

GHAZI SHAMSUR RAHMAN

**LAWS
RELATING
TO PRESS
IN
BANGLADESH**

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DEDICATION

To,

my youngest Mother

Hasna Hena Shams

with my good wishes

Ghazi Shamsur Rahman

INTRODUCTION

My personal association which has, of necessity, grown very deep with the Press dates back to January 1980 on which date I joined the Press Council as its Chairman.

The Press Council Act was passed in 1974. The main objective behind the constitution of the Press Council was to maintain freedom of the Press and to improve its standard. With this end in view the Press Council was constituted in 1979. It should be clearly understood that the laws of the country delineate the frontier within which freedom should be exercised and standard improved.

When I joined the Press Council as its Chairman on the 1st of January 1980, the Press Council was inactive due to absence of Rules and Regulations.

I took immediate steps to make Press Council function effectively. A draft rule for the Press Council was prepared and was sent to the Government. The Press Council Rules was promulgated by the Government on 12th September 1980. After the promulgation of the Press Council Rules by the Government, the Press Council Regulations were framed on the basis of the Press Council Act and Rules. The Press Council Regulations were promulgated on 7th October 1980. From that date, the Press Council started actually functioning. Right then, it was felt that the Council and the journalists need a manual containing all laws that affects the Press.

I prepared an anthology of laws relating to the Press and in the first Council meeting held in 1980, I distributed copies thereof to the learned members.

In the second Council meeting, discussions were held on the preservation of Press-freedom and rights of the Council in correcting erring journalists. The learned members who were perhaps aware of my background as an humble writer requested me at that early stage to write a book on "Press Laws of Bangladesh". I assured the learned members to undertake the work.

Since then the learned members have been urging me to complete the work which I had undertaken at their request.

I am very happy to say that two books have been already published from the Press Council. The books are "Decision of the Press Council" and "Commentary on the Press Council Act". The book "Decision of the Press Council" consists of important judgments of the Council. "Commentary on the Press Council Act" contains analysis of the provisions of the Act. I believe that the books will be of use to journalists and persons connected with journalism. I donated the copy-right of the book "Commentaries on the Press Council Act" to the Press Council.

It is obvious that the Council could take no adequately satisfactory measures relative to the freedom of the Press. During the period, the Press Council has been in existence, publication of a number of papers was prohibited and in some cases news were pre-censored under the Special Power Act.

The Special Power Act vests the Government with the right to prohibit the publication of a newspaper and to pre-censor. The Government utilised that right. Therefore, the action of the Government was in accordance with law. Now if a paper is banned or a news censored the freedom of Press is jeopardised. And when freedom of Press is in jeopardy, the Press Council can look into the matter. This responsibility of the Press Council is based on law.

In one of the cases Press Council observed : "The Press Council is caught between the two horns of a dilemma. The Press Council must act within the bounds of law and the law speaks in two voices by two Acts. The Press Council Act requires the Press Council to keep in view any restriction imposed on the newspaper in the matter of publication of news and views, and the Special Power Act provides the Government with the power of pre-censorship. In the circumstances we may rest our views on the constitutional guarantee of Freedom of expression and the assurances of the authorities in Bangladesh and assume jurisdiction in the matter only for the purpose of opining as to if the imposition or continuance of pre-censorship is justified by circumstances."

It has been contended in some quarter that the Press Council did not have enough power and that it is not possible to control an erring newspaper through warning, admonition or censure. Press Council believes that if a journalist goes wrong in his profession he can be brought back to normalcy by awakening his conscience. Press Council consists of reputed journalists and learned persons of the society. If they condemn any journalist, it cannot go in vain.

Then again judgments of the Press Council are published in newspapers. The journalists admonished by the Council are obviously ashamed of their behaviour. What can be done by putting one to shame cannot always be done through punishment. There are courts for punishment. It is not wise to make the Press Council another punishing organisation.

Man connected with Press must know that his freedom should be consistent with the freedom of others. Study of laws that affect the Press will give him the required knowledge to exercise his freedom with injury to none.

CHAPTER I

NEWSPAPERS : HISTORY OF THEIR LAW.

The start of the first newspaper in this subcontinent which term would include in this work Bangladesh, India and Pakistan, is related to Mr. James Augustus Hicky. He identified himself as "the printer to the Honourable Company" meaning obviously the East India Company. He had hardly any refined taste and his paper, named Bengal Gazette or Calcutta General Advertiser, a two-sheet newspaper, contained only abuses and attacks on the servants of the Company. Even the Governor-General Warren Hastings and his wife were not spared. The result was what was anticipated. He was subjected to a number of action. The first was deprivation of the privilege of circulating his newspaper through the General Post Office. Secondly Mr. Hicky was interlocked with serious litigations, in a number of libel cases.

He was also subjected to oppression by the East India Company which left him in utter penury. During the next few years a few other papers came up evidently because all of them assured the Governor-General that they would abide by the regulations made by his Government. In Madras, the Madras Gazette was required to submit to censorship by the Military Secretary before its publication. When the newspaper protested against this precensorships the free postage facilities were withdrawn. However, by and large, the Bombay and Madras newspapers generally kept themselves on the right side of the Government, the rare recalcitrants being summarily dealt with on charges of gross libel of the Government. In Calcutta, one William Duane, Editor of the Bengal journal, was persecuted, his house broken into and searched and he was ultimately sent back to England without being given any compensation for the property left behind by him. In a dispatch to the Board of Directors, the Governor-General said that newspapers in Calcutta had assumed a

licentiousness too dangerous to be permitted in this country and that he, therefore, had to be deported to England. In general, papers were pulled up for various offences, the most important of which related to military subjects. Those editors who were found inconvenient were deported to England. The most significant aspect of this period was that there were no Press laws as such in this country during the latter part of the 18th century. Despite that, the pattern of Governmental action was to deport incorrigible editors, deny postal facilities to the unrepentant and to require those who persisted in causing displeasure to the Government to submit either a part or the whole newspaper for censorship.

Every newspaper today is required to carry in print the name of the printer, publisher and the editor and this requirement seems to have its origin in the early 19th century. The Marquess of Wellesley, who was engaged in a fight with Tipoo Sultan, could not brook any news being published about the European community in India and laid down rules for the conduct of the whole tribe of editors and threatened to deport the mischievous editors by force to Europe. Regulations were made in 1799 requiring the newspapers to print the names of the printer, publisher and the editor and to submit all material published in the paper for prior scrutiny by the Secretary to the Government. Any breach of the regulations was punishable with deportation from India. But, in fact, the newspapers did not submit to the requirement of precensorship with regularity. On the other hand, in spite of the rigid restrictions there was a spate of pamphlets, some of them emanating from the Missionaries of Serampore attacking Hindu and Muslim beliefs. In Madras, the regulations were more stringent, requiring the press to submit manuscripts for censorship before publication.

Precensorship came to an end under peculiar circumstances. When asked to exclude certain portions from his newspaper, Heatly, the editor of Morning Post, refused to comply claiming that no action could be taken against him as he was a native of India. Heatly was born of a European father and Indian mother and the Government having realised that it was powerless to take action against

one Indian by birth, Lord Hastings abolished censorship and placed the responsibility for excluding any matter likely to affect the authority of the Government or anything injurious to the public interest on the editor himself.

During this period, three men played an important part in establishing freedom of the press in this country. James Silk Buckingham was an indefatigable fighter for the freedom of the press and was on several occasions threatened to be deported but was saved by Lord Hastings, who adopted a benevolent attitude towards the press, because he realised that the most effective safeguard for the Government was permitting full freedom of discussion by the press as this would serve to strengthen the hands of the administration. Despite the strong opposition from his Council and censure from the Court of Directors, Lord Hastings relaxed some of the existing restrictions. Raja Ram Mohan Roy's three papers, which resolutely opposed Hindu social and religious beliefs, were considered as fraught with danger and likely to explode all over India like a spark thrown into a barrel of gunpowder. In official quarters, they were viewed with some apprehension. The newspapers, which favoured orthodox viewpoint however, did not attract the same measure of hostile attention. The tireless campaign by Buckingham and Ram Mohan Roy convinced many eminent minds both in this country and in England of the useful role a free press could play by its exposure of lapses in the administration and its criticism of the Government's policies.

After the departure of Lord Hastings, the new Governor-General John Adam recorded his objection "to the assumption by an editor of a newspaper of the privilege of sitting in judgment on the acts of Government and bringing public measures and the conduct of public men as well as the conduct of private individuals before the bar of what Mr. Buckingham and his associates miscall "public opinion". He, therefore, issued an ordinance requiring that all matters printed in a press or published thereafter, except matters of a commercial nature, should be printed under licence

from the Governor-General. The application for a licence should furnish the name or names of the printer and publisher or the proprietors, their places of residence, location of the press and the title of the newspaper, etc. Where there was a change in any of the particulars enumerated above, a fresh application for licence should be submitted. The Governor-General had the power to revoke the licence. Certain penalties were imposed in cases where the printing or publishing was done without the requisite licence. Regulations issued under this ordinance empowered magistrates to attach and to dispose of both unlicensed printing presses and presses which continued to function after the notice of recall. The presses were also required to carry on the first and last pages the names of the printer, city or town or place of publication and also required that a copy of the paper should be forwarded to the local magistrate on payment. Penalties were imposed for non-compliance with these regulations. It was apparent that these regulations were aimed at the Indian language press of those days. These regulations may be said to be the forerunners of the Vernacular Press Act of 1878.

In the period that followed, both Lord Bentinck and Sir Charles Metcalf adopted a more liberal attitude towards the press in India. Metcalf advocated the liberty of the press believing that its benefits outweigh its mischiefs. The unsatisfactory nature of the Press Laws agitated the minds of Indians and Sir Charles Metcalf referred the matter to Lord Macaulay to draft a Press Act. Macaulay pointed out that the licensing regulations were indefensible and should be repealed. He expressed the view that licences to print ought not to be refused or withdrawn except under very peculiar circumstances. While agreeing with the views of Lord Macaulay, the Governor-General expressed the view that as the Press Laws differed in the different provinces, the enactment of general law for the whole of India was indispensable. But there were others in the Governor-General's Council who emphasised the importance of the Government keeping a watchful eye particularly on the native press. However, the Council passed the new Act repealing the Bengal regulations of 1823 and Bombay Press Regulations of 1825 and 1827. The new Act

was made applicable to all the territories of the East India Company and required the printer and publisher to give a declaration about the precise location of the premises of publication. For this change in law, Metcalf had incurred the displeasure of the Court of Directors, but Lord Auckland, who succeeded him, was in no mood to revise the liberalization policy towards the Indian Press. Under Metcalf's Act of 1835, the press in India developed rapidly in the three provinces of Bengal, Bombay and Madras, as also in the North-West Provinces (now Uttar Pradesh).

At this stage it is interesting to note the observations made by Edward Thompson on the progress of the press in India in his study of Metcalf. He said :

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

"It was not the Indian Press that he liberated but the British Press in India, which existed under a cat and mouse regime in its first days under James A. Hicky, in Warren Hasting's time. Physical violence was the main check in its scurrility and irresponsibility. Calcutta society, very tolerant of immorality and indecorum, disliked frank commentary on its doings, and Hicky was frequently assaulted. As the century ended, Lord Wellesley presiding over a great crisis which permitted the intervention of no scruples and complications (luxuries in any case not much in his time) tightened up control. Journalists had leave to write what he approved ; if they worked otherwise, they left India. Lord Minto carried the Government's progressively obscure attitude still further. This dread of the free distribution of knowledge became a chronic disease. It was our policy in those days to keep the natives of India in the profoundest possible state of barbarism and darkness, a policy which operated outside the Company's own territory.."

✓ Lord Ellenborough was faced with a peculiar problem : that of publication by officials of official documents in a newspaper controversy in vindication of their position. The Governor-General directed that "official documents and papers were in no case to be made

public or communicated to individuals without the previous consent of the Government to which alone they belong." The Government issued instructions to newspapers prohibiting publication of official orders and deliberations to which they could not have had access except through the good offices of a highly-placed official. The point to note here is that Lord Ellenborough restrained the officials instead of reprimanding the editors for the publication. A controversy arose as to what may be officially communicated to the press and what should not and also by whom and thus was born the Official Secrets Act. Later the idea of Government official publicity was evolved.

The language newspapers devoted themselves to questions like the suttee, caste, widow re-marriage, polygamy, the atrocities of indigo planters and the blunders of young magistrates. The importance of the native press by then had become very considerable.

What the British call the Sepoys Mutiny of 1857, and referred to by us as our first war of independence, aroused grave apprehensions in the mind of the Government and it felt that sedition had been poured to an audacious extent into the hearts of the people of India. Lord Canning introduced Act XV of 1857 to regulate the establishment of printing presses and to restrain the circulation of printed books and papers in India. An important feature of the law was that it did not draw a line of demarcation between European and Indian publications. The Bill applied to every kind of publication, be it in English or in an Indian language owned by Indians or by Europeans. The Act, it may be noted, reintroduced the main features of the Adam Licensing Regulations of 1823. Under this Act, keeping or using of printing presses without a licence from the Government was prohibited and the Government assumed discretionary powers to grant licences and to revoke them at any time. The Act was applicable to the whole of the subcontinent and was limited only for one year. The prohibition imposed was that "no newspaper, etc, shall contain any observations or statements impugning the motives or designs of the British Government either in England or in India or in any way tending to bring the

said Government into hatred or contempt, to excite **disaffection** or **unlawful resistance** to its orders or to **weaken its lawful authority** or the authority of its civil or military servants, or observations or statements having a tendency to create alarm or suspicion among the native population of any intended interference by the Government with their religious opinions and observances or having a tendency to weaken the friendship towards the British Government of Native Princes, chiefs.....or alliance with it."

The rapid growth of the local language press made the Government rather uneasy. The official opinion had hardened towards the language press and the diehards among them stressed the need for a more effective law than that which then existed (namely, Act XXV of 1857, s.124A of the Penal Code and so on). In the year 1877, the Press Association, headed by Surendranath Banerjee, waited on the then Viceroy and made a fervent appeal not to impose any stringent restrictions on the language press. The Viceroy in his reply made no reference to the subject. In the following year, the Vernacular Press Act was passed (Act IX of 1878). The salient provisions of this enactment were to place newspapers published in the languages of the subcontinent under "better control" and to furnish the Government with more effective means than the existing law provided for punishing and suppressing seditious writing. The Vernacular Press Act owed its origin to the pique of the then Lt. Governor of Bengal, Sir Ashley Eden. The incident leading to the passing of the Act, as described by Motilal Ghose, needs narration in full :

"Babu Shishir Kumar was at the time a poor man. His position in Calcutta Society was not high. The tempting offer came from the ruler of the province. Many other men in his circumstances would have succumbed to his temptation. But he was made of a different stuff. He resisted and did something more. He thanked His Honour for his generous offer, but also quietly remarked, your honour, there ought to be at least one honest journalist in the land. The expected result followed. Sir Ashley flew into an unconquerable rage. With scathing sarcasm, he told Babu Shishir Kumar that he

had forgotten to whom he was speaking, that as supreme authority in the province he could put him in jail any day he liked for seditious writing in his paper, and that he would drive him back to Jessore bag and baggage from where he came in six months. It was not a vain threat. The Vernacular Press Act owed its origin to this incident. It was to take his revenge on Babu Shishir Kumar that Sir Ashley Eden persuaded Lord Lytton to pass this monstrous measure at one sitting. The blow was aimed mainly at the Amrita Bazar Patrika which was then an Anglo-Vernacular paper and fell within the scope of the Act. But Babu Shishir Kumar and his brothers were too clever for Sir Ashléy. Before the Act was put in force, they brought out their paper in wholly English garb and thus circumvented the Act and snapped their fingers at the Lt. Governor ; for, a journal conducted in the English language was beyond the jurisdiction of Lord Lytton's Vernacular Press Act."

The Vernacular Press Act, instead of cowing down the language press, produced exactly the opposite effect. The general tone of the newspapers was one of opposition to Government and Government measures. This hostile attitude continued till 1880 when Gladstone, who became the Prime Minister, had denounced the Act and gave instructions to repeal the Act.

Writing about the press in the 19th century India, Dr. Patabhi Sitaramayya points out that "popular agitation gives birth to repression on the ground that, unless the people are thoroughly beaten, no concession should be made to popular demands. Lord Lytton's Press Act of 1878 which was, however, quickly withdrawn, was the real forerunner of this policy. The Arms Act was another reply to the growing self-consciousness of the nation and continued a festering sore."

In the latter part of the 19th century, the Government of the then India was haunted by the spectre of sedition. By a notification promulgated on 25th June, 1891, the Government restricted the rights of the free press even in Indian States. The Indian National Congress protested against it in 1891. The notification prohibited

the publication of a newspaper within the territory of a Native State without the permission of the Political Agent. If this was contravened, the Political Agent could, by order in writing, require the editor to leave such local area within seven days from the date of such order and prohibit him from re-entering such local area without the written permission of the Political Agent. Disobedience of such an order made one liable to forcible expulsion. Dr. Pattabhi Sitaramayya points out "Sections 124A and 153A were forged in the year 1897 and really created disaffection towards the Government. It is interesting to note that sections 108 and 144 were first applied to politicians even in the last century. Secret Press Committees were established in 1898 which evoked a vehement protest from Mr. W.A. Chambers at the 14th Congress.....Kelkar spoke against the hateful institution of the Press Committees which are only a thinly veiled press censorship and, as such, a distinct disgrace to British India." Even more startling was the statement, unearthed by Mr. R.N. Mudholkar in 1897 made by Sir James Fitz James Stephen which was in the following words : "Go to the English newspapers ; whatever they say, you may say ; that anybody should want to be more offensive than they, is inconceivable."

Mr. S. Natarajan describes the early part of the 20th century as an "amazingly hysterical period which the press in this sub-continent passed through." The Anglo-Indian Press was one with the Government in its policies and it went all out to belittle the extremist as well as the moderate schools. Naturally, therefore, the Government did not find any danger in the Anglo-Indian Press. Defiance of the Government and challenging its acts were explained away as "occasional lapses from good taste and right feeling." The Times of India, which was pulled up for flagrant contempt of court in the Tilak trial (1897) was let off with a warning. This form of extreme discrimination displayed by the British Government provoked a caustic comment from Gokhale who said : "The terms of race arrogance and contempt in which some of these newspapers constantly speak of Indians, and specially of educated Indians, cut into the mind more than the lash can cut into the flesh. Many

of my countrymen imagine that every Anglo-Indian pen that writes in the press is dipped in Government ink. It is an absurd idea, but it does great harm all the same." Speaking on another occasion, Gokhale went on to expose the system of confidential circulars "which seek to take away in the dark what has been promised again and again in the Acts of Parliament, the proclamations of Sovereigns and the responsible utterances of successive Viceroys" and said that the unlimited power that the Government possessed inclined it constantly to enact repressive legislation. Further, Gokhale's remark that nowhere was the press so weak in influence as it was in India was borne out by the fact that the Government promulgated an Ordinance and enacted laws to control public meetings (1907) followed by the Newspapers (Incitement to Offences) Act, 1908. By this Act, power was given to a magistrate to seize a printing press if he was convinced that a newspaper printed therein contained any incitement to murder or to an act of violence or to an offence under the Explosive Substances Act. Power was conferred on the magistrate to make the conditional order absolute either by an ex parte decision in an emergency or after hearing evidence from persons concerned against the order. Police sub-inspectors were to carry out the magistrate's order under warrant and right of appeal to the High Court lay within 15 days of the order being made absolute. Proceedings under the Act did not save any person from being prosecuted under any other law, and on the order being made absolute, the local Government could annul the declaration in respect of the newspaper or any newspaper which was in substance the same as the prohibited newspaper; the effect of this draconian law was that several newspapers, which expressed sympathy with terrorist activities, ceased publication in 1908. All hopes that the hardships inflicted by the 1908 Act were temporary were shattered when the Indian Press Act was passed in 1910.

The most harsh provisions of the Press Act, 1910, were the requirement of security deposit by every person keeping a printing press and forfeiture of the deposit in all cases where the matter

contained in the newspaper had a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise, to incite to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, or to seduce any officer from his allegiance or his duty, to put any person in fear or to cause annoyance to him, to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order and so on. When the security deposit was forfeited, a person making a fresh declaration was required to deposit a higher amount than the first, and on the third occasion if an offence is alleged, the security deposited, the printing press used for printing the newspaper and all copies of such newspaper were forfeited. No newspaper printed and published in India could be transmitted by post unless the printer and publisher had made a declaration required under s.5 of the Press and Registration of Books Act, 1867, and the publisher had deposited security when so required under this Act. When a postmaster suspected that any article other than a letter or parcel contained the prohibited matter he could detain that article in the course of transmission. Two copies of the newspaper were required to be supplied to the Government free of cost.

Enlightened public opinion was very much against the harsh provisions of the Press Act of 1910 from the very beginning. Gopal Krishna Gokhale and R.N. Mudholkar, who were members of the select committee of the Legislative Council, in a separate note of dissent had expressed their deep misgivings on the working of the Act. They pointed out that the then existing law was sufficient to punish actual sedition as also to deal effectively with incitement to violence. Even assuming that a special legislation of the kind was required to be passed, it should not form part of the permanent statute book of the country. They further pointed out that some of the provisions of the Bill were far too drastic and go beyond the requirements of the situation. Speaking about the security deposit they submitted that the magistrate may be empowered to demand the deposit of a security in cases in which in his opinion there were reasonable grounds to believe that the press or the newspaper

was intended or was likely to be used for any of the purposes described in the Act. This would prevent an unnecessary financial burden (which in the case of small concerns might prove a serious burden) being imposed on well-intentioned printers and publishers.

The 1910 Act had become a festering sore affecting the Press. After the bomb attack on Lord Hardinge in 1912 from which he narrowly escaped, the provisions of the Act, which were already draconian in nature, were still further tightened. Fresh declarations were demanded for various minor causes, such as change of premises, temporary absence of the printer or the publisher, death of the original owner and change in the management. This led in turn to an insistent demand for the repeal of the Press Act.

The far-reaching effect of the provisions of this Act and notorious instance of misuse of the Act could be seen from the case of Mohamed Ali. A pamphlet published by him under the title of "Come over into Macedonia and help us" was forfeited without the notification stating the grounds for the Government's opinion which was a requirement under the 1910 Act. The Calcutta High Court held that it was not seditious and that it was outside the scope of the Penal Code. The Chief Justice of the Calcutta High Court then observed that it would be the duty of the court to hold, but for s.22, that there had been no legal forfeiture. The learned Chief Justice further observed :

"Much that is regarded as standard literature might undoubtedly be caught. The Advocate-General has contended, and rightly in my opinion, that the provisions of the Press Act extend far beyond the Criminal Law and he has argued that the burden of proof is cast on the applicant, so that however meritorious the pamphlet may be, still if the applicant cannot establish the negative, the Act requires his application must fail. And what is this negative? It is not enough for the applicant to show that the words of the pamphlet are not likely to bring into hatred or contempt any class or section of His Majesty's subjects in British India or that they have not a tendency in fact to bring about that result. But he must

go further and show that it is impossible for them to have that tendency either directly or indirectly, and whether by way of inference, suggestion, allusion, metaphor or implication. Nor is that all. The legislature has added the all-embracing phrase "or otherwise". Again, in the case of *New India* edited by Mrs. Besant, the Madras High Court remarked : "Section 3(1) imposes a serious disability on persons desiring to keep printing presses." A deputation of the Press Association headed by Mr. Horniman waited on Lord Chelmsford, the Viceroy, on 5th March, 1917, to impress upon him the harsh nature of the law and he rebuked the deputation in unmeasured terms. He said : "The function of a Judge is not to say what the law ought to be, but what it is. Executive action is and must always be based upon information, experience, considerations of policy which find no place in the courts of law. Sir Lawrence Jenkins was not entirely consistent with himself. And I cannot but think that if he had any knowledge of the statistics I have given you, he would have hesitated before describing the keeping of printing presses and the publication of newspapers as an extremely hazardous undertaking."

Lord Chelmsford used the Press Act with severity and too often. Mrs. Besant was prohibited from entering the Bombay Presidency by Lord Willingdon under the Defence of India Act. In Bengal, the number of young men interned ran up to nearly three thousand. The Congress urged the Government to repeal immediately the Defence of India Act, the Press Act, the Seditious Meetings Act, the Criminal Law Amendment Act and similar other repressive measures.

The Criminal Law Amendment Act, 1913, and the Defence of India Regulations, which came into force at the outbreak of war in 1914, were used to stifle criticism and silence agitation. The amount collected by the Government by way of securities and forfeitures, most of them by executive orders, the number of presses closed and the publications proscribed under the Act would clearly show under what trying conditions the press functioned and to what extent it was crippled. The numerous protests proved to be of no avail. Immediately on the heels of these repressive measures came

the legislation based on the recommendations of the Rowlatt Committee. The agitation, which followed the passing of these laws, took the form of reading publicly, copying and distributing proscribed literature openly and courting punishment. Horniman was deported. Later, however, he was permitted to resume publication but under censorship with security deposit of a few thousands of rupees.

The position had become by then, intolerable. A Press Law Committee was appointed under the chairmanship of Sir Tej Bahadur Sapru in 1921. The journalists deposed before the committee that an Anglo-Indian editor in Madras was allowed to make the most violent attacks on Indians who advocated the reforms that are now law. But if an Indian paper replied to the attack, it found itself accused of exciting hatred. The Sapru Committee recommended the repeal of the 1908 and 1910 Acts, the amendment of the Registration of the Press and Books Act to empower seizure of seditious literature, to ensure the printing of the editor's name in every issue of a newspaper and to reduce the maximum penalty of imprisonment to six months. The committee said that the two Acts had done little to check the evils they were meant to restrain for the "more direct and violent forms of sedition are now disseminated more from the platform and through the agency of itinerant propagandists than by the press."

Next in importance is the Indian Press (Emergency Power) Act, 1931, which was described as an Act to provide against the publication of matter inciting to or encouraging murder or violence. The sweeping nature of s.4 of this Act may be noticed from the fact that it provided that whenever it appears to the Government that any printing press in respect of which any security had been ordered to be deposited under s.3 was used for the purpose of printing or publishing any newspaper, etc., containing any words, signs or visible representations which (i) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence or (ii) directly or indirectly express approval or admiration or any such offence or

of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence, the Local Government may forfeit the security or, where no security has been deposited, declare the press to be forfeited. On the second occasion, the security to be deposited by the press could be upto ten thousand rupees. Power was also conferred on the Postal and Customs authorities to seize articles in course of transmission if they are suspected to contain matter of the nature described above.

Laws relating to press in Bangladesh as at present will be discussed in the following pages.

CHAPTER II

CONSTITUTIONAL PROVISIONS RELATING TO PRESS

Freedom of the Press is a fundamental right

Freedom of the Press is a fundamental right available to every citizen of Bangladesh. Now, what is a fundamental right ?

