH 110–115.

¹⁰¹ *Ibid.*

VII. BALANCING FREEDOM OF MEDIA & MEDIA RESTRICTIONS

Media occasionally provides the best-cooked tale to attract the populace's attention, even if it requires using false facts to seem engaging. Besides violating people's right to privacy, the media also influences the judiciary. This intrinsic media trend would undermine the administration of justice; thus, it should not be permitted to usurp the judiciary's responsibilities. The media can, at most, play the role of a facilitator. However, they cannot exercise their right to free speech in such a way as to influence the outcome of a trial or erode public trust in the administration of justice, such as by reporting sporting events.¹⁰² Media enslaved by stifling laws and regulations is detrimental to democracy, but a press that is unaccountable and uncontrollable is much more perilous. Therefore, reasonable and justified constraints must be placed on the media for "peaceful coexistence" and to protect the unalienable rights of individuals. In many nations, media outlets are required to adhere rigorously to particular limits.¹⁰³ In the United Kingdom, for instance, court contempt restrictions prohibit media coverage of judicial proceedings once an accused has been detained. Such stringent court contempt provisions are intended to guarantee that suspects who are subsequently charged will get a fair trial before a jury that has not been influenced by past media coverage.¹⁰⁴

The enormous growth in information transfer capabilities required the legal recognition of a person's right to privacy. Press freedom is not unrestricted and is limited by libelous laws. When compensation is granted in a privacy action, press freedom is also violated. The existence of a right to privacy was denied on the grounds that it would restrict journalistic freedom. One of the trickiest parts of striking this balance is determining the kind and extent of the invasion.

Lord Diplock, a notable British judge, remarked, "Trial by a newspaper or, as it might be called today, trial by the media, is not to be tolerated in a nation." The immoderate and overzealous media must distinguish between press freedom and broad discretion while attempting to

¹⁰² Emdadul Haque, "Balancing Freedom of the Press and Reasonable Restrictions in Bangladesh: An Appraisal" (2019) 3:1 BEL 80–100, online: <<http://armgpublishing.sumdu.edu.ua/journals/bel/volume-3-issue-1/article-6/>>.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

increase readership. In order to limit the unrestrained manipulation of the media in criminal cases, stricter procedures must be implemented. Consequently, we might expect a nation with a just, quick, and impartial judicial system whose residents live harmoniously. This chapter tries to state how to make balance the right to privacy and freedom of media in other countries. While Bangladesh already has some laws regarding this situation, it could benefit from further utilization and the creation of new laws to balance the exercise of both rights.¹⁰⁵

VIII. FINDINGS

According to Bangladesh's Constitution, the right to privacy is a fundamental right. However, the Constitution does not expressly grant the absolute right to privacy. The freedom of the media is also discussed in the Constitution of Bangladesh. This paper states that excessive media trial violates people's fundamental rights.¹⁰⁶ The issue is that the media occasionally influences public opinion in a way that damages the fair administration of justice and is libelous to the accused. Additionally, media trials affect both the presumed participant and the accused, as described in part III of this paper. Media trials have become increasingly frequent in contemporary Bangladesh. However, this practice results in the infringement of individuals' basic rights, including the right to privacy, which is recognized as a fundamental human right. The media has faced allegations of engaging in the trial of the accused and shaping a widespread perception of guilt or innocence before or after a court's verdict. A person cannot be accused by the media before the court has judged him guilty. When the media accuses someone, but the court does not, many individuals seek justice by posting or blogging on social networking sites, unwittingly criticizing the accused or the victim. This recurrent occurrence could be considered a type of media trial. People typically accuse the accused based on news coverage, which violates their right to privacy and other fundamental rights.¹⁰⁷

Media trials “accuse a person before the court's judgements. Which deprives a person of getting a fair trial, and the Constitution of Bangladesh

¹⁰⁵ Fariha Anjum, *supra* note 7.

¹⁰⁶ Raihan & Sazzad, *supra* note 6.

