

Brief History of Media Laws and Regulations in Bangladesh

As the popularity of media became widespread, the field of media law became more popular, as certain corporate professionals have wanted to participate in Media Laws. As a result, many young lawyers fledged into media law which allowed them the opportunity to increase connections in media, and the opportunity to become a media presenter or an acting role if such an opportunity arose. Prior to the independence, Bangladeshi media history began under the authority of external governments. In 1931, the India Press (Emergency Power) Act was passed giving the local government authority to forfeit the press. Another landmark measure took effect in 1965 under the Pakistani Government, the Defiance of Pakistan Ordinance, which restricted the freedom of Press altogether. The Daily Ittefaq and the New Nation Press were penalized for criticizing the Government. Just before the independence in 1972, four daily newspapers and a periodical were found abandoned and their ownership was vested with the government. In 1972, the Constitution of the People's Republic of Bangladesh was formally endorsed. In this new Constitution, the right of every citizen of freedom of speech and expression and freedom of the press was guaranteed. In 1973, The Printing Presses and Publication (Declaration and Registration) Act was introduced. In 2001, the Dramatic Performance Act of 1876 was repealed. And the Copyright Ordinance of 1962 was revised and became law in 2000. On September 16th, the Information Minister said the future legislation will include an Act titled "Television Network (Management and Control) Act, 2002. The law may provide the commercial activities of Cable operators and distributors.

Media Laws and Regulations prevalent in Bangladesh:

The media of Bangladesh got their freedom from the Supreme law of the land, namely, the Constitution of Bangladesh. Article 39 of the said Constitution[1] deals with freedom of thought, conscience and of speech.

Various media laws and regulations regulate the media of Bangladesh. Important provisions of these laws are as following:

The Cinematograph Act, 1918 (Act No. II of 1918):

Section 2(b): cinematograph" means a composite equipment including a video-cassette recorder used for production, projection and exhibition of motion picture film;

Section 3: Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere as in a place licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such license.

Section 4: The authority having power to grant licenses under this Act (hereinafter referred to as the “licensing authority”) shall be the Deputy Commissioner.

Section 5: (1) The licensing authority shall not grant a license under this Act, unless it is satisfied that-

(a) The rules made under the Act have been substantially complied with; and
(b) Adequate precautions have been taken in the place in respect of which the license is to be given to provide for the safety of persons attending exhibitions therein.

(2) A condition shall be inserted in every license that the licensee will not exhibit, or permit to be exhibited, in such place any film other than a film which has been certified as suitable for public exhibition by 1[the authority] constituted under the Censorship of Films Act, 1963, and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto.

(3) Subject to the foregoing provisions of this section, and to the control of the 2[* * *] Government, the licensing authority may grant licenses under this Act to such persons as it thinks fit, and on such terms and conditions, and subject to such restrictions as it may determine.

Section 6. Punishment for contravention of this Act and rules made thereunder

(1) If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Act or the rules made thereunder, or of the conditions and restrictions upon, or subject to which, any license has been granted under this Act, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand taka, or with both; and his license, if any, shall be liable to be revoked by the licensing authority.

(2) If any person is convicted of an offence punishable under this Act committed by him in respect of any cinematograph, film or cassette, the convicting Court may further direct that the cinematograph, film or cassette shall be forfeited to the Government.

Section 9. Power to exempt:

The Government may, by order in writing, exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Act or of any rule made thereunder.

The Censorship of Films Act, 1963 (Act no. XVIII of 1963):

Section no.3: Constitution of the Board:

The Government may, by notification in the official Gazette, Constitute a Board to be called Bangladesh Films Censor Board, which shall consist of a Chairman and such number of members, not exceeding fourteen, appointed by the Government for the purpose of examining and certifying films for public exhibition in Bangladesh.

Section 4. Certification of films

(1) A person may submit a film to the Board, together with an application in the prescribed form, for granting a certificate that the film is suitable for public exhibition:

Provided that the Board shall not accept any feature film, not being a foreign film, for the purpose of examining its suitability for public exhibition if the total length thereof exceeds fourteen thousand feet, except where, on a request from the film producer, the Government has, for any special reason, previously agreed to relax the said limit.]

(2) If 2[the Board] after examination considers that a film is suitable for public exhibition, it shall grant a certificate to that effect to the person applying for the same and cause the film to be marked in such manner as may be prescribed.