A legal right is an interest which is protected by law and is enforceable in the courts of law. While an ordinary legal right is protected and enforced by the ordinary law of the land, a fundamental right is one which is protected and guaranteed by the written Constitution of the state. These are called 'fundamental', because while ordinary rights may be changed by the parliament in its ordinary process of legislation, a fundamental right, being guaranteed by the Constitution, cannot be altered by any process shorter than that required for amending the Constitution itself. Nor can it be suspended or abridged except in the manner laid down in the Constitution itself.

On the other hand, the fundamental rights being guaranteed by the fundamental law of the land, no organ of the State, executive, legislative or judicial, can act in contravention of such rights, and any act which is repugnant to such rights must be void.

Once the Constitution is regarded as the supreme law of the land the powers of all the other organs of Government are considered as limited by its provisions ; it follows that not only the parliament but also executive and all administrative authorities are equally limited by its provisions, so that any executive or administrative authorities are equally limited by its provisions, so that any executive or administrative act which contravenes the provisions of the Constitution must, similarly, be void.

In fact, no right can be said to be fundamental if it can be overridden by the parliament and if there is no authority under the

Constitution to pronounce a law to be invalid where it contravenes or violates such right directly or indirectly.

The Enforcement of the Rights

The fundamental rights, guaranteed by Part III of the Constitution of Bangladesh, are not “natural” rights but such rights as will be enforceable by Courts ; they are a part of the positive law of the land. While the aim to govern and control the absolute power of the State in imposing restrictions of the freedom of the governed, they are for the most part qualified, not absolute rights, but how far the constitutional protection of such rights will constitute an effective shield against any future executive arbitrariness and legislative invasion is a major problem whose solution would depend as much on the exercise of judicial restraint as on the legislative wisdom of the elected representatives in Parliament. These rights are, no doubt, paramount to ordinary laws.

The insertion of these rights in the Constitution and the guarantee of their enforcement imply judicial review and control of the legislative and executive acts and organs of the State. In so far as there has been encroachment upon the rights not justified by the constitutional restrictions recognised by the Constitution, the Court will declare the order of statute as invalid, unenforceable and unconstitutional. Under Article 26 of the Constitution the Courts have been empowered to declare laws inconsistent with or made in derogation of the fundamental rights to be void. Any person or citizen who feels aggrieved as a result of an infringement of any fundamental rights may move the High Court Division of the Supreme Court under Article 102(1) of the Constitution. These Articles provide the means of enforcing the fundamental rights guaranteed by Part III, and have made the Judiciary the guardian of the citizens, liberty and privileges under the Constitution. The basic principle underlying a declaration of Fundamental Rights in a Constitution is that it must be capable of being enforced not only against the executive but also against the legislature by judicial process.

Even though freedom of the press was not specifically mentioned in Article 8 of the Constitution of Pakistan, 1956 it was considered to be included under the guarantee regarding the freedom of speech and expression. Muhammad Shafi J. in interpreting the scope of that Article, stressed the justification for the existence of an independent press in these words :

“The purpose of the Constitution is that there should be as few restrictions on the freedom of the press as in the light of the conditions prevailing in a country are absolutely essential. In fact, no restriction should be placed on the freedom of the press except in times of grave emergencies, such as war, civil commotion on a large scale, and even then only in respect of matters involving the security of the State.”

Some statements made by Blackstone about the most important of the above-mentioned vehicles of expression, that is, the press, require consideration :

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

These words are, no doubt, to be valued ; but the question remains still to be answered as to how the power of a licenser can be regulated by law if censorship must not be dispensed with for the sake of peace, order, good government and religion. For, censorship, though may be subjected to well-defined principles, would in the long run mean interference by a single person of the rights of other person to make manifest their own thoughts.

Pre-Censorship

An order under Section 7(1) of the Press (Emergency Powers) Act, 1931 calling upon the printer and publisher of a newspaper to deposit security was held unconstitutional since it aimed to restrain him from expressing himself freely before he actually expressed himself. In the words of Kayani C. J., "Whatever restraint is to be placed on him, will naturally relate to the manner of his expression. If he is required to fulfil a condition before actually expressing himself, the restraint will be of a preventive nature."

In a case before the Madras High Court where Section 49-A of the Madras City Police Act, 1886, in regard to publication for sale of any book or pamphlet containing news or information of horse races empowered the executive authority under its rule-making power to permit such publication or to refuse it, the Court held that it amounted to a previous restraint on the exercise of the freedom of expression and was illegal.

"Pre-censorship of news by the executive authority is not consistent with the exercise of the fundamental right to freedom of speech and expression guaranteed by the Constitution."

The reasons for which pre-censorship should be condemned as unconstitutional were advanced by Chief Justice Hughes of the United States Supreme Court. Minnesota enacted a statute under which the owners and publishers could be enjoined from publishing any newspaper or magazine if it contained any "malicious, scandalous and defamatory matter." A paper called "The Saturday Press" was condemned under the statute. The Supreme Court set the injunction aside because the statute imposed a previous restraint on publication, a device resorted to in colonial days to suppress criticism and stiff opposition. Civil or criminal action may be taken if the publisher or press-keeper commits any crime or does any wrong, but a paper cannot be suppressed because it is irresponsible or reckless or impudent.

"While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavouring faithfully to discharge

official duties exert a baleful influence and deserve the severest condemnation in public opinion, it cannot be said that this abuse is greater, and it is believed to be less than that which characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press especially in great cities. The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy consistent with constitutional privilege."

In that they influence public opinion, motion pictures, radio and television can also claim the protection of Article 39. Where a New York statute gave a censor the right to prevent the exhibition of a motion picture on the ground that it was sacrilegious, it was held that the statute was unconstitutional ; thus bringing the motion pictures within the ambit of the constitutional guarantees of freedom of speech and of the press. Clark J. observed : "The censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies. New York cannot vest such unlimited restraining control over motion pictures in a censor."

Freedom of Circulation

Freedom of expression includes the freedom of publication as well as distribution. There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is secured by freedom of circulation. "Liberty of circulating is as essential to that freedom as liberty of publishing ; indeed without the circulation, the publication would be of little value."

If the taxes imposed on a publisher show an invidious incidence, they may be declared unconstitutional as having the effect of stifling circulation of books or papers disseminating knowledge. In 1712, the British Parliament imposed a tax on printed papers and pamphlets and required a stamp to be affixed on a newspaper. Such taxes were known as "taxes on knowledge". A tax of 2 percent was imposed on the gross receipts from advertisement in a newspaper having a circulation of 20,000 copies per week. In the opinion of the Supreme Court, the tax here involved is bad, not because it takes money from the pockets of the appellees :

"If that were, all a wholly different question would be presented. It is bad because, in the light of its history, and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the Constitutional guarantees. A free press stands alone of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."

General observations regarding Constitutional Restrictions on the Freedom of Press

The Constitution does not indicate what restrictions are to be considered reasonable with regard to matters mentioned in Article 39 and, it is for the Courts to decide whether or not a restriction which is impugned is reasonable or not.

The test of reasonableness, wherever prescribed, should be applied to each individual Act impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases :

"The nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and

the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

“The right to determine the reasonableness of the restriction vests in the Court and it requires no mention that there can be no absolute test of reasonableness which would be applicable to all circumstances.”

Where the extent of the restriction is left to the discretion of an executive authority, it amounts to negation of the right to freedom of speech and expression. Demanding security from a person who disseminates or attempts to disseminate or abets the dissemination of seditious matter is provided for under Section 108 of the Code of Criminal Procedure and this was held to be imposing reasonable restrictions in the interests of the security of the State.

The right to free speech and expression guaranteed to every citizen by Article 39 is, as already mentioned, not absolute. Restrictions that are supposed to be good for the community may be imposed to override the right of the individual. And such restrictions will not be considered to be unreasonable. Vague or uncertain restrictions are not reasonable, because the citizen does not know the scope of the restriction and the inevitable result is either to take away the right altogether or render it impossible of compliance. A restriction imposed on a guaranteed right cannot be reasonable if it is arbitrary, or in excess of what is required in the interest of the public and on this view, Section 144 of the Code of Criminal Procedure was held not to conflict with Article 19 (1) (a) of the Indian Constitution, corresponding to Article 39 of the Bangladesh Constitution. Reasonableness is required not only in the substantive provisions of the impugned law, but also in the procedural provisions. Applying this test, although no objection could be

taken to the substantive provisions of the Dramatic Performances Act (XIX of 1876), its procedural part imposed unreasonable restrictions on the right of freedom of speech and expression as it denied the petitioner the right to be heard before final condemnation of the right to have the order reviewed by a higher tribunal.

In a case where the respondent made some remarks in a petition before a subordinate Judge about the conduct of a High Court Judge it was observed that the contention that no proceedings would be taken against the respondent because of Article 8, corresponding to Article 39 of the Constitution of Bangladesh, was based on a misreading of the Article, for it is mentioned in clear terms that it would not affect any law which placed reasonable restrictions on the liberty of speech and expression.

Content of the Constitutional Provision

Having discussed the nature of the constitutional provisions relating to press, I now pass on to its content.

The Constitution of the People's Republic of Bangladesh provides as follows :

Article 39. (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 to freedom of speech and expression ; and

(b) freedom of the press, are guaranteed.

It is clear from the above, that freedom of thought and conscience is unlimited in Bangladesh. It suffers from no constraints. Freedom of speech, expression and the press is however not unlimited.

It is amazing that in no countries of the world does the principle of unlimited and absolute freedom of thought and conscience find place as in Bangladesh. Nowhere else has freedom of thought and

conscience been guaranteed in so many words. I quote a few Constitutions of the world on this subject.

(A) The First Amendment to the Constitution of the United states (1791) lays down—

The Congress shall make no laws abridging the freedom of speech or of the press.

(B) **England**—The right of freedom of discussion like all other individual rights, is in **England**, not based on any declaration embodied in a constitutional document, or in any particular rule of statute of common law, but is based on the ordinary rule of law that no man is to be punished except for a distinct breach of the law.

(C) **Eire**—Sec. 40(6)(1) of the Constitution of Eire says : The State guarantees liberty for the exercise of the following rights subject to public order and morality :—

(i) The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio' the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with law.

(D) **France**—The preamble to the Constitution of the fourth French Republic (1946) declares—

The free communication of ideas and opinions is one of the most precious of the rights of man ; every citizen, then can freely speak, write and print, subject to responsibility for the abuse of this freedom in cases determined by law.

(E) U. S. S. R.—Art. 125 of the Soviet Constitution says :

Article 125—In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U. S. S. R. are guaranteed by law.

- (a) freedom of speech ;
- (b) freedom of the press ;
- (c) freedom of assembly, including the holding of mass meeting ;
- (d) freedom of street processions and demonstrations.

These civil rights are ensured by placing at the disposal of the working people and their organisations printing presses, stocks of paper, public buildings, the streets, communications-facilities and other material requisites for the exercise of these rights.

[It would be a mistake to suppose that there are no fundamental rights in the Soviet Constitution. The declarations in this behalf in the Constitutions of the U.S.S.R. and of the allied States are as good as in any other constitution, but for the fact that these rights are to be enjoyed for the benefit or in the interests of one class of people, namely, the working class.]

(F) West Germany—Art. 5 of the West German Constitution (1948) says—

1. Everyone shall have the right freely to express and to disseminate his opinion through speech, writing, and illustration and without hindrance to instruct himself from generally accessible sources. Freedom of the press and freedom of reporting by radio and motion pictures shall be guaranteed. There shall be no censorship.

2. These rights shall be limited by provisions of general laws, legal regulation for protection of juveniles, and by the right of personal honour.

3. Art and science research and teaching shall be free. Freedom shall not absolve from loyalty to the constitution.

(G) Japan—Art. 21 says—

Freedom of assembly, association, speech, and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

(H) The Constitution of India provides—**(1) All citizens shall have the right—****(a) to freedom of speech and expression :**

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(I) Pakistan Constitution of 1956 provided—

8. Every citizen shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the security of Pakistan, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(J) The Constitution of the Islamic Republic of Pakistan, 1962 provided—**9. Freedom of speech.**

Every citizen shall have the right to freedom of speech and expression subject to any reasonable restrictions imposed by law in the interest of the security of Pakistan, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Now, the first point for consideration is,

What could be the meaning and interpretation of this principle enshrined in para 1 of Article 39 of our Constitution regarding absolute freedom of thought and conscience.

There are five accepted rules of interpretation :

1. The fundamental rule of interpretation of all enactments to which all other rules are subordinate is that they should be construed according to the intent of the Assembly which passed them.

For the purpose of interpretation, however, "intent" or intention does not mean what the Constituent Assembly meant to say, but what the meaning of the words employed is. In other words, we have to find out the expressed intention from the words of the Article itself.

2. If the words of the Article are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense.

3. When the language is plain and admits of one meaning only, that meaning, and that meaning alone, must be given to it, however absurd, harsh, unjust, arbitrary or inconvenient the consequences may be. The reason is plain, viz, that in interpreting the Article we cannot assume the function of Assembly.

4. The Constitution must be read as a whole with a view to determining the intention of the Article.

5. The Article ought to be so interpreted that if it can be prevented, no para, sentence or word shall be superfluous, void or insignificant.

So effect must be given to every clause and word of the Article. It is improper to omit any word which has a reasonable and proper place in it or refrain from giving effect to its meaning.

What is thought ? It is an active process through which the objective universe is reflected in concepts, judgements and theories in human mind. Man is a thinking being, the ability to think being a special gift to homo sapiens. A man thinks and that is why he is a man.

What is conscience ? It is a moral sense, an ethical consciousness which differentiates good from bad, and right from wrong. It gives direction to man and purpose to his life.

Thought and conscience are by their very nature individualistic. Although it is the society which provides largest amount of materials.

for their formation, yet it is curious phenomenon that men, in the same society, differ in their thoughts and consciences. The constitutional guarantee protects individualism and opposes regimentation in these two fields.

Keeping the above accepted rules of interpretation and the meaning of the twin concepts of thought and conscience in view, I have tried to ascertain the implication of para one of Article 39. I am not sure what really was the intention of the Constituent Assembly to frame this surprisingly unique principle, but after giving my utmost and anxious consideration on it, I have explored the following possible meanings :—

1. A citizen has such freedom of thought and conscience as is restricted by no limitations. In the field of expression either vocally or in black and white his freedom is limited, the boundary being the interest of the state etc. So his thought and conscience have the freedom of straying into and treading the area of what may presently be regarded as even subversion of state.

A citizen therefore may have subversive thought and conscience ; but as long as he is not the subject of their expression, he enjoys constitutional immunity. He may give an air of subversion or circumstances may clothe him with that character yet he will enjoy immunity by virtue of this guarantee.

2. A citizen has an unlimited freedom of thought and conscience, his restriction begins with expression. So if he writes down his thoughts or ideas born out of his conscience, he is not accountable for them to anybody unless and until his writings get expressed through any media, inclusive of printing or circulating.

Justice Munim, in his “Rights of the Citizen under the Constitution and Law” observes quoting Geoffrey Marshall (Constitutional Theory) that the freedom of thought and conscience must necessarily include the right to express opinions, for, nobody who has urged the necessity of the freedom of thought can have seriously meant anything by that phrase but the expression of free thought by some public manifestation.

With the view of Justice Munim, agreement is difficult.

With Dr. Kamal Hossain, who had significant contributions in the making of our Constitution, I had a short discussion. His interpretation is as follows :

Para 1 of Article 39 puts in human language the spirit of Quranic verse—‘la ikraha fiddin’ and ‘lakum Dinukum olia din’. There may arise, even in these days of enlightened tolerance, situation like Christian inquisition against which this guarantee will operate. A man in power, with state authority at his back, might ask a citizen, “What is your view on Hanafi doctrine ?” The citizen may say in reply that he has the right to think anything about the doctrine and that the said right is fundamental under para 1 of Article 49, and that he is not bound to make about it any declaration.

This fundamental right has been subjected as yet to no judicial interpretation and therefore it is anybody’s guess as to what it really means.

GENERAL DISCUSSION

Article 39 is a guarantee against state action

Article 39 guarantees among other rights the fundamental right of freedom of press subject to the power of the state to impose restrictions on the exercise of this right.

Available to citizens only

But it should be noted that Article 39 is confined to citizens of Bangladesh. The right conferred by this Article is not available to any person who is not a citizen of Bangladesh.

Thus a person whose citizenship has been terminated or who has no citizenship of Bangladesh cannot complain of any restriction against his freedom of expression through press. The citizenship itself is subject to some legislative restrictions.

Available to natural persons only

The right conferred by the Article is confined to natural persons who are citizens and that a corporation not being a citizen, cannot claim this right even though its share-holders are citizens.

Nature of this right

The concept of “natural right” in respect of freedom of press is not relevant in Bangladesh for ascertaining whether there is any inviolable right apart from that included in Article 39 of the Constitution. The concept “of natural right” may however be utilized for determining the ambit of this Fundamental Right itself.

Nature of Constitutional guarantee

There is a difference between what an Act commands and what a Constitution commands. When a right is created by an Act or Ordinance, it can be exercised only subject to the conditions imposed by it and it can be restricted in any manner or taken away by the legislature at any time. But when a right is fundamental under the Constitution, it cannot be taken away by the legislature. The fundamental right may be subjected to such restrictions as are provided by the Constitution itself and no more.

RESTRICTIONS**General**

Absolute or unrestricted rights in respect of freedom of press do not and cannot exist in any modern state. In two very modern states of the world, one having no constitution and the other having one, the position is the same. In England, where there is no constitutional guarantee of fundamental rights and in the United States, where there exists constitutional guarantee of freedom of press, the freedom is not unlimited.

The American Supreme Court has observed :

“The liberty of the individual to do as he pleases even in innocent matters is not absolute. It must frequently yield to the common good.

“The reconciliation of the contest between power and liberty, between the claims of the political society on the one hand and the interests of the individual, on the other, is a perennial problem of political society, a problem of recurrent difficulty which curiously persists irrespective of any difference in the form of government. Since the disappearance of the Fetish of *laissez faire* and the emergence of the welfare state, it is generally acknowledged that the individual can have no absolute or unfettered right in any matter and that the welfare of the individual, as a member of a collective society, lies in a happy compromise between his rights as an individual and the interests of the society to which he belongs. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all.”

The Indian Supreme Court has observed :

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

Police Power

In U.S.A., the doctrine of police power is a rule, under which the states are said to have the inherent power to impose such restrictions upon the fundamental rights as are necessary to protect the common good, public health, safety and morals.

In other words the police power is founded on the theory that “the whole is greater than the sum total of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the state shall suffer.”

The police power is merely an authority to firmly and even with force establish principles of good conduct and neighbourliness calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as that is reasonable and consistent with a corresponding enjoyment by other.

On the other hand,

(i) The police power does not confer upon the state an unrestricted authority to accomplish whatever the public may presently desire. It is the governmental power of self protection and permits reasonable regulation of rights and property in particular essential to the preservation of the community from injury which of course, includes general welfare.

(ii) The regulations which are imposed in the exercise of the police power must have (a) a real and substantial relation to the desired ends, and (b) must not be arbitrary or oppressive in other words, the police power must be exercised subject to constitutional limitations, including "Due process".

The concept as envisaged in our Constitution is that there cannot be any such thing as absolute or uncontrolled liberty, for that would lead to anarchy, and disorder. Liberty has to be limited in order to be effectively possessed. The question therefore arises in each case of adjusting the conflicting interests of individual and of the society.

There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed to the governing authority of the country to be essential to the safety, health, peace, general order and morals of the community. Ordinarily every man has the liberty to order his life as he pleases, to say what he will, to go where he will, to follow any trade, occupation or calling at his pleasure and to do any other thing which he can lawfully do without let or hindrance by any other person ; on the other hand, for the very protection of these liberties the society must arm itself with certain powers. What the constitution therefore attempts to do in declaring the rights of the people is to strike a balance between individual liberty and social control. Art. 39 of the Constitution guarantees this individual liberty and prescribes various restraints that may be placed upon them by law so that they may not conflict

with public welfare or general morality. The peculiarity of this Article lies in the fact it contains two parts, one declaring the right itself and the other enumerating precisely the limitations which may be imposed by the state upon the exercise of this right.

Relationship of restrictions with Permissible ground must be proximate

Not only should the restriction, in order to be valid, relate to any of the grounds mentioned in the Article, but the relationship between the impugned legislation and any of the relevant specified ground must be rational or proximate. This also follows from the expression "in the interest of."

In an Indian case (A 56, S.C. 541) it was said that "Uttering abusive or defamatory slogans against a Minister cannot be penalised on the ground of public order unless there is clear evidence that the utterances would lead to a reasonable apprehension of breach of the peace."

In the interests of

It is now settled that though the words "in the interests of" imply that the restriction imposed under any of the limitation prescribed in Article 39 in order to be valid must be proximately related to a ground specified in the relevant limitation, that very expression enables the legislature to restrict the exercise of the fundamental right as soon as a threat of injury to the social interest protected by the relevant ground on a proximate tendency thereof is manifest, it is not bound to wait until the mischief has actually taken place.

In other words, once the connection between the restrictive legislation and the permissible ground is rational, the legislature has the discretion as to the expediency of the stage at which the restriction is to be applied, thus, it is not prevented from providing against threatened or apprehended injury as distinguished from an actual injury (A 1962 S.C. 955).

Adjustment of competing fundamental rights

The very existence of a legal right requires that the rights of all persons who possess such right should be equally maintained ;

it follows, therefore, that nobody can be allowed to so exercise his legal right as to prejudice the exercise of a similar right belonging to another individual. This inherent limitation of a legal right extends to fundamental rights as well.

U.N. Declaration

The framers of the Universal Declaration of Human Rights (1948) were, however, anxious to emphasise this self-evident limitation which is apt, to be forgotten in course of a zealous advocacy of individual rights. In Art. 19(2) of the Declaration, therefore, it is stated,

“In the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.

The Draft Covenant on civil and political rights prepared by the commission on Human Rights in 1952, amplified the above provision by engrafting it as a limitation clause upon the several individual rights specifically. Thus Art. 16 (3) of the Draft Covenant stipulates that the exercise of the freedom of expression provided in cl. (2) of the Article,

“Shall be subject to restrictions as are provided by law and are necessary for respect of the rights or reputation of others.”

It is to be noted that the limitation provided for in the foregoing provisions is constituted not only by the same right, as that which is sought to be exercised by a person, but also the other rights and freedoms belonging to other persons.

Who may impose the restrictions

The state making any law. The restrictions referred to in Article 39 may be imposed by the legislative authority i.e. the parliament.

From the language of Article 39 it is clear that the restrictions referred to in this clause can be imposed only, by law, including of

course, valid subordinate legislation. But without legislative authority the executive cannot impose any restriction upon any of the fundamental rights guaranteed by Act 39.

The legislature however is not required to make a law solely for the purpose of imposing the restriction. A restriction may be imposed by a general law, if the other conditions are satisfied.

In order to justify a restriction the law which imposes the restriction must be otherwise valid. A restriction which is not authorised by a valid law cannot be saved. In the case of subordinate legislation the procedure required by the statute must be complete before it can be defended under the Article.

What constitutes a restriction

1. When a law is impugned as having imposed a restriction upon a fundamental right, what the court has to examine is the substance of the legislation, without being beguiled by the mere appearance of the legislation (A 1958 SC 578). The legislature cannot disobey the constitutional prohibitions by employing an indirect method. The legislative power being subject to the fundamental rights the legislature cannot indirectly take away or abridge the fundamental rights which it cannot do directly ; on the other hand, the effects of the legislation are relevant for this purpose only in so far as they are the direct and inevitable consequence or the effects which could be said to have been in the contemplation of the legislature. The possible or remote effect of a legislation upon any particular fundamental right cannot be said to constitute a restriction upon that right.

The restriction must have a rational relation to the object which the legislature seeks to achieve

The requirement of the rational relationship between the restriction and the ground of restriction (e.g. public orders) which is authorised by Act 39 follows not only from general principles but also from the specific words in these clauses namely, "in the interests of".

It has been held by the Supreme Court that this expression "in the interests of" postulates a proximity of relationship (A 1954 SC. 276).

Thus, a limitation imposed in the interests of public order to be a reasonable restriction, should be one which had a proximate connection or nexus with public order, but not one farfetched, hypothetical or problematical or too remote in the chain of its relation with the public order.

"In the interests of" does not however predicate that the legislature can impose the restriction only where the mischief has actually taken place or is sure to take place. It can also curb tendencies to cause the mischief aimed at. From this standpoint it has been held that the expression is wider than words like "for the maintenance of." "In the interests of" authorises the legislature to restrict an act or utterance which not only produces the mischief aimed at, e.g. breach of public order or security of the state, but also those which have a tendency to cause that effect but which may not actually lead to a breach of public order, thus the excitement of religious disaffection with a deliberate intent has a proximate tendency to cause public disorder.

The question of tendency has however, to be determined objectively with reference to the circumstances in which the mischief sought to be suppressed is likely to take place and not in the abstract. Indian Supreme Court says in *Romesh Thappar's* (1950 SC R 594) case,

Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits as it is not severable, so long as the possibility of its being applied to purposes not sanctioned by the constitution cannot be ruled out it must be held to be wholly unconstitutional and void.

The validity of a restrictive law depends upon its relationship to any of the grounds enumerated in Art. 39. Hence if the restriction is clothed in such wide language that it is possible to apply it for purposes not sanctioned by the Articles, the restriction must be struck down as wholly void.

The means by which a fundamental right may be restricted

Once the proximity of the relationship of the restriction with a constitutionally permissible object of restriction is established the court would not interfere with the means adopted by the legislature except where it is patently arbitrary. In this sphere, the court acts upon the principle of respect for the legislative determination and does not seek to inquire whether a better means (according to the court) to secure the same object could have been adopted by the legislature.

The restriction must not be excessive

As stated already it has been held that in order to be reasonable, a restriction must not be greater than the mischief to be prevented.

“Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness.”

In other words, even where the restriction imposed has a rational relation to the object which the legislature seeks to achieve, it will be unreasonable if it is unnecessarily harsh and overreaches the scope of the object to achieve which it was enacted A.I.R. 1959 SC. 300.

In determining the substantive reasonableness, the court has to take into consideration various factors such as the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time. The impugned law must not under the

guise of protecting public interests arbitrarily interfere with the exercise of a fundamental right.

Retroactivity and reasonableness

In Bangladesh there is no specific limitation against retrospective legislation save that contained in the case of criminal legislation. The question, however, becomes relevant in connection with the reasonableness of the restriction imposed by such legislation if a fundamental right is affected thereby, and Art. 39 comes into operation. Though the question has not yet been fully thrashed out, the Supreme Court of India has laid down the general proposition that the retrospectivity of a statute is an element which may properly be taken into consideration in determining the reasonableness of the restriction imposed by the statute, but the decision so far merely gives an indication as to the circumstances in which mere retroactivity will not be considered to be unreasonable but not much guide as to the circumstances in which it may be considered to be unreasonable (A.I.R. 1954 SC 92).

A restriction is not necessarily unreasonable merely because it creates a civil liability in respect of a transaction which has taken place before the date on which the Act was enacted.