¹⁰⁷ Barrister Zahid Rahman, “Media trial weakens the assumption of innocence”, *The Rising BD* (29 January 2022), online: <<https://www.risingbd.com/english/campus/news/84857>>.

also guarantees the right to a fair trial.¹⁰⁸ The entitlement to privacy constitutes a paramount and inherent right bestowed upon the denizens of the People's Republic of Bangladesh, thereby occupying a position of utmost significance within the realm of fundamental rights. The interplay between various sections within Part III of the Constitution of the People's Republic of Bangladesh and the universally recognized human rights was enshrined in the Universal Declaration of Human Rights (UDHR). The encroachment of media trials upon the sacrosanct right to privacy of individuals is readily apparent. It is imperative to acknowledge that the media can exert deleterious influences on the realm of human rights. The right to privacy, deemed a fundamental right, finds its articulation within the Universal Declaration of Human Rights (UDHR). The matters at hand are expounded upon within the confines of the third chapter.¹⁰⁹ When the media find any case of a well-reputed person, a political person, or a celebrity, they use this news for their profit. They focus only on their TRP, which is a violation of the law.

When the media unilaterally conducts an undercover operation, it breaches the privacy of another individual and exposes itself to legal liability. A person's right to privacy should be preserved unless there is a clear and substantial public interest. 'Media Trial and Right to Privacy.'¹¹⁰ With the growth of news-gathering mobile applications in addition to traditional media such as television news channels, the internet, newspapers, and radio, the media has woven its web around the thoughts of nearly every individual. The media has a significant influence in shaping the psyche of the current generation and does an outstanding job of luring criminals.¹¹¹ The phrase "media trial" is used to characterize the effect of media coverage on a person's image in the public eye. It leads to a general sense of guilt that persists independently of any judicial ruling. The press coverage they provide a person has no value other than to smear someone's name.¹¹²

Freedom of the media and the right to privacy is protected in the Constitution and UDHR. However, these two rights need to be balanced in Bangladesh. Many countries enact laws stating that media trials cannot

¹⁰⁸ Ibid.

¹⁰⁹ Silvee & Hasan, *supra* note 36.

¹¹⁰ Gk Today, *supra* note 3.

¹¹¹ Shweta Bedekar, "Trial by Media – Pros and Cons", (17 March 2022), online: GD Ideas <<https://www.groupdiscussionideas.com/trial-by-media-pros-and-cons/#:~:text=The%20media%20exposes%20them%20and,the%20criminal%20on%20the%20hook>>.

¹¹² Dr. Dipali A. Purohit, *supra* note 86.

violate people's rights. The right to privacy is protected. Although the freedom of the media is required for a country's democracy, the right to privacy also needs to be ensured. In the United States, the UK, India, et cetera., the government is enacting laws to balance these two rights. "Media trials infringe on people's right to privacy, and the freedom of the media and the right to privacy need to be balanced; these findings are discussed in chapter four."¹¹³

IX. RECOMMENDATIONS

Establish explicit media norms is needed, particularly for digital media, whose scope is expanding rapidly. The objective of the Norms and Values in Digital Media report is to assist the major players – governments and policy makers, companies, and private individuals – in understanding the impact of past activities: what has worked, what has not, and why some acts have had unintended consequences. The objective is to present many alternatives so that stakeholders can find a better path towards their objectives. Social norms are a set of rules or customs about how people should act in a given situation. These rules and customs are expressed by each person as their values, attitudes, beliefs, and opinions.