(3) A certificate granted under sub-section (2) shall, subject to the provisions of this Act, be valid for the whole of Bangladesh, for such period, if any, as may be specified in the certificate.

(4) Where any period is specified under sub-section (3), the Board may, on application in this behalf, extend such period, or the period so extended, or dispense with the period so specified or extended.

(5) If the Board, after examination under section 4A, considers that-

(a) A film is as per Rules framed under this Act for public exhibition in Bangladesh, it shall refuse to grant the certificate of the film for public exhibition and shall inform the decision of refusal to the person applying for the certificate within fifteen days from the date of its decision;

(b) A film is not suitable for such public exhibition but may be suitable-

(i) If made restricted to the members of any profession or any class of persons; or

(ii) Only for a specific period; or

(iii) If a specified portion thereof is excised;

It shall inform the person applying for the certificate within fifteen days from the date of its decision.]

(6) [Omitted by section 4 of the Censorship of Films (Amendment) Act, 2006 (Act No. I of 2006).

Section 4B. Appeal:

(1) Any person who is aggrieved by any decision of the Board under this Act may, within thirty days of the date of receipt of such decision, prefer an appeal to the Government.

(2) An appeal preferred under sub-section (1) shall be disposed of in the prescribed manner.

(3) If an appeal is preferred against the decision-

(a) Under sub-section (4) of section 4, the Government shall direct, by order in writing, that the certificate granted under sub-section (2) of section 4 shall be valid only for the period specified therein, or for the period extended under sub-section

(4) of section 4, or for such period as may be specified in the order;

(b) under clause (a) of sub-section (5) of section 4, and if the appeal is rejected, the Government shall, by notification in the official Gazette, declare that the film to which the appeal relates shall be deemed to be an uncertified film in respect of the whole of Bangladesh;

(c) under clause (b) of sub-section (5) of section 4, and if the appeal is rejected, the Government shall inform the person applying for the certificate within seven days from the date of its decision.

(4) No appeal under this section shall be disposed of without giving an opportunity to the appellant for representing his views in the matter.

(5) The decision of the Government under this section shall be final.

Section 5: Suspension of Certificate:

(1) Notwithstanding anything contained in sub-section (3) of section 4, 2 [the Chairman may, if he is] of opinion that a certified film should not be publicly exhibited, by order, suspend, pending the orders of the Government under sub-section (4), the certificate in respect of that film.

(2) If a 3[Deputy Commissioner] is of the opinion that a certified film should not be publicly exhibited within his district, he may, by order, suspend, pending the orders of 4[the] Government under sub-section (4), the certificate in respect of that film 5

(3) A certified film shall, during the period of suspension of its certificate under sub-section (1) or sub-section (2), be deemed to be an uncertified film in respect of the whole of Bangladesh or, as the case may be, the district concerned.

7(4) A copy of any order of suspension made under sub-section (1) or sub-section (2), together with a statement of the reasons therefore, shall forthwith be forwarded to the Government by the 8[Chairman] or the 9[Deputy Commissioner] making the order, and the Government may either discharge the order or, by notification in the official Gazette, direct that the film shall be deemed to be an uncertified film in respect of the whole of Bangladesh:

Provided that where the Government makes no order under this sub-section within the period of sixty days from the date of making of the order of suspension, the order of suspension shall, on the expiry of such period, be deemed to have been discharged.

(5) Omitted by Article 7 of the Censorship of Films (Bangladesh Amendment) Order, 1972 (President's Order No. 41 of 1972).

Section 6A. Publicity Materials of Certified Films:

(3) The name and address of the producer and director of the film and the approval number of the Board shall be shown clearly on the publicity materials.

(4) Notwithstanding anything contained in Cinematograph Act, 1918 (II of 1918), if an unapproved publicity material is exhibited or displayed in any licensed place, the license of the licensed place shall be liable to suspension or revocation.

Section 7A: Seizure of film:

1)Where the Board has reason to believe that a film or publicity materials are being exhibited in any place in contravention of any provision of this Act or any rule made thereunder, it may, by order in writing, authorise any Police Officer not below the rank of Sub-Inspector or any District Information Officer to search the place and seize the film and the publicity materials, if any, of that film.