How far it would be reasonable to make the exercise of a fundamental right dependent on the subjective satisfaction of the Executive :

In determining the reasonableness of the restriction imposed by a law, one of the tests which has been applied by Indian Courts is whether the restriction is to be imposed by the authority who is empowered by the legislature, subjectively or objectively. A subjective decision is the decision of the person who makes it, solely on his own satisfaction, and the reasonableness of that satisfaction cannot be tested by the court. An objective decision on the other hand, is one which is arrived at by the application of some external standard other than the personal satisfaction of the authority who

makes the decision and because it is made according to an objective standard, the reasonableness of the decision can be tested by the court, or the application of the same objective standard, for instance whether a particular conclusion follows from the evidence placed before the authority.

No absolute answer can, however, be given to the question whether a restriction would invariably be unreasonable if the authority is empowered to impose it on his subjective satisfaction.

The answer to this question depends on the nature of the right and the circumstances calling for the restriction.

Emergency as an exception

In all countries it is acknowledged that an administrative action is not liable to be challenged on the ground that it has affected a right without a notice or hearing where summary action is called for by the emergent nature of the situation. When a building under the roof of which is huddled a number of poor tenants is on the point of collapse, the administrative authority may pull it down without notice by the order. It would follow that a law which provides for such summary action in similar circumstances would not be liable to be impugned as being unreasonable within the meaning of Art. 39.

A law is not invalid merely because it empowers the Government or its delegate on its subjective satisfaction to prohibit, for a limited period, the publication in or importation into, a particular area, of matters prejudicial to the maintenance of peace and harmony affecting or likely to affect public order, because the mischief to be averted demands quick and effective decision.

Provision for appeal or revision as an element of reasonableness

It has been accepted by some of the Superior Courts in this subcontinent that the provision for or the absence of a provision for appeal is an element to be taken into consideration in determining the procedural reasonableness of a statute by which discretionary power is vested in an administrative authority to impose restrictions upon the Expression.

Grounds of restriction

(These restrictions will be elaborately discussed in due course.)

I. Security of the state

However precious the freedom of expression may be in a democratic society the means can never override the end itself. The object of freedom of expression is to maintain the opportunity for free discussion, to the end that government may be responsive to the will of the people and that changes if desired may be obtained by peaceful means, that opportunity can hardly be maintained without the existence of an organised government having the power to ensure the exercise of that right and to prevent interferences with that right, which belongs to every citizen. No state can therefore tolerate utterances which threaten the overthrow of organized government by unlawful or unconstitutional means. The reason is that the security of the state or organized government is the very foundation of the freedom of press.

II. Friendly relations with foreign states

The interests of maintaining friendly relations with foreign states is not specified in any of the major Constitutions of the world as a valid ground for restricting the freedom of press.

The expression friendly relations with foreign states being very wide will include not only libel of foreign dignitaries, inducement of foreign enlistment but also propaganda in favour of rival claimants to authority in a foreign state after Bangladesh has already recognized a particular person or persons to be authority in that state, propaganda in favour of war with a state at peace with Bangladesh, and the like.

III. Public order

None of the freedoms guaranteed by a written constitution can flourish in a state of disorder. Order is an elemental need in any organised society, Hence, as Justice Holmes of the American Supreme Court observed :

“The most stringent protection of free speech would not protect a man falsely shouting fire in a theatre and causing panic.

The essential rights are subject to the elemental need for order without which the guarantee of civil rights would be a mockery.

Public order is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of the internal regulations enforced by the government which they have established.”

Anything that disturbs public tranquillity disturbs public peace, the expression public tranquillity is not defined in the Penal Code, but from the offences included in chap. viii of that code, we may gather what is understood by this expression by the framers of the code, thus it includes an (1) unlawful assembly ; (2) rioting ; (3) promoting enmity between different classes ; (4) affray.

The preaching of communal hatred or feelings of enmity between different sections of the community can be punished (S. 153 A. P.C.) and reasonable preventive measures may also be taken for the maintenance of communal harmony. The test of the offence is whether the writing is likely to rouse communal passions and that is to be determined from the language used, and the atmosphere in which it is published. The truth or untruth of the statement is immaterial, and a sensational statement contained in the headlines, put forward at a time when the atmosphere was surcharged with communal bitterness could not but accentuate the feelings of enmity and hatred between the two communities.

The punishment of Expressions which deliberately insult or attempt to insult the religious beliefs of a class of citizens (S. 205 A. P.C) has also been upheld as valid, on the same ground.

Public order also includes public safety in its relation to the maintenance of public order, Public Safety, ordinarily means security of the public or their freedom from danger, external or internal. From the wider point of view Public Safety would also include the securing of public health, by prevention of adulteration of food-

stuffs, prevention of epidemics and the like. But from the point of view of public order, it would have a narrower meaning and offences against Public Safety would include creating internal disorder or rebellion, interference with the supply or distribution of essential commodities or services inducing members of the police to withhold their services inducing members of the police to withhold their services, or inducing public servants engaged in services essential to the life of the community to withhold their services.

Maintenance of public order would also include the prevention of a public nuisance, and would, therefore include the regulation of the use of loud speakers.

In its external aspect, Public Safety would mean protection of the country from foreign aggression.

It has already been stated that the expression "in the interests of" enables the legislature to curb tendencies to create a breach of public order. But, at the same time, it has also been pointed out that this would not enable the legislature to provide for situations which have only a problematic relationship with public order, whether in a particular case an utterance would have a tendency to create a breach of public order is to be determined objectively from the circumstances in which the utterance is made, the nature of the audience and the like.

IV. Decency or morality

The word decency or morality is wide enough to cover so large an area that its frontiers are not easily discernible.

'Morality' is a far more vague word than indecency. The difficulty of determining what would offend against morality is enhanced by the fact that not only does the conception of immorality differ between man and man, but the collective notion of society also differs amazingly in different ages, thus it was not long ago that birth control *per se* was regarded as immoral. But since the Malthus Doctrine of population, birth control is regarded as a legitimate means of checking overpopulation. Annic Besant was convicted

ted for publishing literature advocating contraception. But in England or in this subcontinent the publication of such literature from a scientific or medical standpoint is no longer regarded as an offence ; the immorality of an act or representation, therefore, has to be judged by the standards of today. One thing is clear, however.

According to the existing notions, immorality, does not refer to acts the condemnation of which depends upon controversial doctrines but to acts which are regarded as acts of immorality by the consensus of general opinion.

It is to be noted that in ss. 292-4 of the Penal Codes the word obscene is used in the same sense of sexual immorality and the heading of the chapter is offences against morals. From this it has been held by the Superior Courts that the expression "interests of morality" is to be construed in the same sense.

V. Contempt of Court

Since the general principles of English common law are followed by our Courts in determining what constitutes contempt of court these principles may be analysed broadly.

In relation to the freedom of speech and expression there are three sorts of contempt of a court, (a) one kind of contempt is scandalising the Court itself ; (b) there may be likewise a contempt of the court in abusing parties who are concerned in causes in the court ; (c) there may also be a contempt in prejudging mankind against persons before the cause is broadly speaking. It consists of any conduct that tends to bring the administration of justice into disrespect or to obstruct or interfere with the due course of justice.

These three kinds of contempt are known as "criminal contempt" as distinguished from "contempt in procedure" or "civil contempt" consisting in disobedience to a Court's order or process involving a private injury.

(a) Scandalising the court.—Any act done or writing published calculated to bring a court or a judge of the court into contempt, or lower his authority is a contempt of court, e.g. imputing corrup-

tion, misconduct or incapacity in the discharge of his public duties. Hence any criticism which tends to bring into ridicule and contempt the administration of Justice is contempt. Thus, it is a gross contempt to impute that judges of the highest court of justice acted on extraneous considerations in deciding a case.

The above rule is subject to important qualifications.

The object of the punishment is not the protection of the judge personally from imputations to which they may be exposed as individuals, but the protection of the public themselves from the mischief they will incur if the authority of the tribunal is impaired. Hence-

(i) The power to punish for scandalising the court is a weapon to be used sparingly and always with reference to the administration of Justice and not for vindicating personal insult to a judge, not affecting the administration of Justice.

No doubt it is galling for any Judicial personage to be criticised, publicly as having done something outside his judicial proceeding which was ill-advised or indiscreet. But if a judge is defamed in such a way as not to affect the administration of justice, he has the ordinary remedies for defamation if he should feel impelled to use them.

There are two primary considerations which should weigh with the Court in such cases, viz. (a) whether the reflection on the conduct or character of the judge is within the limits of fair and reasonable criticism, and (b) whether it is a mere libel or defamation of the judge or amounts to a contempt of the court.

Where the question arises whether a defamatory statement directed against a judge is calculated to undermine the confidence of the public in the competency or integrity of the judge or is likely to deflect the court itself from a strict and unhesitant performance of its duties, all the surrounding circumstances under which the statement was made and the degree of publicity that was given to it would be relevant circumstances. The question is not to be determined solely with reference to the language or contents of the statement made. Mere publication to a third party, which would be

sufficient to establish an ordinary libel may not be conclusive for establishing contempt. That would depend upon the nature and extent of the publication and whether or not it was likely to have an injurious effect on the minds of the public and thereby lead to an interference with the administration of Justice.

(ii) Fair and reasonable criticism of a judicial act in the interest of the public good does not amount to contempt.

Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against a judicial act as contrary to law or the public good, no court could or would treat that as contempt of court. The law ought not be astitute in such cases to criticise adversely what under such circumstances and with such an object is published. But it is to be remembered that in this matter the liberty of the Press is no greater than the liberty of every subject.

Whether the authority and position of an individual judge or the due administration of justice is concerned no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of Justice. The path of criticism is a public way. The wrong headed are permitted to err therein. Provided that members of the public abstain from imputing improper motives to those taking part in the administration of Justice and the genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of Justice, they are immune. Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

But the limits of bona fide criticism are transgressed when improper motives are attributed to judges and this cannot be viewed with placid equanimity by a court in a proceeding for contempt. Imputations made against Judicial officers without reasonable care and caution cannot be said to be bona fide.

Thus, it is a gross contempt to impute that Judge of the highest Court of Justice acted on extraneous considerations in deciding a case.

(b) Obstruction of or interference with the due course of Justice—

Any speech or conduct which tends to influence the result of a pending trial civil or criminal, or otherwise tends to interfere with the proper course of Justice amounts to contempt of court. Thus, (i) anything which prejudices the court against any party before the cause is heard, is contempt whether the court is actually influenced by the act or statement is not material. The gist of the offence is conduct calculated to produce, so to speak, an atmosphere of prejudice in the midst of which the proceeding must go on. Thus discussion in a newspaper of the merits of a pending case or of the evidence to be adduced at the trial, constitutes contempt. The reasonable tendency of the writing to prejudice the court constitutes the contempt. The intention of the writer is also immaterial. (ii) Similarly, it is contempt to prejudice a party to a pending proceeding.

The publications concerning parties to proceeding in relation to those proceeding may amount to contempt of court, because it may cause those parties to discontinue or to compromise, and because it may deter persons with good causes of action from coming to the court, and is thus likely to affect the course of Justice.

Thus, it is a contempt to publish in a newspaper a photograph of a person charged with an offence when a question of identity may arise at the trial. No editor has a right to assume the role of an investigator and to publish statements of facts, during the investigation of a crime, suggesting that the accused was guilty of the crime. The publication of the statement of a witness recorded under S. 164 of the tr. P.C. before the commencement of the trial is likely to create an impression that the accused was guilty and thus to prejudice him at the trial. Similar view has been taken regarding the publication of the charges made in a criminal complaint before the charges are judicially determined. A misrepresentation of the evidence in a pending case, even though unintentional constitutes contempt if it is likely to prejudice the minds of the public against the accused before the case is finally heard.

It is contempt to prejudice a party to a pending Judicial proceed-

ing, e.g. by holding a parallel inquiry on a matter which is subjudice. provided the scope of the inquiry is the same.

(iii) Any threat to a party to a pending litigation which would force him to withdraw his action or to abandon it amounts to contempt. The threat may be offered by issuing a circular that disciplinary action would be taken against a Government servant if he seeks redress to a court of law in matters arising out of his employment without first exhausting the official channels of redress.

(iv) The uttering of words or an action in the face of the court or in the course of proceedings may be a contempt provided they interfere with the course of justice, e.g. persisting in a line of conduct or use of a language in spite of the ruling of the presiding judge, or threatening or attempting violence on the opponent or using language so outrageous and provocative as to be likely to lead to a brawl in court. But a mere insult to counsel or to the opposing litigant is very different from an insult to the court itself or to members of the jury. The power to punish for contempt should not be used to suppress merely offensive methods of advocacy, or mere discourteous conduct of a counsel. But an Advocate who signs an application or pleading containing matter scandalising the court which tends to prevent or delay the course of justice is himself guilty of contempt of court unless he reasonably satisfies himself about the *prima facie* existence of adequate grounds therefore.

The summary proceeding for contempt committed in the court constitutes an exception to the general principle of natural justice that no man ought be a judge in his cause, for, the same judge who has been subject to contempt may try and punish the contemner. But procedure has been upheld both in England and in this subcontinent on the ground of avoidance of delay and the necessity of upholding the prestige of the court in the interest of the administration of justice ; of course, a reasonable opportunity must, nevertheless, be given to the contemner to defend himself.

(v) It is contempt on the part of any party to a prohibitory order issued by the court to commit a breach of it after (a) service

of such order upon him, or (b) otherwise acquiring definite knowledge that such an order had been made.

(vi) It is contempt on the part of a subordinate court to intentionally and wilfully disobey the order of a superior court. But there cannot be intentional disobedience unless the subordinate court had knowledge of the orders of the superior court. Though a telegram from the advocate before the superior court may not be sufficient for communicating a stay order issued by the superior court, an affidavit filed by the party cannot be overlooked by the subordinate court.

(vii) Any direction given by an administrative to a Magistrate to ignore the decision of a superior court constitutes flagrant interference with the administration of justice.

VI. Defamation

The expression 'in the interests of defamation' seems to be wide enough to cover 'blackmailing' which consists in a 'threat' to publish defamatory matter with the object of inducing the person so threatened, to deliver any property or valuable security or to do anything which he is not legally bound to do or to omit to do any act which he is legally entitled to do.

Existing Law : The criminal law relating to defamation is contained in Sec. 499 of the Penal Code. The civil law relating to defamation is still uncodified in Bangladesh and follows the English common law subject to slight differences under s. 3 (a) of the Dramatic Performances Act (XIX of 1876), a dramatic performance may be prohibited if it is of a defamatory nature.

VII. Incitement to an offence

In the absence of any definition of offence in the Constitution, the definition contained in s.3. (38) of the General Clauses Act shall apply :

"Offence shall mean any act or omission made punishable by any law for the time being in force."

Hence, under the present exception, our Legislatures shall be competent to enact that incitement to commit any offence punishable under any law, general, special or local, shall be itself an offence. In short, the incitement of whatever is prohibited (*mala prohibita*) may be made an offence. Thus, the withholding of services by a Police officer being an offence under law inciting a Police officer to withhold his services would be punishable under the present ground.

The applicability of this ground is, however, governed by the following conditions-

Firstly, the impugned law imposing restriction upon advocacy or incitement must relate to a pre-existing offence; in other words, the incitement, in order to be punishable, must be of an act which is, at the time of the offence, already an offence under any law for the time being in force. Hence, an incitement cannot be restricted under the present ground if the act or omission which is incited does not constitute an 'offence' non-payment of land revenue or other similar dues of the Government.

Secondly, in order to be saved by the present clause, the legislation must be levelled against a definite 'offence'. It would not be a valid restriction of the freedom if it is vague. Thus, in *State of Bombay v. Balsara*, the Supreme Court of India held that the prohibition of incitement or encouragement of any member of the public to commit any act 'which frustrates or defeats the provisions of this Act or any rule, regulation or order made thereunder' is too wide and vague, to be justified by Cl. (2) of Art. 19.

What constitutes 'incitement' will have to be determined by the court with reference to the facts and circumstances of each case. In the U.S.A., this also is determined by the 'clear and present danger' test. In *Whitney v. California*, Holmes, J. observed that there was a wide difference between 'advocacy' and 'incitement', and that advocacy falls short of incitement where there is no clear and present danger that the advocacy would be immediately acted upon. The same Judge held in another case that mere por-

trayal of existing evils cannot be construed as criminal incitement to disobey the existing law, however mistaken may be the assumptions of the writer or speaker, however unsound his reasoning or however intemperate his language.

In India, too, it has been held that mere approval or admiration of an act of murder or of violence, say, in a literary or historical work, shall not come within the scope of the present clause, unless such writing itself has a present tendency to incite or encourage the commission of such offence. It cannot be held as a general proposition that in all cases of admiration or approval of an offence or offender there must be a tendency to encourage violent offences. The court has to look to the circumstances in each case in judging such a tendency viz., the purpose of the work, the time at which it was published, the class of the people who would read it, the effect it would produce on their minds, the context in which the objected words appear and the interval of time between the incidents narrated and the publication of the work. Thus, an article in a newspaper expressing approval or admiration of the conduct to certain women in defending themselves against the high-handedness of the police, in exercise of their right of private defence, was held not to constitute incitement of an offence.

The biography of a living person containing the narrative of a revolutionary movement which took place 35 years ago and which has now passed into history, does not come within the mischief of the present clause.

Existing Law

Chapter V of the Penal Code, 1860, provides for the punishment of 'abetment' of an offence and s. 107-8 lay down that a person abets the commission of an offence if he instigates any person to commit it.

S. 505 of the Code provides-

"Whoever makes, publishes or circulates any statement, rumour or report,--

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of

Bangladesh to mutiny or otherwise disregard or fail in his duty as such ; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the state or against the public tranquillity ; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception

It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.”

The constitutional guarantee in respect of freedom of press and the reasonable limitation which law may impose on it have been discussed. In the chapters that follow, these matters will be discussed in greater details.

There could be situations in which the constitution empowers the president to suspend this freedom. This situation is, in constitutional language, known as emergency. Provisions relating to it in the constitution are available in Part IXA which runs as follows :

Part-IXA

EMERGENCY PROVISIONS

141A. (1) If the President is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any Proclamation of part thereof, is threatened by war or external aggression in internal disturbance, he may issue a Proclamation of Emergency :

(2) A Proclamation of Emergency—

- (a) may be revoked by a subsequent Proclamation ;
- (b) shall be laid before Parliament ;
- (c) shall cease to operate at the expiration of one hundred and twenty days, unless before the expiration of that period it has been approved by a resolution of Parliament :

Provided that if any such Proclamation is issued at a time when Parliament stands dissolved or the dissolution of Parliament takes place during the period of one hundred and twenty days referred to in sub-clause (c) the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first meets after its re-constitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament.

(3) A Proclamation of Emergency declaring that the security of Bangladesh, or any part thereof, is threatened by war or external aggression or by internal disturbance may be made before the actual occurrence or war or any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

141B. While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40 and 42 shall restrict the power of the state to make any law or to take any executive action which the State would, but for the provisions contained in Part III of this Constitution, be competent to make or to take, but any law so made

Suspension of provisions of certain articles during emergencies.

shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

141C. (1) While a Proclamation of Emergency is in operation, the President may, by order, declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of the right so specified, shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made under this article may extend to the whole of Bangladesh or any part thereof.

(3) Every order made under this article shall, as soon as may be, be laid before Parliament.

Proclamation of Emergency

There could arise abnormal situations which would call for a departure from normal machinery of Government.

Part IXA of our constitution deals with these abnormal situations or emergencies.

A 'Proclamation of Emergency' may be made by the President at any time he is satisfied that the security or economic life of Bangladesh or any part thereof has been threatened by war, external aggression or internal disturbance (Art. 141A).

President's satisfaction

It is not necessary for the President to recite in the Proclamation the fact of his satisfaction about the emergency. Indian Supreme Court has already held that the question of existence of an emergency which is a pre-condition of the power to make a Proclamation under Art. 352 has been left to the subjective satisfaction of the Executive and that the courts are powerless to review that satisfaction. Though the court left open the question whether the court could interfere

with a Proclamation on the ground of *mala fides* for want of proper materials, it cannot be reasonably anticipated that the court would ever interfere on this ground, because as acknowledged in this case, the Executive is “obviously in the best position to judge the situation” and that the only safeguard against abuse of his power was “public opinion”.

Internal disturbance

It is to be noted that since the present part of the Constitution deals with extraordinary powers to deal with an ‘emergency’ the internal disturbance the existence of which would justify a Proclamation under Art. 141A does not mean ordinary breaches of the ‘public order’ but such a disorder as threatens the security of Bangladesh or any part thereof. It refers to a civil war or something of that nature. On the other hand, the internal disturbance which justifies a Proclamation may or may not be attended with violence. For example, it may be a general strike which ‘disturbs’ the normal life of the people as well as the internal security of the state, without involving an armed rebellion or the like.

Procedural limitation upon the President’s power

Though the Constitution makes the president the sole judge of the question when he should make a Proclamation under this Article, there is one procedural limitation imposed by the Constitution, namely, that after it is made, the Proclamation must be laid before the Parliament.

The Constitution, however, does not prescribe any period within which the Proclamation must be laid before Parliament, or any sanction if he fails to lay it within any period except that it “shall cease to operate at the expiration of 120 days” from the date of its issue by the President.

Duration of a proclamation under Art. 141A

Once a Proclamation has been approved by resolutions of the parliament, according to Art. 141A (2), the Proclamation will

continue indefinitely and will cease to operate only when the President revokes it by a subsequent Proclamation, being satisfied that it is no longer necessary. As in the matter of declaration, so in the matter of revocation, the President is made the sole authority.

Effects of a Proclamation of Emergency under Art. 141A

The effects of a Proclamation of Emergency may be discussed under four heads—(i) Executive ; (ii) Legislative ; (iii) Financial ; (iv) As to Fundamental Rights.

(i) **Executive** : When a Proclamation of Emergency has been made, the executive power of government shall, during the operation of the Proclamation, extend to taking any executive action regardless of fundamental rights.

(ii) **Legislative** : (a) As soon as a Proclamation of Emergency is made, the legislative competence shall be automatically widened and the limitation imposed by fundamental right, shall be removed.

(iii) **As regards Fundamental Rights** : Provision of Articles in Part III (Fundamental right) may be non-existent against the state during the operation of a Proclamation of Emergency. Further the right to move the courts for the enforcement of the fundamental rights or any of them, may remain suspended, by Order of the President. The duration of the suspension may be made shorter by the President's Order, so that it may not continue beyond the necessities of the case.

The further peculiarity of these emergency powers is that no distinction is herein made between times of war and times of peace, for a Proclamation of Emergency may be made even in cases of external aggression or internal disturbances and that not only when they have actually taken place but also when there is 'imminent danger' thereof, according to the President's satisfaction, which is final on the point.

In the U.S.A., it is open to the courts to determine whether Congress was justified in suspending the writ of habeas corpus.

In India, the propriety of the President's making an order under either Art. 352 or 359 is not justiciable and the suspension of the rights under Art. 19, under Art. 358, follows automatically upon the proclamation under Art. 352.

Suspension of right to move Court

1. Article 141C empowers the President to suspend the right to move the Courts for enforcement of any of the fundamental rights, included in Part III of the Constitution, as may be specified in Order of the President, during the operation of a Proclamation of Emergency.

II. The suspension shall be in force during the operation of a Proclamation of Emergency or such shorter period as may be specified in the Order of the President. But the President's Order shall not be final. It will be within the competence of Parliament to revoke or cancel the Order by legislation or to otherwise express its disapproval of the Order of the President. It will, however, be within the power of the President to make delay in giving Parliament the opportunity to take up the matter, for though the President's Order is to be laid before the Parliament, no definite time limit is fixed for that purpose.

It is also to be noted that the Article does not provide for a general suspension of the right to move the court for enforcement of all fundamental rights, or in respect of the whole of the country. Only such rights and such parts of the country will be affected as are mentioned in the President's Order. While it is competent for the President to make his order applicable to the whole of the country and to all citizens, there is nothing to preclude him from making a limited order.

CHAPTER—III

LAWS OF DEFAMATION RELATING OT PRESS

After having dealt with what the constitution has to say on the Press, I am passing on to the consideration of a matter which touches, legally speaking, the press most. Nearly all cases filed and pursued by men and institutions against the newspaper, their editors and reporters in courts of this country relate to defamation. It is therefore, necessary for those connected with press to know in detail this branch of law.

Before proceeding to discuss the matter, I quote two portions, for their obvious relevance, from Shakespeare.

1. *Shakespeare, Othello : Act III, Scene 3, 167 :*

“Good name in man and woman, dear my lord,
Is the immediate jewel of their souls :
Who steals my purse, steals trash ; 'tis something, nothing ;
'Twas mine, 'tis his, and has been slave to thousands ;
But he that filches from me my good name ;
Robs me of that which not enriches him,
And makes me poor indeed.”

2. *Shakespeare, Othello, Act H. Sc. 3 :*

“Reputation, reputation, reputation.
Oh I have lost my reputation !
I have lost the immortal part of myself
And what remains is bestial.”

Defamation is both tort and offence

Defamation is a tort in the sense that a defamed person can sue the one who defames in a civil court for damages. It is also a criminal offence in the sense that a defamed person can initiate proceedings in a criminal court against the one who defames and the accused person is liable to punishment.

I shall first discuss defamation as an offence. Penal Code contains following provisions on defamation.

OF DEFAMATION

499. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any Defamation. imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative of expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of theirs, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says—"Z is an honest man ; he never stole B's watch" ; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of truth which public good requires to be made or published.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Public conduct of public servants.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of true report of the proceedings of a Court of Justice, reports of proceedings of Courts.

Exception.—A Justice of the peace or other officer holding an enquiry in open court preliminary to a trial in a court of Justice, is a court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case or respecting the character of such person, as far as his character appears in that conduct, and no further.

Merits of case
decided in court or
conduct of witness-
ses and other
concerned.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Merits of public
performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish ; Z must be a weak man ; Z's book is indecent ; Z man of impure mind." A is within this exception, if he says this in good faith inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". As not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of the other in matters to which such lawful authority relates :

Censure passed in good faith by person having lawful authority over another.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the court ; a head of a department censuring in good faith those who are under his order ; a parent censuring in good faith a child in the presence of other children ; a school master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils ; a master censuring a servant in good faith for remissness in service ; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Accusation preferred in good faith to authorized person

an accusation against any person to any of those who have lawful authority over that person

Illustration

If A in good faith accuses Z before a Magistrate : if A in good faith complains of the conduct of Z, a servant, to Z's master ; if A in good faith complains of the conduct of Z, a child, to Z's father -A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or others interests.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—“Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty.” A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory or any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

I now pass on to elaborate discussion on the subject

Introduction

The right of a person during his lifetime to the unimpaired possession of his reputation and good name is recognised by law. Every one has an inherent right to have his reputation preserved inviolate. It is a *jus in rem*, a right absolute and good against all the world. A man's reputation is his property and possibly more valuable than any other form of property. It was not a mere poetic fancy that suggested that a good name was to be chosen in preference to riches. Indeed if one were to reflect on the degree of suffering caused by loss of character and compare it with that occasioned by loss of property it will be found that the former far outweighs the latter. Reputation depends on opinion, and opinion in the main is built on the communication of thought and information from one man to another. He, therefore, who directly communicates to the mind matter untrue and likely in the natural course of things substantially to disparage the reputation of a third person is, on the face of it, guilty of a legal wrong for which the remedy is an action for defamation,— a remedy, however, by no means commensurate with the damage that in every case may arise, but limited by many considerations of convenience and public policy.