Forming a regulatory organization to monitor the actions in social media is essential, as it has the greatest impact on the minds of judges today. It is necessary to appoint a body with the authority to warn, condemn, reprimand, and fine the broadcaster, such as the News Broadcasting Standards Authority (NBSA) in India. The NBDSA is an autonomous organization established by the News Broadcasters & Digital Association (NBDA) to represent private television news, current affairs, and digital broadcasters. It touts itself as "the voice of India's news, current affairs, and digital broadcasters." The News Broadcasting & Digital Standards Authority (NBDSA) fined the Hindi television channel News18 India for turning a news discussion on hijab into a "community problem." The NBDSA determined that the show violated the impartiality, neutrality, fairness, and good taste, and decency criteria. If Bangladesh could establish this type of organization and set a standard and fine for unethical broadcasting,

¹¹³ Ibid.

broadcasters would not violate the media standard.¹¹⁴

During the investigation and pre-trial phase of a case, police officers should be limited in how much information they can share with the media. to take the proper steps to stop police-led media trials that hurt the reputation of a suspect or accused person as soon as possible.¹¹⁵

Journalists, freethinkers, bloggers, and press activists must remember that the news, opinions, and other forms of expression must reflect the truth, authenticity, impartiality, fairness, and accuracy, and not prejudice, pressure, bias, or gifts and bribes. Before reporting, newspapers should hear both sides and disclose the sources of information on laws, codes of ethics, and privacy concerns.

Journalists should avoid partisan political connection, polarization, and groupings; instead, they should be more unified and professional, demonstrating independence, honesty, impartiality, courage, and ethical standards. There may be differences of opinion among them, but these should be infused with mutual respect and tolerance for the greater good of press or media freedom. Government regulatory authorities such as the Press Council and Press Institute should be bolstered in order to regulate media outlets effectively. There ought to be a broadcast commission to ensure that broadcast media are properly governed.¹¹⁶ The government, newspaper owners, journalists, freethinkers, bloggers, media activists, and CSOs should work together to establish the limits of press freedom and acceptable regulations that balance the interests of all parties.

Balancing media freedom and privacy laws is what developed countries have done. The two rights should be upheld. The media plays an important role in a democratic country, and people's right to privacy must be protected. These suggestions are inclusive but not exhaustive. Therefore, a greater study should be encouraged in this area to identify successful methods that will serve as a catalyst in the future drafting of effective legislation.

¹¹⁴ Rishika Singh, "What is the News Broadcasting & Digital Standards Authority, which has fined a TV channel over the Hijab issue coverage?", *The Indian Express* (28 October 2022), online: <<https://indianexpress.com/article/explained/news-broadcasting-digital-standards-authority-which-fined-tv-channel-over-hijab-issue-coverage-8233764/>>.

¹¹⁵ Md Touhidul Islam & Syeda Khadijatul Kobra, "Media Trial and its Present Trend of Ensuring Justice in Bangladesh" (2021) 4:1 *International Journal of Law Management & Humanities*, online: <<https://www.ijlmh.com/media-trial-and-its-present-trend-of-ensuring-justice-in-bangladesh/>>.

¹¹⁶ *Ibid.*

X. CONCLUSION

Striking a balance between media freedom and judicial processes may be accomplished by implementing realistic rules, regulations, and ethical standards that are followed by journalists and media organizations. Broadcasting media should adhere to realistic guidelines to restrict reporting on ongoing cases and prevent coverage from unfairly impacting court procedures. To avoid violating privacy rights, legal journalists must comprehend anonymity and professional ethics. The Press Council and other monitoring bodies should strictly enforce a code of conduct to prevent media trials that violate basic rights. Journalism must be ethical and avoid sensationalism for ratings or revenue. International standards and best practices reveal how states balance media freedom and legal privacy. Learn and use these approaches to guide Bangladeshi regulatory frameworks. Media independence is crucial for maintaining democracy and openness, but it should be tempered by the integrity of the judicial system. Finding a balance between media freedom and the legal system requires a broad plan that includes legislative actions, government oversight, and a commitment to protecting basic rights. An oversight committee might be formed to guarantee the protection of media freedom and individual rights, thereby upholding a fair and impartial judicial system.

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Dr Dipali A Purohit, “Impact of Media trial in fair trial” (2017) 8:7 *IRJMSH* 110–115.

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