Section 8: Penalty:

(1) Whoever-

(a) exhibits or causes or permits to be exhibited in any place, or abets the exhibition of, an uncertified film, or a certified film which does not show the mark of the Board;

(b) without lawful authority alters or tampers with, in any way, any film after it has been certified or since such mark was affixed thereto;

(c) exhibits an unapproved publicity materials;

(d) without lawful authority alters or tampers with, in any way, any publicity materials after it has been approved;

(e) contravenes any other provision of this Act or rules made thereunder;

shall be punishable with imprisonment for a term which may extend to three years, but shall not be less than one year, or with fine which may extend to taka ten thousand, or with both; and in case of continuing offence with a further fine which may extend to taka five thousand for each day during which the offence continues.

Section 9: Procedure:

(2) Where a person guilty of an offence punishable under this Act is a company or other body corporate, every managing director, director, manager, secretary or other officer or agent thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent its commission, be deemed to be guilty of such offence.

Section 15. Bar to Legal Proceeding:

No suit, prosecution or other legal proceedings shall lie against the Government, Board, Chairman, Member and any other officer of the Board, as the case may be, in respect of anything which is done or intended to be done in good faith under this Act.

Section 16.No order of Injunction, etc without hearing the Board:

Notwithstanding anything contained in any other law for the time being in force, no Court shall grant an injunction or make any interim order in respect of any order passed under section 4, 5 or 7 without giving the Board an opportunity of being heard.

Notification of Ministry of Information

Regarding Censorship and public exhibition, there is a notification of Ministry of information dated 16th November 1985, which is as follows:

the Government is pleased to issue the following instructions for the purpose of examining and certifying films for public exhibition, namely:-

Application of general principles.- In the light of the broad principles, a film shall be regarded as unsuitable for public exhibition if it has the feature given below :-

I. Security or Law and Order :

(a) Brings into contempt Bangladesh or its people, its tradition, culture, custom and dress.

(b) Tends to undermine the integrity or solidarity of Bangladesh as an independent state.

- (c) Violates any instruction issued by the Government from time to time in the interest of preservation of Law and order and, of the security aspects of the country.
- (d) Portrays sedition, anarchy or violence with political motive.
- (e) Reveals military or other official secrets likely to affect security of the state.
- (f) Leads to breach of law and order or creates sympathy for violation of laws.
- (g) Ridicules or brings into contempt the Defense Forces, Police Force or any other Force responsible for maintenance of law and order in the country. Portrayal of any character falling in this category in a manner that might help to correct any corrupt element therein will be permissible.
- (h) Portrays the Defense Forces or Police Force in derogatory uniforms.
- (i) Gives a general impression of predominance of violence and lawlessness in the country and shows forces of law absent or inactive.
- (j) Has an inadequate story intended to cover-up sequences predominantly consisting of lawlessness, violence, crimes or spying likely to affect adversely the average audience.

N.B.- While invoking sub-clause (a), place and context should be taken into full consideration.

II. International Relations:

- (a) Contains propaganda in favor of a foreign state having a bearing on any point of dispute between it and Bangladesh or against a friendly foreign state which is likely to impair good relations between it and Bangladesh.
- (b) Violates the third country principle, that is which adversely affects friendly relations with the other country or countries or wounds the susceptibilities of foreign nations.
- (c) Portrays maliciously incidents or sequences which are prejudicial to the prestige or history of any people, race or nation.
- (d) Distorts historical facts particularly maligning Bangladesh and its ideals and heroes.

III. Religious Susceptibilities:

- (a) Ridicules, disparages or attacks any religion.
- (b) Causes hatred or strife among religious sects, castes or creeds.
- (c) Exploits religion to denounce or uphold controversial social issues.
- (d) Ridicules religious persuasions so as to offend its believers.

IV. Immorality or Obscenity:

- (a) Condone or extenuates acts of immorality.
- (b) Over emphasizes, glamorizes or glorifies immoral life.
- (c) Enlists sympathy or admiration for vicious or immoral character.
- (d) Justifies achievement of a noble end through vile means.
- (e) Tends to lower the sanctity of institution of marriage.
- (f) Depicts actual act of sex, rape or passionate love scenes of immoral nature.
- (g) Contains dialogue, songs or speeches of indecent interpretation.