Journalism and defamation

The fact that the accused is a journalist does not make any difference, for the simple reason that the press have no special privileges, and are in no better position than any other man. They have rather greater responsibility and should be more cautious in making scandalous imputations. In the case of publication of a defamatory matter actual source of information on which the person accused has acted and the justifiability of his so acting ought to be considered. If he has not taken proper care and acted on a gossip and the complai-

nant is thereby defamed he ought not to escape consequences on the ground that he has promptly contradicted the incorrect report. The culpability in such cases does not depend on the circumstances whether he has tried to undo the wrong which he has committed or not but upon the fact whether he has acted with care and caution or has done so rashly or negligently. Attempt to undo the mischief may exhibit want of malice or fear of the consequences. But even if it indicates absence of malice that is not enough to prove good faith as defined under the Penal Code. It is certainly not using due care and attention to publish defamatory statements about a person and also to publish his denial and let the public take their choice. Where the editor of a newspaper was absent from duty for bona fide purpose at the time of publication of defamatory matter and the work of editing was entrusted to a sub-editor, it was held that the presumptive liability of the editor was displaced and he could not be held guilty under Section 500. Where the declared printer of a newspaper leads absence in good faith, he should prove who was in fact the printer of the newspaper in his absence. The publication of notice in a newspaper conveying an imputation that the complainant is dishonest in the management of the affairs of a company and tries to conceal the dishonesty by methods that are themselves dishonest is defamation. To prove publication of a libel through newspaper it is sufficient to prove that the paper was delivered within the postal area over which the court had jurisdiction and it need not be proved that the article was read by some particular person. Newspaper is commodity meant for reading and it should be assumed that it was so read.

Malice

A newspaper publishing a report alleged to be defamatory cannot be brought within this section unless there is a proof of express malice. Where a newspaper in the usual course of reporting reported under a headline. "Alleged wagon-breaker shot dead" that one alleged to be a wagon breaker and wanted in connection with a number of police case was shot at by the police when he and his associates were alleged to have attacked the police with "daggers and swords" and had died. It was held that there was no defamation.

Imputation: An imputation ordinarily implies an accusation of something more than an expression of a suspicion. An expression of a suspicion may have the same effect on the mind of the person to whom the suspicion is communicated as an accusation would have, so where a person makes a report to police that a theft was committed and that he suspects a certain person which results in the search of that person's house, the person must be deemed to have made an imputation within the section. To give out that a woman had miscarriage without any knowledge whether she was married or not would amount to defamation. However reprehensible and morally unjustifiable the words complained of may be, they must, to be actionable, contain an imputation, concerning some particular person or persons whose identity can be established. An imputation against an association or collection of persons jointly may also amount to defamation within the meaning of Section 499 penal code, but at the same time it must be an imputation capable of being brought home to a particular individual or collection of individuals as such. A newspaper is not a person, and, therefore, it is, not a criminal offence to defame a newspaper. Defamation of a newspaper may in certain cases involve defamation of those responsible for its publication.

Defamation illustrated

An imputation of insolvency against a person in the way of this trade, calling a person discharged bankrupt and gambler convict in an affidavit, a statement in an objection to the nomination of the complainant that the complainant is a drunkard, use of word "blackmarketeer", use of the expression "topsy-turvy" in relation to complainant in a newspaper article, to say at a meeting that the complainant's wife had been married before to another person, calling a person a beast and pig in his conduct, imputing dacoit to a company by publishing open letter in a newspaper, publication of photograph with false caption, characterising any person as goonda, application that the complainant was a woman of loose character, description of person as illegitimate, imputation against

deceased person intended to be hurtful to feelings of his family, accused using defamatory words against Sarpanch in a meeting attended by a large number of persons, filing in court a plaint containing defamatory matter, allegations that woman has paramours wherever she goes, or expression of suspicion in F.I.R. are defamation depending on the circumstances of each individual case.

Information to police by the husband who was not on good terms with his wife that his wife had died due to abortion under suspicious circumstances possibly because the conception was illegitimate or imputation of habit of changing opinions to suit circumstances, or inviting a person to dinner and asking him to leave place when he attends without any imputation, or statement that the public servant worked for money for candidate at an election are defamatory.

A person may be defamed by making scurrilous attacks upon the character of his wife, without alleging anything personally against him.

Imputation against the deceased

Under Explanation—1 the imputation must not only harm the reputation of the deceased person concerned, if living, but must also be intended to be hurtful to the feelings of the members of his family or other relatives.

Imputation against company etc.

Explanation 2 to Section 499, is intended to include a company or an association or collection of persons as such within the word 'person' as used in the definition, so that the latter should not be limited to individuals. The language of Explanation 2 is general and any collection of person would be covered by it. Of course, that collection of person must be identified in the sense that one could with certainty say that this group of particular people has been defamed as distinguished from the rest of the community. There must be some definite body of persons capable of being identified and the whole of whom it can be asserted that the defamatory matter applies. If a person complains that he has been defamed as a member of a class

he must satisfy the court that the imputation is against him personally and that he is the person aimed at. Where certain articles published in a paper contained scandalous accusations against the girl students of a college and implied that the girls were habitually guilty of misbehaviour described in the articles, the inevitable effect on reader must be to make him believe that it is habitual with the girls of that college to behave in this way. As by the article all the girls in the college collectively and each girl individually suffered in reputation, an action for defamation was held competent. Merely because a particular scene in a picture objected to by the complainant depicted some orthodox section of the Brahmin community uttering contemptuous words against bhangi community in general that would not amount to an act of defamation against the bhangi community much less against the complainant personally. The impugned scene in the film was general in nature. It was not directed against any individual or particular group of individuals who could be identified.

Having regard to the provisions of Section 499, read with Explanation 2 and the definition of the word "person" in Section 11, Penal Code, it cannot be said that a complainant for defamation is not maintainable at all by a corporation. But the scope of such a complaint by a corporation is not the same as that by individuals. A Municipal Board *per se* has hardly a reputation. If the management is good it will be said that the Board is being run efficiently. But if the management is bad there is bound to be accusation of inefficiency and nepotism etc. If a person makes any imputation so as to cause any special injury to the property of the Board then the Board can maintain a complaint under Section 500. But where the minority party in the Board attacks the majority party for inefficiency then such an attack does not amount to defamation. The words complained of must reflect on the management of its business and must injuriously affect the corporation, as distinct from the individual who composes it. The alleged libel must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position.

It cannot bring a prosecution for works which merely affect its honour or dignity. Moreover it cannot maintain a prosecution for words which reflect, not upon it as a body, but upon its members individually unless special damage has thereby been caused to it. It is doubtful if the police force at a particular place is such an association or collection of persons as is contemplated in Explanation 2. The libel need not name the class as such : it is sufficient if the words can only be interpreted in such a way as to reflect on all the members of that class. The imputation must be capable of being brought to a particular individual or collection of individuals as such. If a well-defined class is defamed, each and every member of that class can file a complaint. In other cases, the defamatory words must refer to some ascertained and ascertainable person and that person must be the complainant.

Intention to harm

Section 499 requires an *inter alia* intention on the part of the accused to harm the reputation of the complainant or the knowledge that the imputation made by him will harm such reputation. It is not necessary in order to establish an offence under Section 500 to prove that actual harm was caused. Proof that harm was intended to the complainant's reputation or that the accused knew or had reason to believe that harm will be caused by the imputation is sufficient. A person who published defamatory matter against another in a case not covered by any of the exceptions cannot escape punishment on the ground that the reputation of the person attacked was so good or that of the person attacking so bad, that serious injury to the reputation was not in fact caused. Intention to harm the reputation is not necessary but reasonable belief that the imputation would harm the reputation would suffice. The meaning which should be attributed to 'harm' is not the ordinary sense in which the word is used. By 'harm' is meant imputations on a man's character made and expressed to other, so as to lower him in their estimation, and that anything which lowers him merely in his own estimation, certainly does not constitute defamation.

Using obscene and insulting language in speaking of a respectable man after an altercation is over is calculated to lower the reputation of the man spoken of and amounts to defamation.

Explanation 4 to Section 499 would not apply when the words used and forming the subject-matter of the charge are *per se* defamatory. Where in reply to a book written by the complainant the accused wrote a book, matters dealt with being highly controversial religious matters, and in expressing his opinion the accused used very violent expressions but did not assail the personal character or the respectability of the complainant, it was held that there was no defamation. Where the accused referred to a person as Chamar as a result of his annoyance and out of spite and none of the priests attended the religious ceremony which had to be performed at the complainant's house, it was held that the accused was guilty of defamation. Imputation to a Hindu at the time of feast of brotherhood that he is an outcast is defamation. Publication of photograph with false caption depicting person therein as soldiers of "Goonda war" is *per se* defamatory. In the course of an election contest, the accused issued and published a poster against his rival candidate, a Barrister-at-law which contained the words: "The hollowness of Mr.....'s capacity as a Barrister has been exposed. "It was held that the imputation undoubtedly was calculated to lower, in the estimation of others, the intellectual qualities and the aptitude for his profession as a Barrister in him and was, therefore, defamatory. Accused stated in a petition to the forest authorities urging an enquiry into the conduct of a village Munsiff that the Village Munsiff was a very rich man, that he had gained over the Range Officer to his side and had been illicitly grazing goats in the reserve. It was held that the accused was guilty of the offence of defamation. The language employed by him was calculated to harm the Village Munsiff and lower the Range Officer in the estimation of his subordinates and the public.

Exception

A defamatory statement does not fall within any of the Excep-

tions by reasons merely of the fact that it is punishable as an offence under Section 182 or any other section of the Code.

First Exception

Where the allegations contained in news items are factually incorrect, the accused can take no advantage of First Exception to Section 499. Mere creating doubt about truth or otherwise of statement is not enough to claim protection under Exception 1 and discharge the burden cast on accused under Section 105, Evidence Act. It is sufficient if the accused can show that the statements are substantially true in regard to the material portion of the allegation or insinuation. It is not sufficient that only a part of the libel is proved to be true. Public good is the good of the general public as contradistinguished from that of an individual. To come within the exception, the imputation should not only be proved to be true, but it must also be proved that it was for the public good that it was published. No amount of truth will justify a libel unless its publication was for the public good.

Where at a public action of Government forest produce, the officer made statement to the effect that the contractors who did not wish to bid should go away, and the accused said in the presence of witnesses that the complainant was turned out by the officers, it was held that the words used by the accused to the effect that the complainant was turned out, were defamatory, and justification could not be pleaded within the meaning of Exception 1 to Section 499. Denunciation of a Brahmin for providing liquor at a wedding reception to such of his guests as desire to partake of it is not for public good.

A court finding that an imputation is true and made for the public good may, on considering the manner of publication in the newspaper, hold that the particular publication is not for public good and is not covered by exception.

Second Exception

Every citizen has a right to comment on those acts of public men which concern him as a citizen of the country if he does not make his commentary a cloak for malice and slander. A

writer in a public paper has the same right as any other person and it is his privilege, if indeed it is not his duty, to comment on the acts of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment and it is for public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement if he had exercised ordinary care. A newspaper article alleged that the head of a village was guilty of acts of oppression against the villagers in discharging his duties and especially in the procurement of grain. It also alleged that he received bribes. The writer of the article also wrote to the Collector of the district asking him to make enquiry into the allegations, and on enquiry the Collector found that the allegations were false. In a prosecution of the writer for defamation, it was held that the Collector came to the conclusion that the allegations had not been proved did not mean that the allegations were not made in good faith and it was for the Court to determine whether he acted with due care and attention in making the allegations in the article. The editor of a newspaper making certain allegations against the Jail Superintendent after hearing certain prisoners, but without giving the Jail Superintendent an opportunity to refute them, could not be said to have acted with due care and attention, therefore in good faith so as to bring himself within this and the ninth Exception. A member of the Board of Secondary Education was prescribed as 'dalal' of a publisher in an article in a newspaper. The only object of the editor was to draw the attention of the educationists, public and Government to the state of affair prevailing in the Board and he was not in any way actuated by malice. It was a reasonable inference warranted by the facts commented upon and as the facts from which the inference was drawn were correctly stated, he was entitled to the protection of the second exception.

Third Exception

Those who fill a public position must not be too thin-skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust : yet they must bear with them and submit to be misunderstood for a time. Where in a newspaper report the main assertion is true, mere exaggeration or departure from strict truth does not deprive the accused of the privilege given to him by Exception 3. Mere exaggeration or even gross exaggeration does not make the comment unfair especially where the matter is one of public interest, provided there is no misrepresentation or suppression of facts. The accused publishing a letter in a newspaper purporting to be a verbatim account what had transpired at a meeting of the Municipal Corporation and which was admittedly true in substance was protected under this Exception. To cover a case under Exception 3 it is sufficient to show that person concerned acted in good faith.

Fourth and fifth Exception

Publication of reports of proceedings of Court—Explanation 4 makes an imputation defamatory only if it lowers a person in the estimation of others. It implies a fall in reputation. It may be possible to make presumption of good behaviour in civil cases but in criminal cases the existence of good reputation and fall thereof must be factually proved on the plea of justification. It is not necessary to prove that the statement is literally true. It is sufficient if it is true in substance and if the essence of imputation is true. It is not required to be verbatim. A newspaper report of judicial proceeding need not be true absolutely word for word but taking the whole thing it must be a substantially true account. Good faith has not been made an ingredient in Exception 4. Where the accused while publishing news report did not travel beyond contents of complaints, he was entitled to claim privilege under fourth exception.

Sixth Exception

The object of this Exception is that the public should be aided

by comment in its judgment of the public performance submitted to its judgment. All kinds of performances in public may be truly criticised provided the comments are made in good faith and are fair. Liberty of criticism is allowed, otherwise we should have purity neither of taste nor of morals. Good faith under this Exception requires not logical infallibility but due care and attention.

Seventh Exception

Censure by person in authority. A privilege does not justify publication in excess of the purpose or object which gives rise to it. A man may in good faith complain of the conduct of a servant to the master of the servant even though the complaint amounts to defamation, but he is not protected if he publishes it in a newspaper.

Eighth Exception

Statement to person in lawful authority. In order to establish a defence under the Exception the accused must prove that the person to whom the complaint was made had lawful authority over the person complained against, in respect of the subject-matters of accusation. The accused, a member of the Police Force, addressed an application to the District Panchayat Officer alleging that one lady, a neighbour of the accused, was a woman of loose character who was having illicit connection with goondas, her paramours coming to her frequently at nights and that her immoral activities reflected badly on the locality in which the accused lived. It was held that this Exception did not apply as the District Panchayat Officer or the Panchayat had no lawful authority over the person complained against, in respect of the subject-matter of the accusation.

Accusation before the public by publication in a newspaper is not the sort of lawful authority contemplated by the Exception. Where an accused felt some suspicion about a society from the audit report and thought that the publication was necessary in that case and had made some embellishments, additions etc. in the article probably to meet the taste of the public and to attract their point of

attention to the main facts so as to make it an interesting readable matter, it was held that it was a case of excessive publication which would take the case out of the privilege conferred by Exception 8 to Section 499. The benefit of Exception 8 applies to a person charged with defamation under Section 500, where there is a *bona fide* complaint of a grievance and not a wanton accusation maliciously made with the object of injuring another person. Where a person without express malice makes a defamatory charge which he *bona fide* believes to be true, against one whose conduct has caused him injury, to one whose duty it is to enquire and redress such injury, the occasion is privileged on the ground that the person making the charge has an interest in doing so and the person to whom the communication is made has a duty to hear it. A report made with the intention that a person named should be entered on the Surveillance Register is defamatory. Honesty of purpose is essential to protect communications made in fulfilment of a duty. The purport of such communications must also be believed to be true. Good faith of the person making the accusation is an essential condition of exception under 8th Exception. A complaint to police constable is not privileged. The defamatory statements made in answer to questions put by an investigating officer during investigation are privileged.

Ninth Exception :

The exceptions cover not only such allegation of facts as could be proved true but also expressions of opinions and personal inferences. There is no justification for reading the exception as meaning that if the person making the imputation believes in good faith that he has been acting for the protection of the interest of himself or any other person, he is not liable. Even if the defamatory imputations were found to be baseless and incorrect and if they were made by the accused in good faith and for the public good, they were entitled to be protected under Exception 9. Where a lawyer's notice was charged with criminal breach of trust and theft of the properties of the deceased and he was threatened with civil and criminal proceedings and the accused sent in his reply through a

Vakil alleging that the widow was living an adulterous life and that she was discarded owing to her such conduct by her husband and that her daughter was not the daughter of her husband and that she had never lived with the deceased for about twenty-five years and the person to whom the communication is made has an interest in protecting the person making the accusation. In other words, besides the *bona fides* of the person making the imputation the person to whom the imputation is conveyed must have a common interest with the person making it which is served by the communication. This exception merely reproduces the principle laid down by Lord Cambell, C. J. The point of difference between Exceptions 8 and 9 is that whereas in the former the person to whom the complaint is made must have lawful authority to deal with the subject-matter of the complaint and to take proceedings against that person, there is no such requirement in Exception 9, where it is sufficient if a communication is made to a person for the protection of one's own interest in which the other also has an interest. Any one in the transaction of business with another has a right to use, *bona fide*, language which is relevant to that business and which a due regard to his own interest makes necessary even if it should directly or by its consequences be injurious or painful to another. But defamatory comments on the motives or conduct of the party with whom he is dealing do not fall within that rule. Exception relates to private communications made in good faith for the protection of one's interest and does not protect defamatory matter *per se* published in a newspaper. Where the accused made a statement in answer to a requisition by an investigating officer under Section 151, Criminal Procedure Code, 1898, and for the protection of his own interest, it was held that he was protected under this Exception.

Good faith in 9th Exception requires not logical infallibility but due care and attention. In deciding whether an accused person acted in good faith under the 9th Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case; what is the

nature of the imputation made under ; what circumstances did it come to be made ; what is the status of the person who makes the imputation ; was there any malice in his mind when he made the said imputation ; did he make any enquiry before he made it ; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true ? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the 9th Exception. To establish good faith it has to be seen first, circumstances under which the report was written or words uttered ; secondly whether there was malice ; thirdly whether the accused made any enquiry before he made the allegation ; fourthly there are reasons to accept the version of probability that the accused acted in good faith. Where a comparative ignorant and timid man apprehending harassment by the complainant presented a petition to a Magistrate and he was prosecuted for allegations contained therein, it was held that the accused apparently acted more to protect himself than to injure other and that considering the circumstances under which he acted, the conviction under Section 500 was not sustainable. Mere good faith can be negated on the ground of the recklessness indicative of want of due care and attention. Mere subjective belief without objective basis is not sufficient. The unnecessary aspersion is indicative of want of good faith. The care and attention required by law must have relation to the occasion and the circumstances. 'Due care and attention' imply genuine effort to reach truth and not ready acceptance of an ill-natured belief. Exception 4 describes quality of the imputation and not its effects. For the purpose of Exceptions to Section 499, definition of good faith as given in Section 53 of the code would prevail as against that given in the General Clauses Act. It would follow that an assertion P and N made before a Panchayat a statement that he had kept the complainant P for 10 for 11 years, in a case by P under Section 500, it was held that the statement of the accused before the Panchayat was made in good faith in order to explain his beating and

therefore, was covered by Exceptions 8 and 9. A statement that complainant was a rowdy and a lawbreaker made in good faith by rustic villagers for protecting the interest of the public and in order to object to the appointment of the complainant as the village Munsif is entitled to protection under this Exception.

Fair comments

In order that comment may be fair, the following conditions must be satisfied : (a) it must be based on facts truly stated ; (b) it must not contain imputations of corrupt or dishonourable motives on the person whose conduct or work is criticised, save in so far as such imputations are warranted by the facts ; (c) it must be honest expression of the writer's real opinion. The question which must be considered is this, would any fair man however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said. In the matter of public interest, the Court must not weigh any comment on it, in a fine scale. Some allowance for intemperate language must be made if the writer keeps himself within the bounds of substantial truth and that he does not misrepresent or suppress any facts. There is a distinction between 'fair comments' based on wellknown or admitted facts and the assertion of unsubstantiated facts for comment. Where comment is made on allegations of fact which do not exist, the very foundation of the plea disappear. Every one has a perfect right to criticise a man's public conduct, to denounce its policy and even to denounce its folly or its absurdity or the mischievous consequences which will result from it. But a line must be drawn between hostile criticism on a man's public conduct and the motives by which that conduct may be supposed to be influenced. Allegations on the ground of fair comment cannot be justified the moment it is shown that the criticism is based upon a misstatement of facts.

Press

The freedom of journalists is an ordinary part of the freedom of the subject and to whatever length the subject in general may

go, so also may the journalists, but apart from statute and law, their privilege is no other and no higher. They have rather responsibilities and should be more cautious in making scandalous imputations. Where the accused a journalist in his article called the complainant "the most hated man of the locality" but could not produce any evidence either documentary or oral to show upon what material he had based the defamatory article, it was held that no public interest or public good could be served by calling the complainant, "the most hated man of the locality" and that the accused had acted in a reckless way without due care and attention.

Justification by truth

The word justification is used in connection with defamation in the technical sense of truth. It is not for the plaintiff to prove that the defamatory statement is false for the law presumes in his favour. It is for the defendant to establish the truth of a defamatory statement. Every defamatory allegation of fact, whether in the words themselves or in the innuendo, must be proved true. The truth of a defamatory matter is a complete defence to an action for damages though not to a prosecution for the crime of defamation. No action will lie for the publication of a defamatory statement if the defendant pleads and proves that it is true. Truth is an answer to the action, not because it negatives the charge of malice but because it shows that the plaintiff is not entitled to recover damages. For the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess. The reason for the defence of justification is not that the law has any special relish for the indiscriminate infliction of truth on other people, but because defamation is an injury to a man's reputation. At the same time justification is a dangerous plea if it is the only one which the defendant decides to adopt, for if he fails in it the judge is likely to regard his conduct as wanton and to return a verdict for heavier damages.

In order to substantiate the plea of justification it is not neces-

sary to prove literal truth of every fact which he has stated and it is enough to prove the substantial truth of every material fact. A statement is true in substance if the erroneous details in no way exaggerate the defamatory character of the statement or alter its nature.

Fair Comment : Introduction

A fair and *bona fide* comment on a matter of public interest is not a libel and it is a good defence to an action for damages that the statement in question is a fair comment on a matter of public interest. Honest criticism ought to be and is recognised in any civilised system of law as indispensable to the efficient working of any public institution or office, and as salutary for private persons who make themselves or their work the object of public interest. 'Others abide our question, thou art free' may be true of Shakespeare in literature. In law it is not true of him or any body else. Fair comment is the name given to the right of every citizen to comment on matters of public interest. Again it may be remembered that a criticism being a literary work is in its own turn a fair object of criticism, as much so as the work which it criticises. The defence of fair comment is a part of the English law of tort for a pretty long time except in relation to criticism of Government officials and ministers which is a comparatively recent development. Literary criticism, on the other hand, was far more vitriolic in earlier times than in the modern era. The reason is that it was then felt that the proper method in dealing with the matter was not to resort to a court of justice but to meet it with something in print yet more stinging, just as men preferred the sword to litigation in order to vindicate an attack on their honour, so they were expected to retort to the pen with pen.

Distinction between fair comment, privilege and justification

Fair comment and criticism of matters of public importance are protected, even though involving attack on the character of individuals. There has been some difference of opinion as to whether the defence of fair comment is branch of the defence of privilege or an independent and a separate defence. The better view is it is an

independent defence. It is incorrect to say, as some writers do, that *bona fide* comment on matters of public interest come under qualified privilege. Defence of fair comment is distinguishable both from the justification and privilege. If the defendant pleads justification, he must prove that the imputation in the libel is substantially true, that is true not only in its allegations of fact, but also in any comments made therein. If he succeeds he makes out his defence and there is no need to inquire whether the comment was fair, it is sufficient that it was correct. If he fails he may, nevertheless, successfully contend that the statements are in the nature of comment on a matter of public interest. Again if the defence is privilege and privilege is established, the plaintiff must be nonsuited, however grossly untrue the libel might be, unless he has established that the defendant was actuated by the express malice in making the libel. Therefore with a view to negative the defence of privilege the plaintiff has to establish malice on the part of the defendant. But in case of fair comment the question that falls for decision is whether the comment is fair or does it exceed the bounds of fair criticism. But proof of malice may go to establish that the comment is not fair. Thus if a critic states in respect of a play that it is "dull, vulgar and degraded" and when sued for libel raises the plea of fair comment, he will succeed if this is an expression of honest opinion even though comment be not such as jury might think a just or reasonable criticism of the play. But the defence of fair comment will fail if the jury is of opinion that the libel was malicious or that it exceeded the bounds of fair comment. In other words, comment intrinsically unfair is not protected even though it is not inspired by malice.

Requisites of fair comment

There are four requisites of fair comment, namely, (1) the matter commented upon must be of public interest, (2) the comment must be an expression of opinion and not an assertion or a mere statement of fact, (3) the comment must be fair, and (4) the comment must not be tainted with malice.

Matter of public interest

Comment is of public interest, if it deals with the public life or work of any public man or institution or of any person who invites publicity. This includes many well recognised topics in particular, and in general anything which may fairly be said to invite comment or challenge public attention. In other words, there are two classes of cases in which free comment is permissible : (i) those in which the public interest arises out of the subject-matter itself, and (ii) those in which the complaining party itself has invited public attention. To the first category belong the affairs of the state, i.e. public acts of ministers and officers of the state. Everything which directly affects the welfare of a corporation or a state is clearly a matter of general public interest and there can be no dispute as to the right of discussion with regard to the policy of the Government, the administration of justice, the proceedings of the Legislature, the conduct of the executive in civil and military affairs, and generally the manner in which all those who may be called public servants discharge their duty. It includes the conduct of every public man and every public institution. "A clergyman with his flock, an admiral with his fleet, a general with his army, and a judge with his jury are all the subjects for public discussion because whoever fills a public position renders himself open to public discussion and if any part of his public acts is wrong, he must accept the attack as a necessary though unpleasant circumstance attaching to his position. Public institutions and local authorities also fall under the first category.

Books, works of arts, etc.

In the second category of matters of public interest fall those matters in which the complaining party has himself invited public attention. The true ground on which this kind of comment known generally as criticism seems to rest is that he who appeals to the public must be judged by the public. Under this category fall works of art, books, theatres, concerts and other public entertainments. Every man who publishes a book commits himself to the judgment

of the public and any one may comment on his performance. If the commentator does not step aside from the work or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. Every species of literary production down to a tradesman has been dealt with on the same principles. Criticism of a literary work or a work of art cannot be allowed to be used as a mask for mere invectives or personal imputation not arising out of the subject-matter or based on facts. Statements of this kind cannot be treated as comments on a literary work and are libellous if they are defamatory and untrue. Again as already stated a criticism in itself being a literary work is itself a fair object of criticism.

Comment on a literary production need not be confined to criticism of it as literature. It can be criticised for its treatment of life and morals as freely as it can for bad writing, e.g., it can be criticised as having an immoral tendency. But an attack on the character of the author is not allowed ; it is not the man but his work that is subject to comment.

Civil Remedies

An aggrieved person has two remedies, (1) a suit for injunction restraining the publication of a defamatory statements, and (2) a suit for damages for injury to reputation occasioned by the publication of the defamatory matter.

Suit for injunction

The Court is competent to issue an injunction restraining the publication of a libel. But a court will refuse to exercise its discretion of issuing an injunction unless it is satisfied that statements in the document complained of are untrue, and that there is some likelihood of immediate and pressing injury to person or property, or trade, of the plaintiff.

In Bangladesh a court may restrain the publication of a libel by issue of an injunction under S. 54, Cl. (i) of the Specific Relief Act (1 of 1877). Even before the enactment of the Specific Relief Act, 1877, it had been held that the courts in India had such jurisdiction.

Suit for damages ; Damages ; extent of

The usual remedy of a person defamed, however, is a suit for damages. In applying the general principles of the law of damages to actions of defamation, there are certain special considerations which require discussion. This is a kind of action in which (except in case of some kinds of slander, and that too under English law) no proof of actual damage is necessary. The plaintiff, therefore, need only lay before the Judge the words or writing of which he complains, and leave them to say what amount of compensation he is entitled to from the mere fact that the imputations have been made. The quantum of damage must necessarily depend upon the nature and character of the libel and the extent of its circulation, the position in life of the parties, and other circumstances attending the case. The extent of damage which defamation must cause must naturally depend to a great extent upon the publicity given to it. It is one thing for a man to be libelled in a private letter read by a single person, and quite another to be held up to the hatred, contempt or ridicule of the general public in a newspaper or placard. Therefore even though the defendant in his pleadings admits the publication, the plaintiff is nevertheless entitled to prove its manner and extent. If a libel has appeared in a newspaper, the plaintiff is not confined to the damage likely to have been caused by the publication of the particular copy which he gives in evidence, but may also invite the jury to consider the extent to which copies have been multiplied and circulated. "In order to show the extent of the mischief that may have been done to the plaintiff by a libel in a newspaper, you have a right to give evidence of any place where any copy of that libel has appeared for the purpose of showing the extent of the circulation." If the libel is a mere technical one and has not damaged the plaintiff's reputation, nominal damages and costs should ordinarily be awarded.

A plaintiff may recover damages because of the mere probability that injurious consequences will follow from the defamation. It is, however, open to him to strengthen his case by proving that such consequences have in fact followed. Thus a trader in respect of whom a widely circulated libel has been published may prove a genera

falling of his custom though he does not allege it in his pleadings. Similarly it has been held that a person who has been put up to ridicule in a newspaper may show that it has resulted in his being hated by particular persons. A shipowner who was defamed in a newspaper in respect of the seaworthiness and management of one of his vessels used for damages but did not claim any special damage in his pleading. It was held that he could adduce evidence regarding the amount to which the profits of the next voyage had fallen below the average. In such cases, however, the plaintiff gives the evidence in question merely for the purpose of emphasising the fact that has actually happened which the law would presume without proof. It is not the special damage, it is the general damage resulting from the kind of injury he has sustained. But where the only meaning reasonably attributable to a defamatory statement is a criticism of the goods or manufacture of a trader it cannot form the subject of an action without proof of special damage.

Essentials of defamation

There are in general three essentials of the tort of defamation, namely :—

1. There must be a defamatory statement.
2. The defamatory statement must be understood by right thinking or reasonable minded persons as referring to the plaintiff, or
3. There must be publication of the defamatory statement, that is to say it must be communicated to some person other than the plaintiff himself.

CHAPTER IV

LAWS ON SECURITY OF STATE OR SEDITION RELATING TO PRESS

Next to defamation in importance is sedition in which the press is not unoften found to be involved.

Press, it should be clearly understood, is not free to express or publish news and views affecting security of state which amounts to sedition.

What is Sedition

Sedition has been described and its punishment has been provided in section 124A of the Penal Code. Section 124A runs thus :

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring Sedition into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measure of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Sedition as a political crime

The offence defined in section 124-A of the Penal Code may be called a political crime for two reasons. First, the decision whether or not to prosecute a person for the alleged offence is taken by the Government on political considerations and a court cannot proceed with the trial of the case except with the previous sanction of the Government. Secondly, as the offence is against Government established by law in Bangladesh the content of the matter for which prosecution may successfully be maintained varies with the structure of the Government for the time being.

As the Government in the republican Bangladesh is of the people and is in theory run according to the public opinion, it cannot be said that the Government is brought into contempt or hatred by the words uttered by a person, still less there can be any excitation of disaffection towards it. Therefore, it may be argued that the political offence of sedition has no place under the system. This argument assumes that there is a basic agreement in regard to the form of government and that the ultimate interest of the members of the body politic for all practical purposes is identical. One may well be justified in making the assumptions in countries like the United Kingdom and Switzerland. But in our country, there is no such agreement. Tradition and law-abiding instinct of the people largely contribute to the tranquillity in the state. But in Bangladesh which recently became free, it is difficult to expect that these conditions invariably exist. On the other hand the economic backwardness of the people contains roots of discontent, which might in turn, create affiliations across the territorial lines. In all countries of the East, there is an awakening of the hitherto unprivileged for their legitimate share of political power which in itself requires careful handling in order to be constructive and evolutionary instead of developing in the opposite directions. Bangladesh therefore cannot take the risk of dispensing with the legal weapons to counteract the political crime of sedition altogether.

Bangladesh became free after a bloody war extending over three quarters of a year against the established Government. Ideas acquired by the people in the course of that war do not die down until the lapse of a considerable time. Ideas, very often, long outlive their utility and only time can bring about a change in the outlook of the people. An average Bangladeshi even now entertains a distrust against the government and the police force.

No state can be expected to concede freedom to those who profess to put an end to it by availing of that freedom. In that case, there is also no point in waiting until an overt act is done towards the commission of the crime when their cherished aim is to destroy that freedom itself.

India, Pakistan, Australia, Canada, France, Gold Coast, the United Kingdom and the United States have laws similar to the political crime of sedition in Bangladesh. To retain such a law cannot be considered a sign of a reactionary legal system.

Meaning of Sedition

Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction towards the Government to create public disturbance, or to lead to civil war, and generally all endeavours to promote public disorder. Sedition in itself is a comprehensive term and it embraces all those practices whether by word, deed, or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to endeavour to subvert the Government and laws of the country. Sedition as defined under this section does not necessarily involve creation of disorder. The word sedition does not occur in Section 124-A ; it is only found as a marginal note to Section 124-A and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known. There can be no justification for restricting the contents of the section by the marginal note.

The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. But if a man neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty of sedition.

The offence of sedition is the result of balance of two contending forces, namely freedom and security. Freedom and security in their pure forms are antagonistic poles : one pole represents the interest of the individual in being afforded the maximum right of self-assertion free from governmental and other interference while the other represents the interest of the politically organized society in its self-preservation. It is impossible to extend to either of them absolute protection, for, absolute rules would inevitably lead to absolute exceptions and such exceptions would eventually corrode the rules. It is now generally an accepted postulate that freedom of speech and expression which includes within its fold freedom of propagation of ideas lies at the foundation of all democratic organizations, for without free political discussion, no public education so essential for the proper functioning of the processes of popular Government is possible. While conceding the imperative necessity of freedom, it at the same time must be remembered that the first and most fundamental duty of every Government is the preservation of order, since order is a condition precedent to all civilization and the advance of human happiness. The security of the state and organised Government are the very foundation of freedom of speech and expression which maintains the opportunity for free political discussion. The protection of freedom of speech and expression should not be carried to an extent where it may be permitted to disturb law and order or create public disorder with a view to subverting Government established by law. It is, therefore, necessary to strike a proper balance between the competing claims of freedom of speech and security of the state. This balance has been found by the legislature in the enactment of Section 124-A which defines the offence of sedition for our country. The interpretation of Section 124-A has over

the years gone through various vicissitudes and changes. It must, however, be now taken as well settled that words, deeds or writing constitute sedition punishable under Section 124-A only if they incite violence or disturb law and order or create public disorder or have the intention or tendency to do so.

Validity of Section

The section does not contravene Art. 39 of the Bangladesh Constitution.

Incitement to violence is not necessary

To constitute this offence incitement to violence or disorder is not necessary. Exciting feeling of enmity to Government is enough.

Intention

The essence of the crime of sedition consists in the intention with which the language is used ; but this intention must be judged primarily by the language itself. Although in inferring the intention the principle that a man must be presumed to intend the natural and reasonable consequences of his action must be applied, the writings should be read in a fair, free and a liberal spirit and if any doubt should arise in regard to the intention the benefit of that doubt should be given to the writer. Consequently having regard to time, place, circumstances and occasion for publication, the reasonable, natural and probable effect on the minds of people to whom they are addressed, appears to be that feelings of hatred, contempt or dissatisfaction would be excited towards the Government then it is justifiable to say that they are written with that intent and that they are an attempt to create the feelings against which the law seeks to provide. The intention of a writer charged with the offence of sedition may be inferred from the particular language or it may be proved from the language in conjunction with what the writer had said on other occasions and where it is ascertained that the intention was to excite feelings of disaffection to Government it is immaterial whether or not the words written could have the effect of exciting such feelings of disaffection, and it is immaterial also whether the words were true or were false.

Liability of printer, publisher and editor

The man who is the proprietor and owner of the press and the publishing house connected with a seditious publication cannot be allowed to contend that he can shut his eyes to everything going on upon his premises and then pretend that he has no knowledge of the contents of the publication printed and issued by him. Where there is *prima facie* evidence against him he could have evidence to show that, in spite of this circumstantial evidence against him, in fact he was away from the premises during the whole time that the paper was being printed and published and that he had not been informed either of the printing and publication or of the contents of the same. But if he does not call such evidence he can be rightly convicted. The fact that the accused is the declared keeper of a press would not by itself be sufficient to prove that he had knowledge of all the matter printed at that press. He cannot escape criminal liability by a plea that he was not aware of the publication or that he was out of station when it was printed or that he had no intention to commit the offence. Knowledge by the printer of the nature of the matter printed is a question to be determined on the particular facts of a particular case.

If an article constitutes an offence under Section 124-A, the fact that it was not written by the editor does not affect the question of his guilt.

A publisher of an article must be deemed to intend that which is the natural result of the words used having regard to the character and description of people expected to read them. Mere printing is sufficient. Publication is not necessary.

Fair comment

Explanation 2 to section 124-A, Penal Code, is intended to protect criticisms of Government measures, and administrative and executive action of Government, and they give a perfect freedom to journalists, to discuss the measures and administrative acts of Government, to disapprove of them, to attack them, and to use forcible and strong language, if necessary, and to do everything legitimate and honest in bringing before the public or the Govern-

ment, the fact that their measures or their actions are disapproved by a section of the public, or by that particular speaker or journalist. But no publicist, journalist or speaker has any right to attribute dishonest or immoral motives to Government. Criticism, though harsh and uncompromising, must be free from the taint of language which is likely to arouse, or calculated to endanger feelings of enmity, hatred, or disloyalty against Government. The ruler in the democratic state is really the servant of the people and may well be criticised by them. So long, therefore, the criticism has no direct tendency to bring the Government established by law into hatred and contempt and so long as it does not induce the people disobey the laws to defy legally constituted authority, the offence of sedition cannot be said to be committed. Words which were formerly considered to be seditious are now accepted without demur as the inevitable result of the freedom of thought. A man may criticise or comment upon any measure or act of the Government and freely express his opinion upon it. He may express condemnation but so long as he confines himself to that he will be protected but if he goes beyond then he must pay the penalty for it. The question of intention is an important factor in such cases. In a democratic country criticisms of governmental measures and administrative actions are to some extent unavoidable ; they are made for the purpose of enlisting popular support, and in considering the effect of such criticisms no serious notice ought to be taken of crude, blundering attempts or rhetorical exaggerations by which nobody is likely to be impressed. With the change of times the effect of criticisms also changes : what was damaging contempt or hatred of a bureaucratic Government is not so of a popular Government a Government which can neither afford to be hypersensitive, nor impervious, to criticism.

Disapprobation of measures of Government motivated throughout by a desire to excite hatred, contempt, and disaffection towards it attracts the application of Section 124-A and it is immaterial to consider whether absolute independence is advised or any form of constitution advocated.

There is another section (123A) relating to sedition in the Penal Code. Section 123A runs thus :

123A : (1) Whoever, within or without Bangladesh, with intent to influence, or knowing it to be likely that he will influence, any person or the whole or any section of the public, in a manner likely to be prejudicial to the safety of Bangladesh or to endanger the sovereignty of Bangladesh, in respect of all or any of the territories lying within its borders, shall by words, spoken or written, or by signs or visible representation, condemn the creation of Bangladesh in pursuance of the proclamation of Independence on the twenty-sixth day of March, 1971, or advocate the curtailment or abolition of the sovereignty of Bangladesh in respect of all or any of the territories lying within its borders, whether by amalgamation with the territories of neighbouring states or otherwise, shall be punished with rigorous imprisonment which may extend to ten years and shall also be liable to fine.

(2) Notwithstanding anything contained in any other law for the time being in force, when any person is proceeded against under this section, it shall be lawful for any court before which he may be produced in the course of the investigation or trial, to make such order as it may think fit in respect of his movements, of his association or communication with other persons, and of his activities regard to dissemination of news, propagation of opinions until such time as the case is finally decided.

(3) Any court which is a Court of appeal or of revision in relation to the court mentioned in Sub-section (2) may also make an order under that sub-section.

General Comments

Security and liberty are the *sine qua non* for the proper functioning of any democratic state. But, it has been aptly said by Schwartz that security and liberty, in their pure form, are antagonistic poles. The one pole represents the interest of politically organised

society in its own self-preservation. The other represent the interest of the individual in being afforded the maximum right of self assertion, free from governmental and other interference.

However desirable it may seem to be, absolute protection cannot be extended to either of them. For, as has been said, such exception would eventually corrode the rules.

Every state has the paramount duty to demand loyalty from its citizens in respect of its territorial integrity and sovereignty. No-body may be allowed to condemn the creation of Bangladesh. The state must care for its self-preservation.

Though the distinction between disapprobation of Government measures and condemnation of the creation of Bangladesh may at times appear to be thin, it is not illusory. If from a reading of the writing as a whole it does not appear to have intended to influence any person to condemn the creation of Bangladesh or to advocate the curtailment of its territories, then it cannot be construed as attracting the peril of this Section. Whether a writing constitutes condemnation of the creation of Bangladesh is a matter of fact.

Whatever may have been the significance and the scope of its application before the immunity of speech was guaranteed by Article 39 of the Constitution, Section 123A of the Penal Code should now be read in the context of the changed circumstances. Some distinction between making a demand, whether political or economic and the adoption of means to achieve the object must be recognised. This has been nicely expressed in a case where the petition was convicted under Section 124A for demanding that certain tract of Pakistan should be named as Pakhtoonistan.

“It is permissible for a citizen to hold up the men who from the executive government to ridicule and contempt if they are guilty of maladministration. All that the accused had done was to give an exaggerated emphasis on the treatment meted out to a leader of a political party while under custody. It is not the criticism of the government, in whatever venomous and enraging wounds it is cloaked

but the adoption of methods for the attainment of a purpose which encourage force and violence and which may lead to conflict with the authorities with the certainty that there will be grievous loss of life. Short of that every criticism of government is permissible.” P.L.D. 1958 Pesh 15.

Words must be judged in the light of conditions in the contemporary society. Bitter criticism of the government policy which was advocated as having resulted in the predominance of West Pakistan in the administration of the country and demand of regional autonomy for East Pakistan, now forming the State of Bangladesh were not considered as sufficient to show that the person detained under Rule 32(1)(b) of the Defence of Pakistan Rules, 1965 indulged in any activity prejudicial to the country's security, or to the public safety. In the words of Salauddin J,

“As long as the law of the land permits oppositional activities and some amount of freedom of thinking and expression, mere expression of opinion, however much unpalatable it may be to the Government of the day, does not.....call for any action under a special law and order situation or endanger the maintenance of essential supplies and services.”

CHAPTER V

LAWS ON PUBLIC ORDER RELATING TO PRESS

Public order means and includes public safety and tranquillity.

Laws relating to public tranquillity

Chapter VIII of the Penal Code relates to offences against the public tranquillity.

The offences in this Chapter may be classified in the following four groups :

I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (ss. 141, 142, 143)
- (2) Joining an unlawful assembly armed with deadly weapons (s. 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (s. 145).
- (4) Hiring of persons to join an unlawful assembly (s. 150).
- (5) Harboursing persons hired for an unlawful assembly (s.157).
- (6) Being hired to take part in an unlawful assembly (s. 158).

II. Rioting (ss. 146, 147).

- (1) Rioting with deadly weapon (s. 148.)
- (2) Assaulting or obstructing a public servant in the suppression of a riot (s. 152).
- (3) Wantonly giving provocation with intent to cause riot (s. 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed. (s.154).
- (5) Liability of person for whose benefit a riot is committed (s.155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (s. 156).

III. Promoting enmity between different classes (s. 153A and 153B).**IV. Affray (ss. 159, 160).****Texts of the law are as follows**

141. An assembly of five or more persons is designated an “un-
 Unlawful assembly lawful assembly,” if the common object of the persons
 composing that assembly is—

First.—To overthrow by criminal force, or show of criminal force, (Government or Legislature), or any public servant in the exercise of the lawful power of such Public servant ; or

Second.—To resist the execution of any law, or of any legal process ; or

Third.—To commit any mischief or criminal trespass, or other offence ; or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly
 Being member of unlawful assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Whoever is a member of an unlawful assembly, shall be
 Punishment punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon,

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse,

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting,

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Rioting, armed with deadly weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation .—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

153. Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both ; and if the offence of rioting

be not committed with imprisonment of either description for a term which may extend to six months or with fine, or with both.

153A. Whoever by words, either spoken or written or by signs, or by visible representations, or otherwise, promotes or attempts to promote feeling of enmity or hatred between different classes of [the citizens of (Bagladesh)], shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of the citizens of (Bangladesh).

153B. Whoever by words, either spoken or written, or by signs or by visible representations, or otherwise, induce or attempts to induce any student, or any class of students or any institution interested in or connected with students to take part in any political activity (which disturbs or undermines or is likely to disturb or undermine, the public order) shall be punished with imprisonment which may extend to two years or with fine, or with both.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand (taka), if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful

means in his or their power to disperse or, suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom.

The agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, 'shall be punished with imprisonment or either description for a term which may extend to six months, or with fine, or with both.

and whoever, being so engaged or hired as aforesaid, goes armed or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon or offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred (taka), or with both.

Discussion on writings provocative of class enmity

Section 153A and 153B of the Penal Code which have been already quoted and *Section 153A and 153B* which relate to provocative writing merit elaborate discussion. These sections relate to such publications of the press as might create serious law and order situation through provocation of class hatred.

Justification for making the provocation of class hatred and class enmity a crime

No individual has the freedom to provoke class war. Not only is class enmity and hatred destructive of political harmony but it also leads to tension and disorder in the community. In the caste-ridden and communal background, it is not difficult to provoke people to disorder. Not only that the law relating to class hatred was not sufficient to deal with the new situation, it was found necessary to tighten the law and the Parliament has enacted a law.

In the earlier times, state consisted of a number of groups and there was no direct link between the state and the individual. Loyalties were then tribal ; now they are national.

For successful functioning, the state has to effectively maintain direct relation with the individual and the group loyalties should be disregarded to the maximum possible extent. As law and public opinion influence each other, the penal law of class hatred may be so used as to reduce the evil effects of group loyalties to a minimum.

Freedom of the press

The Constitutions of 1962 and 1956 guaranteed the freedom of the press. The non-reference to the liberty of the press in them was merely was considered unnecessary. The liberty of the press means complete freedom to write and publish without censorship or restriction save such as is absolutely necessary for the preservation of society. There should be as few restrictions on the freedom of the press as the conditions obtaining in the country justify except in times of grave emergencies, such as war, civil commotion on a large scale and even then only in respect of matters involving the security of the state. Press is the mouthpiece of public opinion. Its functioning is more important now when the country has become free than it was before. It has to work as a link between the Parliament which frames legislation and the public which express their hope and aspiration through it. The right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject to such restrictions as could be legitimately imposed. Therefore a journalist may comment expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, but he must do so without attempting to excite hatred and disaffection.

Scope

Section 153-A means that no subject is entitled to write or say or do anything whereby the feelings of one class of subjects should

be inflamed against another class of subjects. It is a statutory provision of law for the purpose of preserving order and amity between various classes of subjects.

Criticism of Government.

Adverse criticism, however, pungent, misdirected or unjustified, against a ministry or a Government does not properly fall within the purview of S. 153-A. Thus it was held that to attack the policy of the British Government does not necessarily involve attacking the British people and the one need not necessarily be hated when the other is blamed. It is possible that the same articles published in a newspaper criminate its author both under S.124-A and S. 153-A.

Validity of section

S. 153-A makes punishable the promotion of hatred and enmity and there can be no manner of doubt that if acts mentioned in S.153-A were not offences, public order will be prejudicially affected. The explanation attached to the section does not bar the pointing out of objectionable matters which are promoting feelings of hatred or enmity and the restriction on the liberty of speech and expression imposed by section 153A is, therefore reasonable, and they do not offend against fundamental rights guaranteed by the Constitution.

Class hatred

Where a book contains passages in it which might be construed to create some distant feeling of disaffection against the rich and the wealthy, but it is not easy to hold that they have a direct effect of actual promotion of any ill-feeling or hatred, particularly as the theme is a conflict between capitalism and labour throughout the world and in all the stages of history, the book cannot be said to contain objectionable matter within S.153-A and the benefit of doubt should be given to the accused. But where the original book not only propounds the doctrine of Communism, but is a manifesto of the Communist Party and professedly contains "a complete theoretical and practical party programme", and the picture of the class struggles is highly coloured, and references to the French Revolution of 1830,

the Parisian Insurrection of 1848 and the Reform Agitation in England, etc. point to the readers a revolutionary method for the achievement of the purpose in view, and there is a pointed reference to the methods often adopted by the proletariat in destroying property, smashing machinery to pieces and setting factories ablaze and restoring by force the former status of the workman and declares that Communists must every-where support their revolutionary movement against the existing social and political order of things, and announces that the end can be attained only by forcible overthrow of all existing social conditions, and ends with an appeal to the working men to unite, it would come within the mischief of this section.

Explanation

An explanation appended to a section is not the same as a proviso. Therefore explanation to S. 153-A cannot be used to enlarge, the provisions of the substantive section any more than a proviso can be used to enlarge the provision to which it is a proviso.

The explanation to S. 153-A indicates that the essence of an offence under S. 153-A is malicious intention, and if there is no malicious intention in the publication, honesty of purpose may safely be inferred. Section 153-A is not intended to apply to the case of the honest agitator, whose primary object is to secure redress of certain wrongs, real or fancied, and who is not actuated by the base mentality of a mere mischief-monger. If the writer is expressing views which he holds honestly, however wrong they may be, and has no malicious intention, he cannot be brought within the mischief of S. 153-A, a section in which the Legislature has preserved a delicate balance between the undesirability of anything tending to excite section or to excite strife between classes, and the undesirability of preventing any *bonafide* argument for reform. In this connection it may be remembered that the editor of a newspaper has certain public duties, one of which is to publish matters which, it is in the public interest, that it should be known and if he does so honestly, he is evidently not liable to be dealt with by a criminal court.

Classes of people

The first and most important ingredient in the connotation of the term 'classes' is that the words used must point to a well defined and readily ascertainable group of subjects. In the second place some element of permanence or stability in the group would have to be present before there can be an attempt to excite enmity against that group. Thirdly, the group indicated must be sufficiently numerous and widespread to be designated "a class". The group should have a common and exclusive designation and should also possess common and exclusive characteristic which may be associated with their origin, race or religion. It follows that a joint stock company or its shareholders, or landlords could not be said to constitute a class within the meaning of the section. Similarly 'capitalist' is altogether too vague a word to denote a definite and ascertainable class so as to come within S. 153-A.

Public tranquillity may be disturbed by publication of matters which are intended to outrage religious feelings. Such publication is an offence under Section 295-A which reads as follows :

295-A "Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Bangladesh, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER VI

LAWS ON OBSCENITY RELATING TO PRESS

What is obscenity ?

An exact and precise definition of obscenity is not possible. It is essentially a relative and subjective term. It is subjective in the sense that it describes the reaction of the human mind to a certain kind of experience. The same object may not have the same effect on all persons. As D.H. Lawrence observed, 'what is pornography to one man is a laughter of genius to another.' The concept of obscenity would not only vary from individual to individual but it would also vary from community to community and in the same community from one place to another. What is obscene to a community, conceding for a while that such a common standard is ascertainable, would ultimately be determined by the attitude of the society in a particular period, to certain things which are intimate in the life of human beings. In other words the standard of obscenity is the resultant of the cultural values of a given society at a given time. What has been condemned as obscene by one community has been hailed as a masterpiece of literary work by the same community in a later period or by another community at the same time. The classic illustration of this could be found in the reaction of English and French communities to Emile Zola's *La Terre*. Just at the time Vizetelly, the publisher of *La Terre*, was convicted and sentenced by an English Court for having published the novel, Zola was awarded membership of the Legion of Honour by the French Government. Seven years later, Zola was honoured by literary London. It would be surprising to note that *Fruits of Philosophy*, a work of Annie Besant and Charles Bradsaugh, was the object of a criminal trial. Eminent writers like Thomas Hardy, George Moore, Henrik Ibsen and Bernard Shaw have not escaped the accusation of the authorship of obscenity though later their works have been acknowledged as works of immense literary value.

Obscenity, Meanings of

The problem of defining what is obscene is not easy to solve. Social changes, changes in the behaviour and outlook of the people from age to age bring in a variation in the idea of obscenity as we have seen in the previous paragraph. If one compares the dress worn by women from time to time in different parts of the world and even in the same part at different periods of history, one will be astounded as to the variable idea of obscenity prevalent the world over. The changes in the ideas of obscenity may be in terms of region, in terms of time and in terms of persons. It may even be that with the same person the same thing may not be obscene at all stages of his life. In *Sukanta Halder v. The State* AIR CAL. 214 Mr. Justice R.P. Mookherjee says :

...The idea as to what is to be deemed to be obscene has varied from age to age, from region to region, dependent upon particular social conditions. There cannot be an immutable standard of moral values.

It is interesting to note that section 292 of the Penal Code, which was introduced into the Code by the Obscene Publications Act, 1925, has not defined the term 'obscene'. This is a lacuna which is of great import in the administration of this branch of law. Whereas in the case of other offences, a strict definition of the offence and its constituent elements are scrupulously laid down in the code, the case of obscene publication is otherwise. It leads to the result that the judge has to make a subjective determination as to what his notion of obscenity is and then see whether the article impugned falls within that determination. On the one hand, it may be said to be good as it does not set a procrustean standard for all purposes ; on the other hand, the vagueness is generally abhorrent to the strict idea of legal liability, particularly in cases of criminal offence.