- (h) Exhibits the human form, actually or in shadow graphs-
 - (i) in a state of nudity;
 - (ii) indecorously or suggestively clothed;
 - (iii) indecorous or sensuous posture.
- (j) Indecently portrays national institutions, traditions, custom or culture. (This covers kissing, hugging and embracing which should not be allowed in films of sub-continental origin. This violates accepted canons of culture of these countries . Kissing may, however, be allowed in case of foreign films only. Hugging and embracing may be allowed in sub-continental films subject to the requirements of the story, provided that the same do not appear to be suggestive or of suggestive nature.)

N.B.- (i) Deception of attempts or indication to rape may be permissible on when it is intended to condemn it.

- (ii) Bikini or bathing costume scene may be permissible in case of foreign films.
- (iii) Modern dress and suitable bathing costume in local production may be allowed in export quality films, provided these are of modest presentation.
- (iv) In case a picture creates such an impression on the audience as to encourage vice or immorality, the film should not be certified even it shows that the vicious to the immoral has been punished for his/her wrong

V. Bestiality:

- (a) Exhibits wanton cruelty to animals.
- (b) Shows exaggerated horror, torture or cruelty or suffering which creates severe adverse reaction among the spectators.
- (c) Depicts third degree methods unless otherwise it is for the betterment of the society.

VI. Crime :

- (a) Condone criminal acts.
- (b) Portrays the *modus operandi* of criminals which may help to introduce new methods of crime.
- (c) Makes heroes of criminals or elicits sympathy of audience on their behalf.
- (d) Maliciously ridicules or belittles public officers engaged in the prevention or detection of crime or punishment of criminals or entrusted with the dispensation of justice.
- (e) Suggests wrong-doings or criminal activities as profitable or as normal incidents of ordinary life.
- (f) Overemphasizes criminal activities in such a way as to arouse sympathy.
- (g) Familiarizes the adolescents and young people with crime and acts of violence as normal incidents of ordinary life and not to be reprobated.
- (h) Shows science as a means of acquiring devilish powers by master criminals and highly equipped and most modern laboratory as his headquarter.
- (i) Upholds trafficking women, children, liquor, drugs, and smuggling of any kind.

VII. Plagiarism:

Plagiarism in any form from any old or under production foreign or Bangladeshi film.

N.B.- (i) A plagiarized film is that which comes to near the original as to suggest the original in the mind of every person seeing it.

(ii) Plagiarism shall not, however, be deemed to prohibit exceptions being made in suitable cases in the local production of well-known classics of folk-tales or where a producer of an old film produces a better version of his film or he is legally authorized to remake or reproduce the original.

The Indecent Advertisements Prohibition Act, 1963(Act no XII of 1963)

Definition of Advertisement:

Section 2(a) “advertisement” includes any notice, circular or other document, displayed on any house, building or wall, or published in any newspaper or periodical, and any announcement made orally or by any means of producing or transmitting light or sound, but does not include trade circulars issued by manufacturers of drugs to medical practitioners.

Definition of Indecent:

Section 2(b) of the Act, indecent includes whatsoever may amount to any incentive to sensuality and excitement of impure thoughts in the mind of an ordinary man of normal temperament, and has the tendency to deprave and corrupt those whose minds are open to such immoral influence, and which is deemed to be detrimental to public morals and calculated to produce pernicious effect, in depraving and debauching the minds of persons.

Section4. Penalty:

Whoever contravenes any of the provisions of this Act shall, on conviction, be punishable-

(a) in the case of a first conviction, with imprisonment which may extend to six months, or with fine, or with both; and

(b) in the case of any subsequent conviction, with imprisonment which may extend to one year, or with fine, or with both.

Section 5. Confiscation of documents, etc, containing indecent advertisements:

Any person authorised by the Government in this behalf may, at any time, seize and detain any document, article or thing which such person has reason to believe contains any advertisement which contravenes any of the provisions of this Act and the Court trying such contravention may direct that such document (including all copies thereof), article or thing shall be forfeited to the Government.

Section 6. Offences by companies:

(1) If the person contravening any of the provisions of this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Section 7. Complaint by a police officer

Without prejudice to the right of any other person to make a complaint of an offence under this Act, a Police Officer not below the rank of sub-inspector who receives information that such an offence has been committed, shall, if he is satisfied as to the truth of the information, make a complaint of the offence in writing to the nearest Magistrate having jurisdiction.