The International Convention for the Suppression of Circulation of, and Traffic in, Obscene publications, which met in Geneva in 1923, itself did not lay down any definition.

The first place where one would turn to obtain the meaning of 'obscenity' will of course, be dictionaries. The Oxford English Dictionary says of obscenity as being 'offensive to modesty or decency, expressing or suggesting unchaste or lustful ideas ; impure.. indecent, lewd'. In Webster's International Dictionary the meaning is : 'offensive to chastity or modest ; expressing to the mind.... something which delicacy, purity and decency forbid to be exposed ; impure as obscene language, obscene pictures..' Though there are many judgments, which have referred to these meanings in approving terms, yet it will be seen that the meanings are merely synonyms and lead only to further questions, such as impure in what respect offensive to whose modesty ? 'how do you tell that it is at all offensive ?' and so on.

A somewhat basic idea is found in a letter of Havelock Ellis : "There can be no doubt whatever regarding the.....view of obscenity" as residing exclusively not in the thing contemplated but in the mind of the contemplating person.' May one also pardonably quote Sir A.P. Herbert : The "dirt" of today may be the art of tomorrow' ?

However that may be, so far as the law in this subcontinent is concerned the test which has been accepted and approved of in a series of cases from the earliest time is that laid down by Cockburn C.J. in Reg. V.H. Ocklin and the test is this :

"The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

Legal provision on obscenity

Law relating to obscenity is incorporated in the Penal Code as under :

Section 292. Whatever

(a) Sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, Sale, etc. of distribution, public exhibition circulation, makes, object books etc. produces or has in his possession any obscene book, pamphlet, paper drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception :—This section does not extend to any book, pamphlet, writing, drawing or painting kept or used *bonafied* for religious purposes of any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Section : 293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such

obscene object as is referred to in the last preceding section, Sale etc. of obscene objects to young person. or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Intention : The section does not make knowledge of obscenity an ingredient of the offence and the prosecution need not establish it. Absence of knowledge may be taken in mitigation but does not take the case out of the section. Under section 292, in the matter of selling or keeping for sale an object which is found to be obscene the ordinary *mens rea* will be required before the offence can be said to be complete. *Mens rea* need not be proved by positive evidence. In criminal prosecution *mens rea* must necessarily be proved by circumstantial evidence alone unless the accused confess. *Mens rea* cannot be said to have been absent once it is found that the periodicals are obscene.

Intention of the journalist is not to be looked in to conclude whether the offence under section 292 has been committed or not because it would be a matter for judicial determination to find as to whether the impact of the impugned material on the average human mind is such or not as to create human degradation and an urge to sexual immorality where it may have never existed before.

The test of obscenity

The test of obscenity on a review of the authorities would be as to whether or not looking to the present day standards of morals and thoughts, the tendency of the writing alleged to be absence would be to deprave public morality ; in other words, the question is, has it got the tendency to corrupt or deprave the mind of an ordinary man into whose hand the newspaper or the periodical is likely to fall by raising in him lascivious thoughts. It will not do to say that standard of morality vary from region to region and it is impossible to have one inflexible standard of obscenity for all countries. The court has to take into account all the factors before it comes to the conclusion as to whether or not a publication

is an obscene publication. Authorities clearly indicate that while judging the character of publication, the court must consider the effect that it would produce on the mind of an average person in whose hand the book is likely to fall. While so judging, neither a man of wide culture or superb character nor a person of depraved mentality only should be taken as a reader of such publication. It is also necessary that the court must also consider the effect on the mind of young and unwary persons or those of impressionable age. After all, it depends on the question as to who are likely to read the paper or periodical. If they are likely to be read by adolescent, there can be no reason to exclude the consideration of effect on their mind. It is difficult to subscribe to the theory of eliminating altogether the effect of a publication on the minds of young persons, for they also constitute a large part of the reading public in this country. Obscenity may be adjudged in the light of influence which the impugned matter may have not only on the minds of the persons already depraved or abnormal but also on the minds of persons who may be completely uninitiated to sex and may be innocent. If any material incites extreme immoral perversities in respect of sexual indulgence then it incites the impulses to depravity and degeneration. Such material would be undoubtedly obscene. In the present day society in Bangladesh great emphasis is being laid on family planning and therefore it has become absolutely necessary to impart education on sex to masses ; even so the books dealing with sex matters are to be so composed that they do not cross the bounds of decency and do not tend to become pornographic. Mere defamatory article however filthy, indecent, loathsome and lewd it may be, does not come within the definition of obscenity. The word "obscene" in the section is not limited to writings, picture etc. intended to arouse sexual desire. At the same time the mere treating with sex and nudity in art and literature is not per evidence of obscenity. The test given by Cockburn, C.J. in (1868) L R 3 QB 360 the effect that the tendency of the matter charged as obscene must be to deprave those into whose hands a publication of the sort may fall so far followed in is the sub continent is

the right test. The test does not offend Article 39 of the Constitution. In judging a work, stress should not be laid upon a word here and a word there or a passage here or passage there. The work as a whole must be considered, the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influence of this sort. In this connection the interests of contemporary society and particularly the influence of impugned writing on it must not be overlooked. Where obscenity and art are mixed, art must so preponderate as to throw the obscenity into the background or the obscenity may be overlooked if it has preponderating social purpose or profit. What the court has to see is that whether a class, not an isolated case, into whose hands the paper article or story all suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts around in their minds. The charge of obscenity must therefore be judged from this aspect. In judging the obscenity of one article the character of the article in a periodical is a collateral issue which need not be explored. "Obscene" means offensive to chastity or modesty ; expressing or presenting to the mind or view something that delicacy, purity forbid to be expressed ; impure, as a obscene language ; anything "expressing or suggesting or suggesting unchaste and lustful ideas ; impure indecent, lewd." The test of obscenity is whether the language complained of would corrupt those whose minds are open to immoral influences. The form of expression and not the actual meaning is important. Distinction should be drawn between obscenity and frankness of expression. Religious publication is not obscene within Section 292 as its tendency is not to deprave morals but if extracts from it contain objectionable matter and have a tendency to deprave or corrupt minds which are open to immoral influences the fact that they formed part of a religious publication is not ground for publishing it. A passage in a religious book may become obscene if it finds a place in a journal intended for the public

Where the consequences of a publication are likely to introduce in the minds of readers impure thoughts and revolting ideas not present in their minds before the publication it is an offence under section 292. Obscene passages are not excused because the rest of the publication is unobjectionable. The literary eminence of the author of the article containing obscene matter does not justify the offence under the above section. There should be no printing of description exciting sensuality but descriptions of diseases with appropriate remedies therefore intended only for doctors and patients are not criminal. Where the article in question was a serious work intended to give advice to married people and particularly husbands, on how to regulate the sexual side of their lives to the best advantage, that is to say with a view to promoting their health and mutual happiness, it was held that such works when properly written serve a useful purpose and would not come within the mischief of the section.

A passage out of the context may have one meaning while in relation to the context it may not have the same meaning. Whether the writing is obscene is a matter in which the court is entitled to rely on its own judgment apart from the other circumstances. A picture of a woman in the nude is not *per se* obscene. For the purpose of deciding whether a picture is obscene or not one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, and the person or persons in whose hands it is likely to fall. It is no justification that the matter published is by an eminent writer or is composed in a style not easily understood by all.

CHAPTER VII

LAW ON CONTEMPT OF COURT RELATING TO PRESS

What is Contempt

Freedom of press is subject to any reasonable restrictions imposed by law in relation to contempt of court.

Generally speaking, any expression in any newspaper which tends to bring the authority and administration of the law into disrespect or disregard or interferes with the administration of justice or prejudice parties, litigants or their witnesses during litigation amounts to contempt of court.

The proper test is, what impression an ordinary and average reader will obtain by reading the expression. When the expressions indicate that the public have lost confidence in the court, it is difficult to construe that they amount only to a criticism against a Judge.

In *Reg. v Gray*, Lord Russell explained the expression as follows :

“Any writing calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further any writing calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is a contempt of court. The former class belongs to the category which Lord Hardwicke, L. C. characterised as scandalising a court or a judge.” That description of that class of contempt is to be taken subject to one, and an important, qualification. Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of court. The law ought not to be statute in such cases to criticise adversely what under such circumstances and with such an object, is published ; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen.”

Constitutional Provision on Contempt of Court : Article 108 of the Constitution of the Peoples Republic of Bangladesh.

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

Freedom of the Press

Freedom of the press does not mean freedom to indulge in crude or sophisticated blackmailing or licence to write anything and assassinate the character of persons, or to assume the role of investigator or try to prejudice mankind against any person yet freedom of the press is essential to political liberty and proper functioning of democracy. The American Commission in their report entitled "A Free and Responsible Press" have stated as follows :

"Freedom of the press is essential to political liberty. Where men cannot freely convey their thoughts to one another, no freedom is secure. Where freedom of expression exists, the beginning of a free society and a means for the very retention of liberty are already present. Free expression is, therefore, unique among liberties."

"The right to freedom of expression is an expression of confidence in the ability of free men to learn the truth through the unhampered interplay of competing ideas. Where the right is generally exercised, the public benefits from the selective process of winnowing truth from falsehood, desirable ideas from evil ones. If the people are to govern themselves, their only hope of doing so wisely lies in the collective wisdom derived from the fullest possible information and in the fair presentation of different opinions. The right is also necessary to permit each man to find his way to the religious and political beliefs which suit his private needs."

The Government of India Press Commission in its report states :

"The tender plant of democracy can flourish only in an atmosphere where there is a free interchange of views and ideas which one not only has a moral right but a moral duty to express.

Democracy can thrive not only under the vigilant eye of the Legislature, but also under the care and guidance of public opinion, and the press is par excellence, the vehicle through which opinion can become articulate. Its role consists not only in reflecting public opinion but in instructing it and giving it proper orientation and guidance. For this the press has not only moral right to free expression but is subject to certain responsibilities also. But the terrain of normal restriction is not always co-extensive with the legal restrictions which may be imposed upon the right. Up to a point the restriction must come from within. The legal protection may continue to remain even though the moral right to it has been forfeited. To quote again from the American Commissioner's Report "many a lying venal and scoundrelly public expression must continue to find shelter under freedom of the press", but widely different purposes to impair the legal right even when the moral right is gone may easily be a cure, worse than the disease. Each definition of an abuse invited the abuse of the definition. If the courts had to determine the inner corruptions of personal intention, honest and necessary criticism would proceed under an added peril. Though the presumption is against resort to legal action to curb abuses of the tolerance, the control of the press must be subjective or proportional. The ethical sense of the individual, the consciousness that abuse of freedom of expression, though not legally punishable, must tarnish the fair name of the press and the censure of fellow journalists, should all operate as powerful factors towards the maintenance of the freedom even without any legal restrictions being placed on that freedom.

The test that a publication amounts to the contempt of court generally bases on the following facts :—

- (1) That there has been a publication.
- (2) That the publication is intended to prejudice a fair trial of a pending case.
- (3) That the publication tended to interfere with the due course of justice or was calculated to prejudice the public mind.

- (4) That the publication was with the knowledge of the pending case or with the knowledge that the case was imminent.

Editorial comments by newspapers relating to the judicial acts of the High Court, which exceed the bounds of fair criticism are concerned by irresponsible appreciation of the action, dictated or calculated to lower the sense of confidence in the administration of justice by attributing sectional prejudices to the judges and holding them out as issuing directions in matters of judicial proceedings on considerations other than judicial, and attributing to the court entrusted with enforcing fundamental rights, unconstitutional practice and discrimination, amount to contempt.

Thus where the main object of an article was found to be to scandalise the Chief Justice and the Judges of High Court with whose consultation, approval and full support, certain notifications were issued, and clearly to suggest that justice cannot be had where justice is being administered thereby shaking the confidence in the public mind about the administration of justice and creating an impression that the judges in the highest court in the state act on extraneous considerations, it was held that the article amounted to contempt of the High Court.

Persons have been held liable in contempt for writing and publishing articles unjustifiably attacking the Chief Justice and the Judges of the High Court. The Court has, therefore, to scrutinize carefully the article to find out whether it is of such a nature as would exceed the limits of fair inference, legitimate comment and criticism or has been conceived of in haste with irresponsible appreciation of the action of the High Court with a tendency to affect the dignity and prestige of the High Court, thereby constituting a contempt.

The freedom of the press under our Constitution is not higher than that of a citizen, and there is no privilege attaching to the profession of the press as distinguished from the members of the public. To whatever height the subject in general may go, so also

may the journalist, and if an ordinary citizen may not transgress the law so must not the press. That the exercise of expression is subject to the reasonable restriction of the law of contempt, is borne out by Article 39 of the Constitution.

It should be well to remember that the judges by reasons of their office are precluded from entering into any controversy in the columns of the public press, nor can they enter the arena and do battle upon equal terms in newspapers as can be done by ordinary citizens.

A discussion in a newspaper of the merits of a pending case or of the evidence to be adduced at the trial of the witnesses who may be appearing in a case, cannot be permitted. An one-sided publication, in extenso of a statement of a witness under Section 164, Cr. P.C before the Magistrate constitutes contempt of court. After a cause has been finally decided the chief hurdle to comment and criticism is removed, as there is no longer the possibility of influencing the decisions. Law recognises in such cases freedom of criticism so long as it is fair and true. Law does not restrain to punish the free expression of the disapprobation of what is done in, or by, the courts. But even in such cases it must not be forgotten that disrespectful attacks on the Court even after it has finally disposed of a case imputing to it corruption or incompetency, will make the critic liable to be summarily punished for contempt of court. The publication of an article in a newspaper cannot be justified on the ground that the trial for the offence to which it relates is not then in progress nor immediately to be commenced; but the date of the hearing is to be fixed afterwards. Truth or falsity of the facts or comments published is immaterial. Good faith or malice of the author is an equally irrelevant consideration. The outcome of the trial against the person, who was the target of the newspaper attack cannot avail the contemner. The test of guilt in all such cases depends on the findings, whether the matter complained of, tended to interfere with the cause of justice, and not on the question, whether such was the objective sought; much less whether it was

achieved. The goodness of the motive in exposing an evil is not the criterion in cases of contempt committed by newspaper publication. In a case of serious contempt of court an apology, which may be tendered, could not take the sting out of the contempt. As the respondent was proprietor and editor of a local newspaper which has a limited circulation and which was not even published regularly it was held that it would meet the ends of justice, if he was ordered to pay a fine and a sentence of imprisonment was not awarded.

Power to punish for contempt of itself

1. Though as a Court of Record the Supreme Court would have the power to punish for contempt of itself, Art. 108 specifically mentions this power in order to remove any doubts.

2. The object of this power to punish is not the protection of the judges personally from imputations to which they may be exposed as individuals, but the protection of the public themselves from the mischief they will incur if the authority of the tribunal is impaired.

Hence—

(i) The power to punish for scandalising the court is a weapon to be used sparingly and always with reference to the administration of justice and not for vindicating personal insult to a judge, not affecting the administration of justice.

There are two primary considerations which should weigh with the court in such cases, viz-(a) whether the reflection on the conduct or character of the judge is within the limits of fair and reasonable criticism, and (b) whether it is a mere libel or defamation of the judge or amounts to a contempt of the court.

Where the question arises whether a defamatory statement directed against a judge is calculated to undermine the confidence of the public in the competency or integrity of the judge or is likely to deflect the court itself from a strict and unhesitant performance of its duties, all the surrounding circumstances under which the statement was made and the degree of publicity that was given to it would be relevant circumstance. The question is not to be

determined solely with reference to the language or contents of the statement made. Mere publication to a third party, which would be sufficient to establish an ordinary libel may not be conclusive for establishing contempt. That would depend upon the nature and extent of the publication and whether or not it was likely to have an injurious effect on the minds of the public and thereby lead to an interference with the administration of justice.

“Although contempt may include defamation, yet an offence of contempt is something more than mere defamation and is of a different character.”

(ii) Fair and reasonable criticism of a judicial act in the interest of the public good does not amount to contempt.

But the limits of bonafide criticism are transgressed when improper motives are attributed to judges and this cannot be viewed with placid equanimity by a court in a proceeding for contempt. Imputations made against judicial officers without reasonable care and caution cannot be said to be *bona fide*.

Thus, it is a gross contempt to impute that judges of the highest Court of Justice acted on extraneous considerations in deciding a case.

(iii) Any speech or writing which tends to influence the result of a pending trial, civil or criminal, or otherwise tends to interfere with the proper course of justice, amounts to contempt of court.

Thus—

(a) Any threat to a party to a pending litigation which would force him to withdraw his action or to abandon it, amounts to contempt. The threat may be offered by issuing a circular that disciplinary action would be taken against a government servant if he seeks redress to a court of law in matters arising out of his employment without first exhausting the official channels of redress.

(b) It is contempt to prejudice a party to a pending judicial proceeding, e.g., by holding a parallel inquiry on a matter which is sub judice, provided the scope of the inquiry is the same.

(c) It is contempt on the part of any party to a prohibitory order issued by the court to commit a breach of it after (a) service of such order upon him, or (b) otherwise acquiring definite knowledge that such an order had been made.

(d) The uttering of words or an action in the face of the court or in the course of proceedings may be a contempt, provided they interfere with the course of justice.

(e) A subordinate court may be held guilty of contempt of court for violating an order of the Supreme Court only if it disobeys the order intentionally, i.e. after having knowledge of the order from an authentic source. A mere error of judgment is not sufficient for visiting a judicial officer with the penal consequences of a proceeding for contempt.

3. But the power to punish for contempt is an extraordinary power which must be used sparingly, and even on the ground of interference with the due course of justice. The court does not proceed by way of contempt "unless there is real prejudice which can be regarded as a substantial interference" as distinguished from "a mere question of propriety."

4. But though this extraordinary power must be used sparingly, where the public interest demands it the court will not shrink from exercising it and imposing punishment even by way of imprisonment, in cases where a mere fine may not be adequate.

Thus, an Advocate who signs an application or pleading containing matter scandalising the court which tends to prevent or delay the course of justice is himself liable to be punished for contempt of court unless he reasonably satisfies himself about the *prima facie* existence of adequate grounds therefore.

On Contempt of Court, we have the following Act :

Statutory Laws of Contempt in Bangladesh

Apart from the Contempt of Courts Act, there are certain specific provisions made in statutes to punish certain types of contempt.

Other statutory laws of contempt in Bangladesh—

(I) The Code of Criminal Procedure, Act V of 1898.

Sec. 480 (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender * * * to be detained in custody and at any time before the rising of the court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred Taka and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) Nothing in (section 29A or in chapter XXXIII) shall be deemed to apply to proceedings under this section.

481. (1) In every such case the court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the court interrupted or insulted was sitting, and the nature of the interruption or insult.

482. (1) If the court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred Taka should be imposed upon him or such court is for any other reason of opinion that the case should not be disposed of under section 480, such court, after recording the facts constituting the offence and the statement of the accused as herein before provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

483. When the (Government) so directs, any Registrar or any Sub-Registrar appointed under the Registration Act, 1877 shall be deemed to be a Civil Court within the meaning of section 480 and 482.

484. When any Court has under section 480 (or section 482) adjudged an offender to punishment (or forwarded him to a Magistrate for trial) for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such court, or on apology being made to its satisfaction.

485. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the court requires him to produce, and does not offer any reasonable excuse for such refusal, such court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a court established by Royal Charter, shall be deemed guilty of a contempt.

486. (I) Any person sentenced by any court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the court to which decrees or orders made in such court are ordinarily appealable.

(Part VIII. Special Proceedings. Chapter XXXV—Proceedings in case of certain offences affecting the Administration of justice. Chapter XXXVI.—Of the Maintenance of Wives and Children)

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the reverse the sentence appealed against.

(3) An appeal from such conviction by a court of small cause in a presidency-town shall lie to the High Court, and an appeal from such conviction by any other court of small cases shall lie to the Court of Session for the sessions division within which such is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such judge, and in other cases may be made to the District Judge, or, in the presidency towns, to the High Court.

487. (1) Except as provided in sections 480 and 485, no Judge of a Criminal Court of Magistrate, other than Judge of a High Court Division, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority or is brought under his notice as such Judge or Magistrate in the course of a Judicial Proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such court.

195 (1) No Court shall take cognizance.

(a) of any offence punishable under sections 172 to 188 of the Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate ;

Prosecution for contempt of lawful authority of public servants

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate : or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such court, or of some other court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1) the term "Court" (includes) a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that--

(a) Where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate : and

(b) Where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to (criminal conspiracies to commit such offences and to) the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the court and, upon receipt thereof by the court, no further proceedings shall be taken on the complaint.

476. (1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of ^{Procedure in case mentioned in section 195.} justice that an inquiry should be made into any offence referred to in section 195, sub-section (I), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

(Provided that, where the court making the complaint is a High Court, the complaint may be signed by such officer of the court as the court may appoint.)

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate or any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

(II) The Penal Code Act XLV of 1860.

✓ 228. Whoever intentionally offers any insult, or cause any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

Intentional insult or interruption to public servant sitting in judicial proceeding

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka), or with both ;

Absconding to avoid service of summons or other proceeding.

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka), or with both.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order

Preventing service of summons or other proceeding, or preventing publication thereof.

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may

extend to one month, or with fine which may extend to five hundred (taka), or with both ;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand (taka), or with both.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

Non-attendance
in obedience to an
order from public
servant.

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka), or with both ;

or if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

✓ **175.** Whoever being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka) or with both ;

Omission to pro-
duce document to
public servant by
person legally bo-
und to produce it

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka) or with both ;

or if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both ;

or if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes as true, information on the subject which he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both ;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to Two years, or with fine or with both.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

✓179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred (taka) or with both ;

✓180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent, to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred (taka), or with both.

181. Whoever, being legally bound by an oath (or affirmation) to state the truth on any subject to any public servant or other person authorized by law to administer such oath (or affirmation), makes, to such public servant or other person or as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the

injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand (taka), or with both.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred (taka), or with both.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred (taka), or with both.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred (taka), or with both.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred (taka), or with both ;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, of affray, of apprehending a person charged with or guilty punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred or with both.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

Shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred (taka), or with both ;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand (taka), or with both.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant,

(III) The Code of Civil Procedure

135 (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his court.

Exemption from arrest under civil process.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue agents and recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of court while going to or attending such tribunal for the purpose of such matter and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

151. Nothing in this code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Saving of inherent Powers of Court.

These are special provisions and would have effect apart from the provisions of the general law under the Contempt of Courts Act.

7. Law of contempt and constitutional freedoms—The law of contempt has to be construed in relation to, and consistently with, the provisions of the Constitution from which it now derives its autho-

rity. Our Constitution has provided for a certain extent of freedom of speech and expression as fundamental right under Article 39 thereof.

Article 39 of the Constitution allows fair inference, legitimate comment and criticisms to certain extent in the exercise of the freedom of speech and expressions subject, however, to the provision of reasonable restrictions. Therefore, it would call for a scrutiny into the fairness and legitimacy of an inference, comment and criticism. This will require the consideration of the relevant provisions of the Constitution to ascertain that fact. Therefore, it will be necessary to consider these aspects vis-a-vis, the relevant provisions of the Constitution.

The question had arisen whether the law of Contempt of Courts and the summary jurisdiction of the High Court in matters of contempt does not constitute an unreasonable restriction on the freedom of speech and expression guaranteed by Article 39 of the Constitution in relation to the Contempt of Courts Act. Also whether the Act is not repugnant to the provisions or Article 39 of the Constitution. It has been held in several Indian cases that the restrictions imposed on the freedom of speech and expression by the law relating to contempt is a reasonable restriction.

It has been held that the law in relation to contempt is expressly saved by Article 39 of the Constitution. The reason being that courts, both in England as well as in this subcontinent have thought that the power and jurisdiction to punish contempt of courts is necessary to ensure free and unhampered administration of justice and for curbing unjustified attempts to impair the confidence of the public in the courts. The jurisdiction in contempt, it has also to be emphasised, is exercised not for the vindication of the personal interests of a particular judge, but for the good of the general public. The public good is equally, if not more, important than the individual freedom of speech and expression. A balance, therefore, has necessarily to be struck between the two in order to ensure both of them. It is trite to say that unrestricted freedom is likely to dege-

nerate into licence ; but an oppressive regimentation of this freedom will seriously cripple it and make it almost non-existent and valueless. Thus, by the provision of Article 39 of the Constitution it has been sought to achieve an adjustment between the individual freedom of speech and expression on the one hand, and the need or healthy social control over that freedom on the other.

It is undeniable that the maintenance of the prestige and authority of courts is a public concern. So also the need to ensure that the course of justice is not obstructed is a matter of great importance. Equally, if not more important, it is to maintain unimpaired the confidence of the public in the Courts of Law. If the courts are brought in ridicule and disrepute, and if the public cease to have confidence in them the very foundation of State Society will be shaken. Freedom of speech and expression cannot, therefore, be permitted to go to the length of bringing courts of law into contempt, and disregard and undermining public confidence in them. Consequently necessary restriction cannot be held to be unreasonable. The power to commit for contempt is to be used to protect the interests of the public for whose benefit and for the protection of whose rights and liberties the courts exist and function.

In *State of Madras v. V.G. Rao* the question was raised whether the words "in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause" in Article 19 (2) of the Indian Constitution do not relate to any existing law, or do not prevent the State from making any law in relation to contempt of court, defamation, or incitement to an offence ? It was observed that even assuming that the Constitution makes the existing law relating to contempt of Court subject to reasonable restrictions on the exercise of the right of freedom of speech, the whole law of contempt of court, as it stood on the date of the coming into force of the Constitution answers the test of reasonableness.

General.—Contempts have been classified into two categories which might broadly be designated civil and criminal contempts—

Formal contempt comprising those cases where the power of the Court is invoked and exercised to enforce obedience to order of courts and the latter where the act of the contemner is calculated to interfere with the course of justice including libels or insults to judges and publications prejudicing the fair conduct of proceedings in court. In regard to 'civil' contempts appeals lie from orders passed in such cases.

Ordinarily, in the case of civil contempts, the courts are reluctant to interfere unless the disobedience to the court's order issued for the benefit of the other party, is wilful.

Criminal contempt.—As brought out in the preceding note, where acts of the contemner is calculated to interfere with the course of justice, including libeling or insults to judges and scandalizations and publications which prejudice fair conduct of proceedings in court. Therefore the test is whether the allegations made are of such a character or are made under such circumstances as to tend to obstruct or interfere with the due course of justice or the proper administration of law. The *bona fides* of the person making the allegation, the nature and the circumstances under which the said allegations are made, the extent and character of the publications and similar other considerations will have to be borne in mind in coming to the conclusion whether the fact complained of is an obstruction to public justice.

Thus it would appear, that obstruction or interference within the course of justice being the criterion to determine this nature of contempt, anything said or done which do not have the effect would not be contempt.