Section 10. Indemnity:

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Private Broadcast Media(Radio and Television) Bill 2004 and Future of Private Broadcast Media

More private television and radio channels are unlikely to get permission to go on air until the Private Broadcast Media(Radio and Television) Bill, 2004 is passed in parliament aiming to control the electronic media. Former Information Secretary AMM Nasiruddin said that "Preparation of uniform guidelines has become urgent as the information ministry continues to receive applications for permission to run private radio and satellite television. The Information Ministry said they have so far received around 30 applications for private satellite television channels and 15 for radio.[2],

The permission for satellite TV channels has been snagged in red tape for a long time after the Government granted permission to seven channels, namely Channel I, ATN Bangla, International Television(ntv), Inquilab Television(ITV), Universal Television(UTV), Jamuna Television and Ekushey Television. At present, ATN Bangla, Channel I and ntv are on air while ITV, UTV and JTV have failed to start telecast within 365 days of getting permission as per rule. ETV's contract was cancelled in line with a Supreme Court order. Two separate policy guidelines were prepared in 1998 for private radio and Television channels but the Government later decided to formulate a comprehensive policy to encourage competition and ensure professionalism in the electronic media. The Information Secretary said that "we have already collected the policies and regulations of other SAARC countries and a committee is working on the proposed regulations." New radio or TV channels may get permission before the passage of the Bill if the Government decides to permit any on urgent basis, he said.

Currently, Bangladesh has no law for private radio and television channels. The Authority uses some acts including the Wireless Telegraphy Act, 1885, the Telegraph Act, 1933 and Bangladesh Telecommunications Regulatory Commission(BTRC) Act, 2001, to allocate frequency for and oversee technological aspects of the channels. After the ETV scandal, the Information Ministry worked out a draft regulation aiming to give it a legal form. The draft was referred to the Parliamentary standing committee on information ministry for further scrutiny.

According to the draft, all private satellite channels would require license, a provision that does not exist in the existing guidelines. It says the channels already on air – ATN Bangla, Channel I and ntv would require fresh licenses under the new law. The draft also proposes government permission for transfer of shares and licenses, strict enforcement of Bangladesh Telecommunications Act 2001, suspension and cancellation of licenses, investigation into violation of the law and punishment to the offenders under the criminal laws and fines up to 20 lakhs. The draft law provides for compulsory licencing, a system for scrutiny of applications, issuance of first time license for five years and renewal of licenses. According to the draft, the government will invite applications from people interested in up radio and TV channels and a six member committee headed by a Chairman nominated by the government will issue the licence. Bangladesh Betar and Bangladesh Television will nominate one each member and the government will nominate two under technically skilled person category. The committee will consider the financial and technical capability of the applicants, location of the stations and skill of the manpower. It will also examine whether the applicants have anti-state or anti-people role or attitudes. Foreign nationals, firms not registered under the Companies Act, registered companies with less than Tk. 1 crore paid up capital and people or companies defaulting on loans from government or private financial institutions will not be eligible to apply for the license.

According to the draft law, broadcast of news, special programmes and advertisements by private channels will be controlled by the Act. The programmes of national importance such as speeches, news broadcast by state-owned BTV and Betar and government handouts must be aired on run by the channels for free. Violation of some provisions of the proposed law will be considered as criminal offence. For the first time offence, the offenders will be fined Tk 10 lakh and in default will have to serve a 3 months jail term. Each offence after the first one will carry a fine of Tk 20 lakh and six months imprisonment. In default, failures to pay the outstanding amount for license, transfer of more than 50% shares without permission and violation of any term will result in cancellation and suspension of license, says a draft.

The Organisations so far applied for permission to run private satellite channels include Media One, Liberty Television, Dhaka Telefilm, Telebangla, Bishal Multimedia, Bishal Music, Bijoy Broadcasting Univision, Daffodil Multimedia and Movie Tone Media Communication. The entrepreneurs are from various profession. They include industrialists, former Vice Chancellor, newspaper editor and expatriates. Many of them do not have strong economic background. “To establish a television channel it needs about TK. 60 crore,” said marketing manager of an existing satellite television channel. There is an allegation that some are lobbying with the ministers and influencing persons in the government to get permission on priority basis. But the existing entrepreneurs think more channels may distort already crunched market unless the market itself gets bigger. Media experts are, however, optimistic to see more channels that would create more job opportunities, more competition, more exposure and expand market as well.[3]

Autonomy of Public broadcasting; Bangladesh Betar and Bangladesh Television:

The Cabinet okayed on 7th May, 2001 two draft laws seeking to grant autonomy to Bangladesh Betar and Bangladesh Television. It was one of AL's electoral pledges in 1996 to give autonomy to the electronic media.