In order to establish criminal contempt it is not necessary that there should be intention on the part of the opposite party to interfere with the course of justice. It is not even necessary that the mind of the trial court should be affected. It is sufficient if the publication tends to prejudice the public or the court for or against a party before the case is finally heard. The question of intention is immaterial so long as the words used in the publication tend to interfere with

the course of justice or prejudice the public or the court in the of the case.

'Contempt of Court' may include conduct which though not directly influencing the judge's mind may affect the conduct of the parties to the proceeding and which is likely to affect the course of true justice.

The mere holding of a departmental enquiry during the pendency of a criminal prosecution in respect of the same subject-matter and even passing an order therein for punishment would not amount to contempt. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations. Such exercise of powers *bona fide* cannot come within the mischief of the law of contempt. The position would be different, if an attempt is made by the departmental authorities to influence the court or to create an atmosphere of prejudice.

Apart from certain exceptions which may arise due to the special nature of the conduct giving rise to a criminal contempt, the law as to attachment and committal as a form of procedure in either case is essentially the same, namely, whether it be followed as a summary process for criminal contempt or as the form of execution of an order or judgment in a civil contempt.

General criticisms of judges conduct.—Oswald had observed :

"General criticisms on the conduct of a Judge, not calculated to obstruct or interfere with the course of justice or the due administration of the law in any particular case even though libellous, do not constitute a contempt of court."

Communication to judge.—(Oswald, page 48) : "It is a grave contempt of court to communicate with, or to seek in any way to influence, a judge upon the subject of any matter which he has to determine. Thus a person who wrote a letter to the Lord Chancellor relating to a threatened suit, and enclosed a bank note, was held guilty of a contempt and ordered to attend personally and show cause why he should not be committed ; but afterwards, on his

ing and expressing contrition, he was discharged on payment of Rs. 500. The contempt is the same whether the communication be accompanied by abuse or by a bribe or not."

(Oswald, page 48) : "Writing to the Judge after a case was over, unless the communication contained charges of injustice,..... presumably would not constitute a contempt. As where a defeated litigant, who had been warned during the case by the judge not to behave like a monkey in the box, telegraphed to the judge every morning for some time after the trial, why did you call me a monkey? Reply paid."

When a person communicates to a judge his opinion or decision on the facts of the case, which is subjudice, it constitutes contempt and his motive in so communicating is irrelevant.

Every private communication to a Judge or a Magistrate for the purpose of influencing his decision upon a matter publicly before him always is, and ought to be, reprobated. It is to be treated as a high contempt of court.

There is a misconception amongst some people dabbling in public affairs that writing letters to presiding officers of courts giving them the writer's view 'point in a particular case and suggesting to them a particular course to be adopted by courts is not only no offence, but even falls within the public duties of such people.

A member of a Legislative Assembly is not expected, and should not as a matter of fact, take sides in petty squabbles and quairrels that take place amongst illiterate and unsophisticated village folk. What one would expect from such people holding such responsible position is not to fan the fire of internecine quarries by taking sides, but to attempt at reconciliations and restoration of mutual good relations amongst warring factions and groups.

Libels on Judges or Courts. (Oswald, page50) : ".....A libel upon a Judge in his judicial capacity is a contempt, whether it concerns what he did in court, or what he did judicially out of it ; but a libel is not a contempt if not written of the Judge in his judicial capacity."

(Oswald, page 50) : "It has been said that commitments for contempt of court by scandalising the court itself have become obsolete in this country, and that, when a trial has taken place and the case is over, the judge or the jury are given over to criticism. This seems to go a great deal too far. There does not seem to be any good reason for saying that the principles which governed the numerous early cases on the subject have been now set aside. Offences of this kind are also punishable on criminal information or indictment "(Oswald, page 50).

Scandalising a Court or Judge.—The 'scandalising' might manifest itself in various ways, but in substance it is an attack in individual judges or the court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character or ability of the judges. Such conduct is punished as contempt for the reason that it tends to create mistrust in the popular mind and impair confidence of the people in courts which are of prime importance to the litigants in the protection of their rights and liberties.

Civil contempt.—Civil contempts consists of cases of non-compliance or of disobedience of the orders of the courts which are made for the benefit of private parties. A disobedience to judgments, orders and other process or for breach of undertaking categorised as civil contempt involves private injury and is punishable when the disobedience is useful. When an order made for the benefit to a party is disregarded or violated the courts seek to enforce the order by punishing the person guilty thereof for contempt, and for the reason it has been said that such a proceeding for contempt is a form of execution, the main object of the proceeding being to secure enforcement of the orders. For this reason such contempts have been also described as one of procedure.

General.—When sanctity (not in a divine sense) attaches to established courts and tribunals it follows, as a corollary, that all orders emanating from these public institutions should be respected and strictly complied with, whether the orders be mandatory or of a

prohibitive character. On the same principle and a similar analogy, it is impossible for a party to a proceeding to resile from an undertaking given to a court to do or to refrain from doing a thing in a particular way. The undertakings given to courts of law, are generally for the benefit of one party to a proceeding. If, consequently there is a disregard or breach of such an undertaking which is recorded in a case or proceeding the party affected by such a disregard or breach can bring the matter to the notice of the court to deal with it under the Law of Contempt of Court.

Order must be implicitly obeyed. At pages 102. and 103 of his Contempt of Court (1910 Ed.), Oswald says :

“An-order must be implicitly observed ; every diligence must be exercised to obey it to the letter, and any proceedings resulting in a breach are tantamount to an actual breach. But disobedience, if it is to be punishable as a contempt, must be wilful. A client cannot escape responsibility for writing a letter which amounts to contempt of court merely by saying that he had written it at the instruction of his lawyer. In this case the lawyer accepted responsibility for making those allegations and stated that he wished to establish them. Both the client and the lawyer were fined for contempt which consisted of charging the court and the opposite lawyers with conspiracy to cheat and defraud his client. Counsel appearing for a client has a responsibility in cases where his client wants him to allege fraud and dishonesty on the part of the court in the discharge of its judicial functions and he has to exercise due care in such matters and cannot escape the responsibility simply by saying that what has been done was under instructions from his client. But even if the counsel exercises due care he cannot escape punishment because of the other rule that a contempt cannot be justified. This means that practically counsel is prohibited from making any allegation against the court notwithstanding all the care he has exercised in testing the truth thereof. The Legislature must take a hand to change this irrational position. Where the disobedience is not wilful instance, the order which is to be obeyed may be suspended for a time or the order for

attachment or committal may be directed to lie in the office. In certain proceedings by the Crown attachment issues as of course, and these observations do not apply....." (Oswald.)

Ordinarily in the case of civil contempts, the courts are reluctant to interfere unless the disobedience to the court's order issued for the benefit of the other party is wilful.

So long as an injunction order has not been vacated by the court granting it, or has not been reversed on appeal, no matter how unreasonable and unjust the injunction may be, the order must be obeyed. Violation of the order of injunction cannot be excused on the ground, that though the court acted within its jurisdiction, the order has it passed was erroneous for the court, in contempt proceedings, will not inquire into the merits of the case in which the injunction was issued.

(IV) The contempt of courts act, 1926

Act No. XII of 1926

8th March, 1926

An Act to define and limit the powers of certain courts in punishing contempts of court.

WHEREAS doubts have arisen as to the powers of the High Court Division to punish contempts of courts ;

AND WHEREAS it is expedient to resolve these doubts and to define and limit the powers exercisable by the High Court Division . . . in punishing contempts of court ;

It is hereby enacted as follows :-

- 1.-(1) This Act may be called the Contempt of Courts Act, 1926
- (2) It extends to the whole of Bangladesh
- (3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.
1st May 1926'

2.- (2) Subject to the provisions of sub-section (3) the High Court Divisionshall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts sub-ordinate to it as it has and exercised in respect of contempts of itself.

(3) The High Court Division shall not take cognizance of a contempt alleged to have been committed in respect of of a court sub-ordinate to it where such contempt is an offence punishable under the Penal Code.

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand taka or with both :

Provided that the accused may be discharged or the punishment awarded may be remitted an apology being made to the satisfaction of the court :

Provided further that notwithstanding anything elsewhere contained in any law, the High Court Division shall not impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a court sub-ordinate to it.

CHAPTER VIII

LAWS ON FRIENDLY RELATIONS WITH FOREIGN STATES RELATING TO PRESS

The interests of maintaining friendly relations with foreign states is not specified in any of the major Constitutions of the world except India as a valid ground for restricting the freedom of expression. The framers of our Constitution and that of India might have been inspired by art. 2(j) of the Covenant on Freedom of Information and the Press prepared by the United Nations Conference in 1948 which approves of legislative restrictions against, "systematic diffusion of deliberately false and distorted reports which undermine friendly relations between peoples or states."

The expression 'friendly relations with foreign states', covers a very wide area and includes not only defamation of foreign dignitaries, inducement of foreign enlistment, but also propaganda in favour of rival claimants to authority in a foreign state after our country has already recognized a particular person or persons to be authority in that state. As a matter of fact it is difficult to define the area constituting friendly relations with foreign states.

We have the following two Acts in our country on the subject. Besides these two Acts, there is, in the chapter relating to principles of our constitution, an article on the subject of Foreign relations.

The Foreign Recruiting Act, 1874 **Act No. IV of 1874**

(24th February, 1874)

An Act to control recruiting in (Bangladesh) for the service of foreign states

Preamble

WHEREAS it is expedient that the Government should exercise

full control over recruiting in Bangladesh for the service of foreign states ; it is hereby enacted as follows :-

Short title

1. This Act may be called the Foreign Recruiting Act, 1874, It extends to the whole of Bangladesh.

Local extent

2. In this Act—

“Foreign State” includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of Bangladesh.

Power to prohibit or permit recruiting

3. If any person is, within the limits of Bangladesh obtaining or attempting to obtain recruits for the service of any foreign state in any capacity, the Government may, by order in writing, either prohibit such person from so doing, or permit him to do so subject to any conditions which Government thinks fit to impose.

Power to impose conditions

4. The Government may from time to time by general order notified in the official Gazette, either prohibit recruiting for the service of any or any foreign state, or impose upon such recruiting any conditions which it thinks fit.

Power to rescind or vary orders, offences

5. The Government may rescind or vary any order made under this Act in such manner as (it) thinks fit.

Power to rescind or vary orders, offences

6. Whoever, in violation of the prohibition of the Government or of any condition subject to which permission to recruit may have been accorded,-

(a) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever, shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the court thinks fit, or to both.

Place of trial

7. Any offence against this Act may be inquired into and tried, as well as any district in which the person accused may be found, as in any district in which it might be inquired into and tried under the provisions of the Code of Criminal procedure, 1898.

The foreign relations Act. 1932.

Act No. XII of 1932

8th April, 1932.

An Act to provide against the publication of statements likely to prejudice the maintenance of friendly relations between the Government of Bangladesh and the Governments of certain foreign states.

WHEREAS it is expedient to provide against the publication of statements likely to prejudice the maintenance of friendly relations between the Government of Bangladesh and the Government of certain foreign states ; It is hereby enacted as follows :-

Short title and extent. 1. (1) This Act may be the Foreign Relations Act, 1932.

(2) It extends to the whole of Bangladesh.

2. Where an offence falling under Chapter XXI of the Penal Code is committed against a Ruler of a State outside but adjoining

Power of Government to prosecute in certain cases of defamation. Bangladesh or against the consort or son or principal Minister of such Ruler, the Government may make, or authorise any person to make, a complaint in writing of such offence, and, notwithstanding any thing contained in section 198 of the Code of Criminal Procedure, 1898, any court competent in other respects to take cognizance of such offence may take cognizance thereof on such complaint.

3. The provisions of section 99A to 99G of the Code of Criminal Procedure, 1898, and of section 27B to 27D of the Post Office Act, 1898, shall apply in the case of any book newspaper or other document containing matter which is defamatory of a Ruler of a State outside but adjoining Bangladesh or of the consort or son or principal Minister of such Ruler and tends to prejudice the maintenance of friendly relations between the Govt. of Bangladesh and the Government of such State, in like manner as they apply in the case of a book newspaper or document containing seditious matter within the meaning of those sections ;

4. Where, in any trial of an offence upon a complaint under section 2, or in any proceeding before the High Court Division arising out of section 3, there is a question whether any person is a Ruler of any State, or is the consort or son or principal Minister of such Ruler, a certificate under the hand of a Secretary to the Government that such person is such Ruler, consort, son or principal Minister shall be conclusive proof of that fact.

This law (The Foreign Relations Act 1932) provides that where on offence under chapter XXI of the penal code is committed against a ruler or prime Minister of a foreign neighbouring country, the government may make or authorise anybody else to make a complainant to the court. Chapter XXI of the Penal Code relates to defamation.

The Act further provides that section 99A to 99G of the code

of criminal procedure 1898 and section 27B to 27D of the Post Office Act 1898 shall apply in case of the aforesaid rulers or Ministers.

The relevant provisions of the code of Criminal Procedure are quoted below :

• 99A (1) Where

Power to declare certain publications forfeited and to issue searchwarrants for the same.

(a) any newspaper, or book as defined in the Printing Presses and publications (Declaration and Registration) Act 1973 or

(b) any document,

Wherever printed, appears to the Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of Bangladesh or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 123A or section 124A or section 153A or section 295A of the Penal Code, the government may, by notification in the official Gazette, stating the grounds of its opinion declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to government and thereupon any police-officer may seize the same wherever found in Bangladesh and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In Sub-Section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

99B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the Application to High Court Division to set aside order.

Order of forfeiture High Court Division to set aside such order on the ground that the issue of the newspaper, of the book or other document, in respect of which the order was made, did not contain any treasonable or seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A.

99C. Every such application shall be heard and determined by a Special Bench of the High Court Division composed of three judges.
Hearing by special Bench

99D. (1) On receipt of the Application, the Special Bench shall if it is not satisfied that the issue of the newspaper,

or the book or other document, in respect of which the application has been made, contained treasonable or seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A, set aside the order of forfeiture.
Order of Special Bench setting aside forfeiture

(2) Where there is a difference of opinion among the judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those judges.

99E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.
Evidence to prove nature or tendency of newspaper

99F. The Supreme Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.
Procedure in High Court Division

99G. No order passed or action taken under section 99A shall be called in question in any court otherwise than in accordance with the provisions of section 99B.
Jurisdiction barred.

Relevant Section of the Post office Act are as under :

27B. (1) Any officer of the Post Office authorised by the Post Master General in this behalf may detain any postal article in course of transmission by post which he suspects to contain.

Power to detain newspapers and other articles being transmitted by post.

(a) (i) any newspaper or book as defined in the Printing Presses and Publications (Declaration and Registration Act 1973) or

(ii) any document, containing any treasonable or seditious matter, that is to say, any matter the publication of which is punishable under section 123, 123A or section 124 A as the case may be, of the Penal Code ; or

(b) any newspaper as defined in the printing presses and publications (Declaration and Registration Act. 1973) edited, printed or published otherwise than in conformity with the rules laid down in that Act ; and shall deliver any postal article so detained to such officer as the government may appoint in this behalf.

(2) Any officer detaining any postal article under the provision of sub-section (1) shall forthwith send by post to the addressee of such article notice of the fact of such detention.

(3) The Government shall cause the contents of any postal article detained under sub-section (1) to be examined, and if it appears to the government that the article contained any newspaper, book or other document, of the nature described in clause (a) or clause (b) of sub-section (1), may pass such orders as to the disposal of the article and its contents as it may deem proper, and, if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force.

Provided that any person interested in any article detained under the provisions of clause (a) of sub-section (1) may, within two months from the date of such detention, apply to the government for release of that same, and the government shall consider such application and pass such orders thereon as it may deem to be proper,

Provided also that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court Division for release of the article and its contents on the ground that the article did not contain any newspaper, book or other document containing any treasonable or seditious matter.

(4) In this section “document” includes also any painting, drawing or photograph, or other visible representation.

27C. Every application made under the second proviso to sub-section

(3) of section 27B shall be heard and determined in this manner provided by section 99D to 99F of the Code of Criminal Procedure, 1898, by Special Bench of the (High Court Division) constituted in the manner provided by section 99C of that Code.

27D. No order passed or action taken under section 27B shall be called in question in any court otherwise than in accordance with the second proviso to sub-section (3) of that section.

Provisions in the Constitution

Article 25 which is the only relevant one on this point find place in part II of the Constitution of the People's Republic of Bangladesh. This part of the Constitution, it should be noted, is not judicially enforceable. Neither are they intended to the more pious declarations. In this Part, the Constitution gives certain directions to the legislature and the executive to show in what manner they should exercise the legislative and the executive power. It is the intention of the Constitution that both the legislature and the executive should not merely pay lipservice to these principles but that they should be made the basis of all legislative and executive action.

The sanction behind the principle is, of course political and not juridical. These principles are not cognisable by the courts and if the Government of the day fails to carry out these objects no courts can make the Government implement them. Yet these prin-

Laws on Friendly Relations with Foreign States relating to Press

ciples have been declared to be "fundamental in the governance of the country."

So far as the courts are concerned, the Directives are not enforceable by any judicial process. No court would be entitled to declare any legislation as invalid on the ground that it does not conform to the spirit of any of the principles. Nor will the court be competent to compel the Government to carry out any principle.

The relevant Article runs thus :

25. (1) The state shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall—

Promotion of international peace, security and solidarity.

(a) strive for the renunciation of the use of force in international relations and for general and complete disarmament ;

(b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice ; and

(c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

(2) The state shall endeavour to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity.

CHAPTER IX

(a) Laws on Religious feelings.

(b) False statement in connection with election.

While making a report or writing a view, the journalist is required to guard against publication of anything that touches religion adversely. The people of Bangladesh are sensitive and journalists are required by law to respect that sentiment.

Section 295A provides as follows :

295A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Bangladesh, by words, either spoken or written or by visible representations insults or attempts to insult the religions or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

4. "Deliberate and malicious intention. Religious beliefs". To attract the provisions of section 295-A it is not so much the matter of discourse as the manner of it. In other words, the words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feelings of any class of citizens of Bangladesh. Intention to outrage religious feelings deliberately and maliciously must be made out. Insult to religion offered unwittingly or carelessly or without any deliberate or malicious intention does not attract section 295-A. Under section 295-A, it is certainly for the prosecution to establish the element of malice by proper evidence. But it has to be realised that malice is a state of mind and often is not capable of direct and tangible proof. In almost all cases where it is required to be proved it has to be inferred from the surrounding circumstances. In Section 295A the word "malicious"

has not been used in the popular sense to establish malice as contemplated by section 295-A. It is not necessary for the prosecution to prove that the applicant bore ill will or enmity against specified persons. If the injurious act was done voluntarily without a lawful excuse malice may be presumed. The intention of the writer of a book must be judged primarily by the language of the book itself though it is permissible to receive and consider external evidence either to prove or to rebut the meaning ascribed to it. If the language is of a nature calculated to produce or to promote feelings of enmity to hatred the writer must be presumed to intend that which his acts was likely to produce.

It is not possible to accept the view that a statement which would otherwise fall within the meaning of section 295-A can be taken out of its merely because it happens to be a true statement. The truth of the language can neither be pleaded nor proved. Even a true statement may outrage religious feeling.

Provocation received from supporters of the opposite view cannot amount to a lawful excuse for writing the offensive books. If the words used are bound to be regarded by any reasonable man grossly offensive and provocative and are maliciously intended to be regarded as such then an offence would have been committed. It is no defence to a charge under section 295 A for anyone merely to say that he was writing a pamphlet in reply to one written by adherent of another religion who has attacked his own religion. If he chooses to write such a pamphlet, he must take care of the language which he employs. It is no defence that author had incidentally attacked other religious beliefs also.

Reports affecting tranquillity

We have seen in chapter IV that sedition affects public tranquillity. Sections 124A and 123A of the penal code which relate to sedition have already been discussed. Section 153A and 153B which relate to promotion of enmity between classes and inducement to students for political participation have also been discussed.

Reports tending to injure religious feelings have been discussed under section 295A of the code.

171G. False statement in connection with an election.

Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate shall be punished with fine.

Ingredients of the offence.—This section punishes any false statement made or published by any person, including a journalist, in relation to the personal character or conduct or any 'candidate [as defined in s. 171A (a), I.P.C.], which such person either knows or believes to be false or does not believe to be true.

This section creates a separate offence, distinct from the offence of defamation under s. 499, in the following respects—

(i) s. 171G is a species of the general offence of defamation and there may be cases which may fall under s. 171G but not under s. 499, and vice-versa.

(ii) S. 171G does not relate to any person other than a candidate at an election.

(iii) Truth is a complete defence under s. 171G ; but it is no defence under s. 499, unless the accused can come under any of the exceptions to the section

(iv) The punishment under s. 500 is more deterrent than under s. 171G.

CHAPTER—X

LAW ON AUTHENTICATIONS

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

Act No. XXIII of 1973

An Act to provide for declaration for the keeping of printing presses and the printing and publication of newspapers and for registration of books.

Whereas it is expedient to provide for declaration for the keeping of printing presses and the printing and publication of newspaper and for registration of books, and for matters connected therewith

It is hereby enacted as follows :—

PART—I

Preliminary

1. *Short title and commencement*.—(1) This Act may be called the Printing Presses and Publications (Declaration and Registration) Act, 1973.

(2) It shall come into force at once and shall be deemed to have taken effect on the 28th day of August, 1973.

2. *Definitions*.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “authenticated declaration” means a declaration made and subscribed under section 7 and authenticated or deemed to have been authenticated under section 12 ;

(b) “book” includes every volume, part or division of a volume and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed ;

(c) "document" includes any painting, drawing, photograph or other visible representation ;

(d) "editor" means the person who controls the selection of the matter that is published in a newspaper ;

(e) "form" means a form contained in the Schedule ;

(f) "newspaper" means any periodical work containing public news or comments on public news, and includes such other class of periodical works as the Government may, by notification, in the official Gazette, declare to be newspapers ;

(g) "news-sheet" means any document other than a newspaper containing public news or comments on public news ;

(h) "paper" includes a document, leaflet, newspaper, news-sheet and poster ;

(i) "prescribed" means prescribed by rules ;

(j) "press" includes a printing press and all machines, implements and plant and parts thereof and all material used for multiplying documents ;

(k) "printer" means the person who owns or keeps in his possession any press for the printing of books or papers ;

(l) "printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing ;

(m) "publisher" means the person who, in any manner whatsoever undertakes, is in control on, or is responsible for the publication of any book or paper and includes the proprietor of the publishing concern ;

(n) "unauthorized newspaper" means any newspaper in respect of which there are not for the time being valid declarations under section 7 ;

(o) "unauthorized news-sheet" means any news-sheet other than a news-sheet published by a person authorized under section 21 to publish it ; and

(p) "unauthorized press" means any press other than a press in respect of which there is for the time being a valid declaration under section 4.

PART—II**Printing Presses**

3. *Particulars to be printed on books and papers.*—Every book or paper printed in Bangladesh shall have printed legibly on it the name of the printer and the place of printing, and, if the book or paper be published, the name of the publisher and the place of publication.

4. *Keeper of printing press to make declaration.*—(1) No person shall keep in his possession any press for the printing of books or papers, unless he has made and subscribed before the District Magistrate within whose local jurisdiction such press may be a declaration in Form A.

(2) As often as the place where a printing press is changed, a fresh declaration shall be necessary :

Provided that where the change is for a period not exceeding sixty days and the place to which the printing press is shifted is within the jurisdiction of the same District Magistrate no fresh declaration shall be necessary :—

(a) the keeper of the press continues to be the same ; and

(b) within twenty-four hours of the change, the keeper of the press informs the District Magistrate in writing of the change.

PART—III**Printing and Publication of Newspapers**

5. *Publication of newspapers.*—No newspaper shall be printed or published except in conformity with the provisions of this Part and unless there subsists an authenticated declaration in respect thereof.

6. *Name of the editor to be printed on the newspaper*—Every copy of every newspaper shall contain the name of the editor of the newspaper printed clearly on such copy as the name of the such editor.

7. *Declaration of the printer and publisher.*—The printer and the publisher of every newspaper shall appear, in person or by agent authorised in this behalf in accordance with the rules, before the District Magistrate within whose local jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate originals, a declaration in Form B.

8. *No minor to be printer, publisher or editor.*—No person who has not attained majority in accordance with the provisions of the Majority Act, 1876 (IX of 1875), or of the law to which he is subject in respect of the attainment of majority shall be permitted to make a declaration under section 7, nor shall any such person edit a newspaper.

9. *Effect of non-publication of newspaper.*—(1) If a newspaper in respect of which a declaration has been made under section 7 is not published within three months of the date on which such declaration is authenticated or deemed to have been authenticated under section 12, the declaration shall become null and void.

(2) Where a declaration becomes null and void under sub-section (1), the printer and the publisher shall make and subscribe a fresh declaration under section 7 before printing or publishing the newspaper, and the provision of sub-section (1) shall apply to the fresh declaration and to any subsequent fresh declaration.

3. Where a newspaper having been published is not published,-

(a) in the case of a daily newspaper, for three months, and

(b) in the case of any other newspaper, for six months, the declaration made in respect of that newspaper shall become null and void, and the printer and the publisher shall make and subscribe a fresh declaration u/s 7 before further printing or publishing the newspaper and to every such fresh declaration the provisions of the two foregoing sub-sections shall, without prejudice to the provisions of this sub-section, apply.

10. *Effect of change of language, periodicity or place of publication.*—If at any time after the making of a declaration under section

7, the newspaper to which the declaration relates is printed or published in a language, with a periodicity or at a place, other than the language or languages, periodicity or place shown in the declaration, the declaration shall become null and void, and any further printing and publication of the newspaper shall be unauthorized unless a fresh declaration under section 7 is made, but nothing in this section shall apply to a temporary change of the place of printing or publication for a period not exceeding thirty days at any one time, if within seventy-two hours of such temporary change the District Magistrate is informed of it in the manner prescribed.

11. *Effect, if printer or publisher leave Bangladesh.*—If at any time the printer or the publisher who has made a declaration under section 7 leaves Bangladesh, the declaration shall become null and void unless,—

(a) the absence of the printer or the publisher from Bangladesh be for a period not exceeding six months, and

(b) the printer or the publisher, before leaving Bangladesh, informs, in writing, the District Magistrate within whose jurisdiction the newspaper is printed or published, of his intended absence and the name of the person who has undertaken to discharge, in his absence and on his behalf, the responsibilities of the printer or the publisher, and furnishes to the District Magistrate a statement, in writing, of that person accepting those responsibilities.

12. *Authentication of the declaration.*—(1) Subject to the provisions of sub-section (2), each of the duplicate originals of every declaration made and subscribed under section 7 shall be authenticated by the signature and official seal of the District Magistrate before whom the said declaration is made.

(2) The District Magistrate shall not authenticate the declaration unless he is satisfied that—

(a) the proprietor, the printer and the publisher are citizens of Bangladesh ;

(b) the proprietor, if he himself is not the printer or the publisher, has authorised the making of such declaration ;

(c) the title of the new paper proposed to be published is not the same as the title of any newspaper already being published in the same language at any place in the country, not being a newspaper of different periodicity published by the same publisher or another edition of the same newspaper published from another place ;

(d) the printer or the publisher was not convicted of an offence involving moral turpitude within five years before the date of his making and subscribing a declaration under section 7 ;

(e) the printer or the publisher has not been found to be a lunatic or of unsound mind by any court ;

(f) the proprietor or the publisher has the financial resources required for regularly publishing the newspaper ; and

(g) the editor possesses reasonable educational qualifications or has had adequate training or experience in journalism.