The draft law, which will now be sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting, is taken to be tabled in the coming budget session of the “House of the Nation” designated to be the last session of the 7th parliament.[4]

The latest government move to give autonomy to the state-run electronic media at the fag end of its tenure bypassing substantial recommendations of the government-appointed “Betar TV autonomy Commission,” which it was instrumental in setting up for the purpose in the first place, has evoked sharp criticism from the civil society.

Politics of autonomy: Saga of Public Broadcasting:

In many fragile democracies of Asia, Africa and Latin America, autonomy of electronic media is considered as a controversial issue having a political overtone. The government exerts a great deal of control over public broadcasters, using them as a mouthpiece for government rather than as an independent source of information for the public. It is only when the independence of public broadcasters is guaranteed in law and in practice that they can truly operate as servants of the public interest, providing high quality information from a variety of sources to the public. The governments of illiberal democracies attempt to devise mechanisms to retain control over the electronic media directly or indirectly. Bangladesh is not an exception. Since the independence of BD, the electronic media had always been a propaganda machine.[5]

During the autocratic rule, the electronic media was branded as a media devoted for the sole course of the then autocrat H.M. Ershad, his wife and their close associates (Shaheb-bibi-golam). Until 1991, the issue of ‘autonomy radio-TV’ did not come to the forefront of the societal discourse.

Granting autonomy to Betar and BTV was one of the main demands in the joint declaration of the 3 alliances announced after the fall of Ershad. In November, 1990 major political alliances, popularly known as the 5, 7 and 8 party alliances announced ‘Joint Declaration’ to consolidate the movement against autocracy. Section 2(d) of the Joint Declaration states, “The mass media, including the radio and television, will have to be made into independent and autonomous bodies so that they become completely neutral.....”

With the restoration of parliamentary democracy in 1991, on the basis of consensus among major political parties, the issue of ‘public broadcasting autonomy’ gained momentum. The expectation was high in the public regarding the granting of autonomy of electronic media in line with the Joint Declaration. Regrettably the BNP Government did not uphold its commitment to grant autonomy to electronic media. The then minister for Information publicly denounced the idea of neutrality of state-run media’ and claimed the government’s right to enjoy ‘subjective coverage’ as it was voted to power. Such absolutely unprecedented argument in favor of a ‘loyal electronic media’ from an elected government put an abrupt end to the hope for an autonomous public broadcasting service. However, the BNP government’s control over the electronic media. But the recommendations were never published, let alone be materialised.

Left Democratic Front Leader Rashid Khan Menon initiated a bill seeking withdrawal of state control over the public broadcasting in the fifth parliament during the BNP’s regime. where he proposed that the authority

of parliamentary committee on Ministry of Information be strengthened to conduct the affairs of Betar-BTV. But the bill was never passed.

The Awami League government constituted a 16 member “ Commission for Framing Rules and Regulations for the Autonomy of Bangladesh Television(Radio- TV Autonomy Commission) in September 1996, coming back to power after long two decades

. Following several foreign visit by its members and a series of discussions, the Commission submitted its report to the Prime Minister in August 1997, recommending the full autonomy for radio and Tv. Afterwards the government maintained absolute secrecy on the content of the report. It didnot even spell out its plan of action to follow up the Commissions costly exercise. There had been a little progress in implementation of the report recently when Prime Minister Sheikh Hasina said that her government would deregulate the electronic media before it completes its term.

The Report:

The Commission was required to submit its findings and recommendations to the Prime Minister within six months. This was subsequently extended by 3 months. The Commission finalised its report on 30th June, 1997. The findings of the Commission included both administrative and non-structural measures and means of handling satellite and terrestrial measures, and FM radio bands. The recommendations of the Commission included the formation of a National Broadcasting Commission(NBC) completely independent of the Government accountable only to a Parliamentary Committee on Information. The NBC would administer both Bangladesh Betar and Bangladesh Television. NBC would approve the budgets for both of them, which would function and operate from there own income. A Code of conduct would be signed between NBC and the private operators. A standard Committee would be formed by NBC to monitor Satellite and guidelines. In the area of news coverage, protocol value would replace news value. The Commission, headed by former civil servant M Asafuoudoula suggested that the President appoint one chairman and six members of the National Broadcasting Commission.

The Petition and the rule nisi:

Since its submission to the Government, the Commission's report has been kept in secret as a 'classified document'. Odhikar, a leading Bangladeshi Human Rights NGO, filed a writ petition(Writ Petition no. 4314 of 2000) against the Ministry of Information and the National Broadcasting authorities(Bangladesh Betar and Bangladesh television) on 17th August 2000 for full publishing the report in public. Terming the inaction of the Government in implementing the recommendations of the Commission Report as 'arbitrary, unlawful and mala fide, in as much as such inaction is a violation of the fundamental right guaranteed in Article 39(freedom of thought and conscience, and of speech) of the Constitution', Odhikar demanded for speedy implementation and recommendations.

Earlier on 13 August 2000, Masood Alam Ragib Ahsan, Director of Odhikar, had served a demand of justice notice on the same authorities (the respondents) seeking the implementation of the Commission Report. Understandably no one from the relevant government ministry or authority bothered to reply the notice.

Against the backdrop, a Division Bench of the High Court Division of Bangladesh Supreme Court comprising Justice K. Munwaruddin and Justice M.M. Hussain issued a rule nisi on 19th November 2000 ‘calling upon the respondents to show cause as to why the respondents shall not be directed to consider for implementing the report dated 30.06.1997 submitted by the Commission for the Formation of the Rule and Regulation for the Autonomy of Bangladesh Betar and Bangladesh Television Commission.’ The rule was made returnable within 4 weeks from the date of issuance.

Proposed Bill:

Instead of formation of a National Broadcasting Commission as recommended by the Autonomy Commission and the Government is now planning to form two separate authorities and government itself would appoint members of those bodies. Each authority would have a chairman with some members to assist in the running the affairs of the two public broadcasting agencies. Under the two draft laws approved by the cabinet Bangladesh Betar Authority Act, 2001 and Bangladesh Television Authority Act, 2001, the government can sack the chairman of both the authorities without giving any reason.

On 10th May, State minister for information Professor Abu Sayeed defended the draft laws stating proper implementation of the laws would ensure the autonomy of the state run radio and television. He, however, said the concept of autonomy did not suit in the era of free flow of information. He hoped that the laws would become to effect before the end of the Awami League’s Government term. “Once the parliament passes the laws, a national broadcasting policy will be formulated in line with the spirit of the Independence War and social and national interests” the Minister added. Defending government’s authority to appoint chairman and members of the bodies to administer the two media, Prof. Sayeed claimed that the Constitution has to be changed for vesting the appointing authority on the president.

Some member of the Commission regretted that this proposed laws not only came at the fag end of the government’s tenure but also marked a significant departure from the commission’s recommendations. In many parliamentary democracies with ceremonial presidency, the president can appoint or nominate persons in different government or autonomous bodies. Such practice has turned into a convention and considered as a mark of recognition of the ceremonial role of the Head of the state. The question of violating the Constitution, if a President appoints or nominates representatives in some autonomous bodies, simply does not arise. The proposed law establishing a ‘National Human Rights Commission of Bangladesh’ drafted by Ministry of Law, Justice and Parliamentary Affairs in the present regime also recognises the role of the President.

Constitution of NHRC: The President in consultation with Committee consisting of the-A) Prime Minister, B) Speaker of the parliament, C) Leader of the Opposition in the Parliament shall constitute the NHRC. The Commission shall consist of a chairman and four members. At least one member should be a woman. [6]

[1] Freedom of thought and conscience, and of speech

(1) Freedom of thought and conscience is guaranteed.

(2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence-

(a) the right of every citizen of freedom of speech and expression; and b) freedom of the press, are guaranteed.

[2] Avik sanwar rahman, “ No more pvt TV, Radio channels before passage of new law submitted applications for permission to satellite TV channels will wait for uniform guidelines to be established.”, The Daily Star(Dhaka), Monday, November 22, 2004.

[3] ibid

[4] A.H. Monjurul Kabir, “ Autonomy of public broadcasting from absolute control to controlled autonomy?” , Human Rights in Bangladesh: Significant cases.

[5] ibid

[6] Section 3(1)(2)