“Explanation.—A proprietor or a publisher shall be deemed to have the financial resources required for regularly publishing a newspaper if he has such bank balance as the Government may, by notification in the official Gazette, specify from time to time in this behalf.”

(3) If the District Magistrate refuses to authenticate the declaration, the person making the declaration may, within forty five days of such refusal, prefer an appeal to the Government whose decision thereon shall be final.

(4) If the District Magistrate fails to authenticate the declaration within sixty days of the making thereof, the person making the declaration may prefer an application to the Government praying for an order directing the District Magistrate to authenticate the declaration, and the Government shall make such order on such application as it may deem fit.

13. *Deposit of authenticated declaration.*—The duplicate originals of the declaration authenticated under section 12 shall be deposited one each in the office of the District Magistrate and with the officer appointed by the Government under section 37.

14. *Inspection and supply of copies of the declaration.*—The officer in charge of each original deposited under section 13 shall allow any person to inspect that original on payment of a fee of taka two, and shall give to any person applying a copy thereof attested by the seal of the office which has the custody of the original, on payment of a fee of taka four.

15. *Copy of declaration or newspaper to be prima facie evidence.*—In any legal proceeding, whether civil, criminal or otherwise, a copy of a declaration attested in the manner prescribed in section 14 and a copy of the newspaper having the name of a person printed thereon as its editor, shall be sufficient evidence, unless the contrary is proved, as against the person whose name has been subscribed to such declaration, or printed on such newspaper, as the case may be, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title corresponds with the title of the newspaper mentioned in the declaration or the editor of every portion of the issue of the newspaper of which a copy is produced.

16. *New declaration by persons who have signed declaration and subsequently ceased to be printers or publishers.*—Every person who having subscribed a declaration under section 7 subsequently ceases to be the printer or publisher of the newspaper mentioned in such declaration shall appear, in person or by agent authorised in this behalf in the manner prescribed, before the District Magistrate, and make and subscribe in duplicate originals a declaration in Form C

17. *Authentication and filling of declaration under section 16.*—Each of the duplicate originals of the declaration made under section 16 shall be authenticated by the signature and seal of the District Magistrate before whom it is made and one such original shall be filed along with each original of the declaration under section 7.

18. *Inspection and supply of copies of declaration under section 16.*—The officer in charge of each original of the declaration filed

under section 17 shall allow any person applying to inspect that original on payment of a fee of taka one, and shall give to any person applying a copy thereof attested by the seal of the officer having custody of the original, on payment of a fee of taka two.

19. *Putting copy of declaration under section 16 in evidence.*—In any legal proceeding in which a copy of a declaration under section 7 attested in accordance with section 14 has been put in evidence it shall be lawful to put in evidence a copy of a declaration under section 16 attested in accordance with section 18, and the former declaration shall not then be taken to be evidence that the declarant, was at any period subsequent to the date of the latter declaration, printer or publisher of the newspaper therein mentioned.

20. *Cancellation of authentication.*—(1) If, at any time, the District Magistrate, who authenticated a declaration under section 12, is satisfied that, subsequent to the authentication,—

(a) the proprietor, the printer or the proprietor or the publisher ceased to be a citizen of Bangladesh ;

(b) “the printer or the publisher has been convicted of an offence involving moral turpitude ;”

(c) the printer or the publisher has been found to be a lunatic or of unsound mind by any court ; or

“(d) the proprietor or the publisher has ceased to have the financial resources required for regularly publishing the newspaper, he may, by an order in writing stating the reasons therefore, cancel the authentication of the declaration :

Provided that no such order shall be made except after giving the person who made the declaration a reasonable opportunity of being heard.”

(2) Any person aggrieved by an order under sub-section (1) may, within sixty days of the making of such order, prefer an appeal to the Government whose decision thereon shall be final.

“20A. *Power to declare certain publications forfeited and to issue search warrants for the same.*—Where any book or paper wherever made appears to the Government to contain any words, signs

or visible representations which are indecent, obscene or scurrilous, the Government may, by notification in the official Gazette, stating the grounds of its opinion, declare all copies of such book or paper to be forfeited to the Government and thereupon any police officer may seize the same wherever found in Bangladesh, and any District Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such book or paper may be or may be reasonably suspected to be."

PART—IV

Unauthorised News-sheets and Newspapers

21. *Authorization of persons to publish news-sheets*—(1) The District Magistrate may, by order in writing and subject to such condition as he may think fit to impose, authorise any person by name to publish a news-sheet or to publish news-sheets from time to time.

(2) A copy of an order under sub-section (1) shall be furnished to the person thereby authorised.

(3) The District Magistrate may at any time revoke an order made by him under sub-section (1).

22. *Power to seize and destroy unauthorised news-sheets and newspapers*.—(1) Any police-officer, or any other person empowered in this behalf by the Government may seize any unauthorised news-sheet or unauthorised newspaper, wherever found.

(2) Any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search any place where any stock of unauthorised news-sheets or unauthorised newspapers may be or may be reasonably suspected to be, and such police-officer may seize any documents found in such place which, in his opinion, are unauthorised news-sheets or unauthorised newspapers.

(3) All documents seized under sub-section (1) shall be produced as soon as may be before a District Magistrate, Sub divisional Magistrate or Magistrate of the first class and all documents seized under sub-section (2) shall be produced as soon as may be before the court of the Magistrate who issued the warrant.

(4) If in the opinion of such Magistrate or court any of such documents are unauthorized news-sheets or unauthorized newspapers, the Magistrate or court may cause them to be destroyed ; but if, in the opinion of such Magistrate or court, any or such documents are not unauthorized news-sheets or unauthorised newspapers, such Magistrate or court shall dispose of them in the manner provided in sections 523, 524 and 525 of the Code of Criminal Procedure, 1898 (V of 1898).

23. *Power to seize and forfeit presses producing unauthorized news-sheets and newspapers.*—(1) Where a District Magistrate or Sub-divisional Magistrate has reason to believe that an unauthorized news-sheet or unauthorized newspaper is being produced from any press within the limits of his jurisdiction, he may by warrant authorize any police-officer not below the rank of Sub-Inspector to enter upon and search any place wherein such press may be, or may be reasonably suspected to be, and if, in the opinion of such police-officer, any press found in such place is used to produce an unauthorized news-sheet or unauthorized newspaper, he may seize such press and any documents found in the place which in his opinion are unauthorized news-sheets or unauthorized newspapers.

(2) The police-officer shall make a report of the search to the court which issued the warrant and shall produce before such court, as soon as may be, all property seized :

Provided that where any press which has been seized cannot be readily removed, the police-officer may produce before the court only such parts thereof as he may think fit.

(3) If such court, after such inquiry as it may deem requisite, is of opinion that a press seized under this section is used to produce an unauthorized news-sheet or unauthorized newspaper, it

may, by order in writing, declare the press to be forfeited to the Government ; but if after such inquiry, the court is not of such opinion, it shall dispose of the press in the manner provided in sections 523, 524 and 525 of the Code of Criminal Procedure, (V of 1898)

(4) The Court shall deal with the documents produced before it under this section in the manner provided in sub-section (4) of section 22.

PART—V

Delivery of Books and Newspapers

24. *Copies of books printed to be delivered gratis to government.*—Notwithstanding any agreement between the printer and publisher of a book, the printer of every book printed or lithographed in Bangladesh, shall, within one month of its delivery out of the press, supply free of expense, four copies of every such book, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the book, to such officer and at such place as the Government may by notification appoint.

25. *Receipt of copies delivered under section 24.*—The officer to whom a copy of a book is delivered under section 24 shall give to the printer a receipt in writing therefor.

26. *Copies of newspapers to be delivered gratis to Government.*—The printer of every newspaper shall deliver at such place and to such officer as the Government may by notification direct, free of cost, four copies of each issue of such newspaper as soon as it is published.

PART—VI

Registration of Books

27 *Registration of memoranda of books.*—There shall be kept as such office, and by such officer as the Government may appoint, a book to be called a Catalogue of Books wherein shall be registered,

as soon as may be after the delivery of every book in pursuance of the provisions of section 24, a memorandum of the book so delivered, and such memorandum shall, so far as may be practicable, contain the following particulars, namely :-

(a) the title of the book and the contents of the title page, with a translation into Bengali of such title and contents, when the same are not in the Bengali language

(b) the language in which the book is written,

(c) the name of the author, translator or editor of the book or any part thereof.

(d) the subject,

(e) the place of printing and the place of publication,

(f) the name of the printer and the name of the publisher,

(g) the date of issue from the press or of the publication,

(h) the number of sheets, leaves or pages,

(i) the number of the editions,

(j) the number of copies of which the edition consists,

(k) whether the book is printed or lithographed.

(l) the price at which the book is sold to the public, and

(m) the name and residence of the proprietor of the copyright or of any portion of such copyright.

28. *Publication of the memoranda of books*—The memoranda registered during each quarter in the said Catalogue of Books shall be published in the official Gazette as soon as may be after the end of such quarter.

PART—VII

Penalties for offences under foregoing provision:

29. *Penalty for contravention of section 3.*—Whoever shall print or publish any book or paper in contravention of the provisions of section 3 shall be punishable with fine not exceeding taka two thousand or with simple imprisonment for a term not exceeding six months, or with both.

30. *Penalty for keeping press without making declaration.*—Whoever shall keep in his possession any printing press without making a declaration as is required by section 4 shall be punishable with fine not exceeding taka two thousand, or with simple imprisonment for a term not exceeding six months, or with both.

31. *Punishment for making false statement.*—Any person who shall, in making any declaration under this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punishable with fine not exceeding taka two thousand and imprisonment for a term not exceeding six months.

32. *Penalty for printing or publishing in contravention of the provisions of this Act.*—Whoever shall edit, print or publish any newspaper in contravention of the provisions of this Act or whoever shall edit, print or publish, or shall cause to be edited, printed or published, any newspaper, knowing that the said provisions have not been observed with respect to that newspaper shall be punishable with fine not exceeding taka two thousand, or imprisonment for a term not exceeding six months, or with both.

33. *Penalty for disseminating unauthorised news-sheets and newspaper.*—(1) Whoever makes, prints or otherwise produces, distributes, publishes or publicity exhibits or keeps for sale, distribution or publication, any unauthorized news-sheet or unauthorized newspaper, shall be punishable with fine not exceeding taka ten thousand.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), any offence punishable under sub-section (1), and any abatement of any such offence, shall be cognizable.

34. *Penalty for not delivering books.*—If any printer of any such book as is referred to in section 24 shall neglect to deliver copies of the same in pursuance of that section, he shall for every such default forfeit to the Government such sum not exceeding taka five hundred as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by

that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

35. *Penalty for failure to supply copies of newspapers gratis to Government.*—If any printer of any newspaper published in Bangladesh neglects to deliver copies of the same in compliance with section 26, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorized by that officer in this behalf, be punishable with fine which may extend to taka five hundred for every default.

36. *Recovery of forfeitures and disposal thereof and of fines.* Any sum forfeited to the Government under section 34 may be recovered under the warrant of the Magistrate determining the sum, or of a successor in office, in the manner authorized by the Code of Criminal Procedure, 1898 (V of 1898), and within the period prescribed by the Penal Code (XLV of 1860), for the levy of a fine.

PART—VIII

37. *Appointment of officers.*—The Government may appoint an officer or officers to carry out the purposes of this Act and such officer or officers shall have such duties and powers in respect of the regulation of matters pertaining to printing press, books and publishers as the Government may assign.

38. *Conduct of searches.*—Every warrant issued under this Act shall, so far as it relates to a search, be executed in the manner provided for the execution of search warrants under the Code of Criminal Procedure, 1898 (V of 1898).

39. *Offence 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 the offence was committed without his knowledge.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence was committed with the consent of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, -

(a) 'company' means anybody corporate and includes a firm or other association of individuals and

(b) 'director' in relation to a firm means a partner in the firm.

40. *Power to make rules.*—The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

41. *Repeals and savings.*—(1) The Press and Publications Ordinance, 1960 (XV of 1960), and the Printing Presses and Publications (Declaration and Registrations) Ordinance, 1973 (XVI of 1973), are hereby repealed.

(2) Notwithstanding the repeal, any declaration made, subscribed or authenticated, anything done or any action taken under any provision of any of the aforesaid Ordinances shall, in so far as it is not inconsistent with any provision of this Act, be deemed to have been made, subscribed, authenticated, done or taken under the corresponding provisions of this Act.

(3) The provisions of the General Clauses Act, 1897 (X of 1897), shall, subject to the provision of sub-section (2) apply to the repeal of the aforesaid Ordinances by this Act.

THE SCHEDULE

FORM A

(See section 4)

Declaration of the Keeper of the Press.

I..... (name) son of
.....residing at
do hereby declare that I have a press for printing at*.....

*Give full description and address of the premises where the press may be situated.

FORM B

(See section 7)

Declaration of the Printer and/or Publisher of Newspaper

I.....(name), son of.....
.....residing at
do hereby declare that I am the printer or publisher or printer and publisher of the newspaper entitled.....appearing as¹..
.....in²..... and printed or¹ published or printed and published at⁴

1 Strike out which is not applicable.

2 Here state the periodicity.

Here mention the language or languages.

4 Give full description and address of the premises where the printing or publication is conducted.

FORM C

(See section 16)

Declaration of person who ceases to be Printer and or Publisher

I.....(name), son of
.....residing at
do hereby declare that I have ceased to be the¹ printer or publisher,
or, the printer and the publisher of the newspaper entitled.....
.....appearing as².....in³.....
.....

1 Strike out which is not applicable.

2 Here state the periodicity.

3 Here mention the language or languages.

S.M. Rahman,
Secretary.

Printed by the Manager, Government Printing Press, Tejgaon,
Dhaka. Published by the Assistant controller-in-charge, Bangladesh
Forms and Publications Office, Dhaka.

CHAPTER—XI
LAW ON PRESS COUNCIL
PRESS COUNCIL ACT

Act No XXV of 1974

An Act to establish a Press Council

WHEREAS it is expedient to establish a Press Council for the purpose of preserving the freedom of the press and maintaining and improving the standard of newspapers and news agencies in Bangladesh ;

It is hereby enacted as follows :—

1. *Short title*—This Act may be called the Press Council Act, 1974
2. *Definition*—In this Act, unless there is anything repugnant to the subject or context,—

- (a) “*Chairman*” means the Chairman of the Council ;
- (b) “*Council*” means the Press Council established under section 3 :
- (c) “*editor*” means the person who controls the selection of the matter that is published in a newspaper ;
- (d) “*member*” means a member of the Council ;
- (e) “*newspaper*” means any periodical work containing public news or comments on public news and includes such other class of printed periodical work as the Government may, by notification in the Official Gazette, declare to be newspaper ;
- (f) “*prescribed*” means prescribed by rules made under this Act :
- (g) “*working journalist*” means a person who is a whole-time journalist and is employed as such in, or in relation to, any newspaper establishment and includes an editor, a leader writer, news editor, sub-editor, feature writer, reporter, correspondent, copy tester, cartoonist, news photographer, calligraphist and proof-reader.

3. *Establishment of the Council*—(1) With effect from such date as the Government may, by notification in the official Gazette, appoint, there shall be established, in accordance with the provisions of this Act, a Council to be called the Press Council.

(2) The Council shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

4. *Composition of the Council*—(1) The Council shall consist of a Chairman and fourteen other members.

(2) The Chairman shall be a person who is, or is qualified to be appointed as a Judge of the Supreme Court of Bangladesh and shall be nominated by the President of Bangladesh.

(3) Of the other members,

(a) three shall be working journalists nominated by such association of working journalists as the Chairman may notify in this behalf ;

(b) three shall be editors of newspapers and news agencies nominated by such association of editors of newspapers and news agencies as the Chairman may notify in this behalf ;

(c) three shall be persons who own or manage newspapers and news agencies nominated by such association of owners or managers of newspapers and news agencies as the Chairman may notify in this behalf ;

(d) three shall be persons having special knowledge or practical experience in respect of education, science, art, literature and law of whom respectively one shall be nominated by the University Grants Commission, one by the Bangla Academy and one by the Bangladesh Bar Council ; and

(e) two shall be members of Parliament nominated by the Speaker :

Provided that before notifying any association under clause (a) clause (b) or clause (c), the Chairman shall consult such associations

of persons of the category concerned and such individuals or interests concerned as he thinks fit :

Provided further that no working journalist who is an editor of any newspaper or news agency or who owns or manages any newspaper or news agency shall be eligible for nomination under clause (a) :

Provided further that no editor who owns or manages any newspaper or news agency shall be eligible for nomination under clause (b) :

Provided further that not more than one person having interest in any newspaper or news agency or group of newspapers or news agencies shall be eligible for nomination under clause (a), clause (b) or clause (c),

(4) Where any nominating body referred to in clause (a), Clause (b), clause (c) or clause (d) fails to send the names of its nominees to the Chairman when invited by him to do so or where a nominating body does not exist for the time being, the Chairman may nominate members to represent the category concerned.

(5) The names of persons nominated under this section shall be forwarded to the Government and shall be notified by the Government in the Official Gazette and every such nomination shall take effect from the date on which it is so notified.

5 Term of office of Chairman and members—(1) Save as otherwise provided in this section, the Chairman shall hold office for a period of three years and shall be eligible for re-nomination for one further term.

(2) Save as otherwise provided in this section, a member shall hold office for a period of two years and shall be eligible for re-nomination for one further term.

(3) Where a person nominated as a member under clause (a), clause (b) or clause (c) of sub-section (3) of section 4 is censured under the provisions of sub-section (1) of section 12, he shall cease to be member of the Council.

(4) Where a person is nominated to be a member of the Council by virtue of his holding an office or appointment, he shall cease to be such member as soon he ceases to hold that office or appointment.

(5) A member shall be deemed to have vacated his seat if he absents himself without excuse, sufficient in the opinion of the Chairman, from three consecutive meetings of the Council.

(6) The Chairman may resign his office by giving notice in writing to the Government and any other member may resign his office by giving notice in writing to the Chairman, and upon such resignation being accepted by the Government or the Chairman, as the case may be, he shall be deemed to have vacated his office.

(7) Any vacancy arising under sub-section (2) sub-section (3), sub-section (4) or sub-section (5) or otherwise shall be filled, as soon as may be, by nomination made by the same authority by which and in the same manner in which the member vacating office was nominated and the member so nominated shall hold office for the remaining period for which the member in whose place he is nominated would have held office.

6. Conditions of service of Chairman and members—(1) The Chairman shall be a whole time officer and shall be paid such salary as the Government may determine.

(2) A member shall receive such allowances or fees for attending the meetings of the Council as may be prescribed.

7. Committees.—The Council may constitute from amongst its members such committees as it may deem necessary to assist it in the discharge of its functions :

Provided that the Council may co-opt as members of such committees persons who are not members of the Council.

8. Meetings of the Council.—(1) The Council shall meet at such times and places as may be provided by regulations made under this Act :

Provided that, until such regulations are made, the Chairman may summon a meeting of the Council at such time and place as he may deem expedient by notice addressed to each member.

(2) To constitute a quorum at a meeting of the Council, not less than six members, including the Chairman, shall be present.

(3) The meetings of the Council shall be presided over by the Chairman and, in the absence of the Chairman, by a member nominated by the Chairman.

(4) All questions at a meeting of the Council shall be decided by a majority of the members present and voting, and in the case of equality of votes, the person presiding shall have a second or casting vote.

9. *Vacancies, etc. not to invalidate acts or proceedings of the Council*—No act or proceeding of the Council shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the Council.

10. *Appointment of Secretary, etc.*—The Council may appoint a Secretary and such other employees as it considers necessary for the efficient performance of its functions on such terms and conditions as may be determined by regulations made under this Act.

11. *Object and function of the Council.*—(1) The object of the Council shall be to preserve the freedom of the press; and to maintain and improve the standard of newspapers and news agencies in Bangladesh.

(2) The Council may, in furtherance of its object, perform the following functions, namely :—

- (a) to help newspapers and news agencies to maintain their freedom ;
- (b) to build up a code of conduct for newspapers and news agencies and journalists in accordance with high professional standard ;
- (c) to ensure on the part of newspapers and news agencies and journalists the maintenance of a high standard of public taste and to foster a due sense of both the rights and responsibilities of citizenship ;
- (d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism ;

- (e) to keep under review any development likely to restrict the supply and dissemination of information of public interest and importance ;
- (f) to keep under review cases of assistance received by any newspaper or news agency in Bangladesh from any foreign source including such cases as are referred to it by the Government or are brought to its notice by any individual, association of persons or any other organisation :

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

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

Provided that nothing in this clause shall be deemed to confer on the Council any function in regard to disputes to which the Industrial Relations Ordinance, 196) (XXIII of 1969), applies ;

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

12. *Power to warn, admonish and censure* .—(1) Where, on receipt a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standard of journalistic ethics taste or that an editor or a working journalist has committed any professional misconduct or a breach of the code of journalistic ethics, the Council may, after giving the newspaper or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may

be provided by regulations made under this Act, and if it is satisfied that it is necessary so to do, it may for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist, as the case may be.

(2) If the Council is of the opinion that it is necessary or expedient in the public interest so to do, it may require any newspaper to publish therein, in such manner as the Council thinks fit, any report relating to any inquiry under this section against a newspaper or news agency, an editor or a journalist working therein, including the name of such newspaper, news agency, editor or journalist.

(3) Nothing in sub-section (1) shall be deemed to empower the Council to hold an inquiry into any matter in respect of which any proceeding is pending in a court of Law.

(4) The decision of the Council under sub-section 1 or sub-section (2), as the case may be shall be final and shall not be questioned in any court of Law.

13. *General powers of the Council.*—(1) For the purpose of performing its functions or holding any inquiry under this Act, the Council shall have the same powers throughout Bangladesh as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (V of 1908), in respect of the following matters namely :—

- (a) summoning and enforcing the attendance of persons and examining them on oath ;
 - (b) requiring the discovery and production of documents ;
 - (c) receiving evidence on affidavit ;
 - (d) requisitioning any public record or copies thereof from any court or office ;
 - (e) issuing commissions for the examination of witnesses or documents ;
 - (f) any other matter which may be prescribed ;
- (2) Nothing in sub-section (1) shall be deemed to compel any newspaper, news agency, editor or journalist to disclose the

source of any news or information published by that newspaper or received or reported by that news agency, editor or journalist.

(3) Every inquiry held by the Council shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code (XLV of 1860).

14. *Payment of the Council.*—The Government may pay to the Council in each financial year such sums as may be considered necessary for the performance of the functions of the Council under this Act.

15. *Fund of the Council.*—(1) The Council shall have its own fund, and all such sums as may, from time to time, be paid by any other authority or person shall be credited to the fund and all payments by the Council shall be made therefrom :

Provided that no grant or advance from any foreign source shall be accepted by the Council without the prior approval of the Government.

(2) All moneys belonging to the fund shall be deposited in such banks or invested in such manner as may, subject to the approval of the Government, be decided by the council.

(3) The Council may spend such sums as it thinks fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the fund of the Council.

16. *Budget to the Council.*—The Council shall prepare, in such form and at such time each year as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure and sums which are likely to be required from the Government during the financial year, and forward copies thereof to the Government for consideration and sanction of the sums shown in the budget to be required from the Government.

17. *Annual report.*—The Council shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year

and copies thereof shall be forwarded to the Government and the Government shall cause the same to be laid before Parliament.

18. *Accounts and audit.*—The accounts of the Council shall be maintained in such manner as may be prescribed and shall be audited by the Controller and Auditor-General of Bangladesh.

19. *Authentication of orders, etc. of the Council.*—All orders and decisions of the Council shall be authenticated by the signature of the Chairman or any other member authorised by the Chairman in this behalf and other instruments issued by the Council shall be authenticated by the signature of the Secretary or any other officer of the Council authorised by the Secretary in this behalf.

20. *Protection of certain actions* :—(1) No suitor other legal proceeding shall lie against the council or any member thereof or any person acting under the direction of the Council in respect of anything which is in good faith done or intended to be done under this Act. (2) No suit or other legal proceeding shall lie against any newspaper in respect of the publication of any matter there in under the authority of the Council.

21. *Public servante* :—The Chairman, members, officers and other employees of the Council shall be deemed to be public servants within the meaning of section 21 of the Penal Code (XLV of 1860).

22. *Winding up* :—No provisions of law relating to the winding up of bodies corporate shall apply to the Council and the Council shall not be wound up except by orders of the Government and in such manner as the Government may direct.

23. *Power to make rules* :—The Government may by notification in the official Gazette, make rules to carry out the purposes of this Act.

24. *Power to make regulation.*—The Council may make regulations, not inconsistent with this Act and the rules made thereunder, to provide for all matters not provided for by rules and for which provisions are necessary or expedient for carrying out the purposes of this Act.

SHORT NOTES

During the past few years, many democratic countries have established Press Council

It is not untrue that the press in this country had shown considerable restraint in times of crisis and has worked hard for national sovereignty and boosting up the morale of the people at critical junctures. Yet the press has its difficulties.

Bringing to book a recalcitrant journalist or censuring an erring journalist is but one of the many functions entrusted to the Council. The Press Council is not a criminal court to adjudicate on infractions of journalistic ethics. The important object placed before the Council is "to preserve the freedom of the press and to maintain and improve the standards of newspapers in Bangladesh." One of its main tasks is to build up a code of conduct for newspapers and journalists in accordance with high professional standards. Amongst the other functions which the Council has to perform are to help newspapers maintain their independence, high professional standards, high standards of public taste and to foster a due sense of both the rights and responsibilities of citizenship and to provide facilities for the proper education and training of persons to enable them to practise the profession of journalism

Undeniably the Constitution has guaranteed to its citizens freedom of Press, speech and expression. The general complaint of the journalists and sometimes of the editors is that the freedom to express views freely and frankly is at times throttled by those who hold the dominant position in the society

From a reading of the objects for which the Council is established and the functions entrusted to it, it is clear that the Council can play a significant role in maintaining the freedom of the Press and ensuring propriety on the part of the press. The Council acts as a buffer between the press and the public. It is its role as a judicial body sitting as a court to inquire into complaints against breaches of journalistic ethics. In its capacity as an adjudicating body, it enquires into complaints against the conduct of the press towards the public

as also in a sense the conduct of the people and the Government towards the press.

The Press Council Act confers power on the Council to entertain complaints made to it by any member of the public or *suo motu* when it believes that a newspaper or news agency has offended against standards of journalistic ethics or public taste etc. The Council has provided a procedure for this by its regulations which, briefly stated, is that the complainant should furnish the name and address of the newspaper, editor or working journalist against which or whom the complaint is lodged, with a cutting of the news item which according to him offends against journalistic ethics. The complainant should mention in his complaint whether he has drawn the attention of the editor to the matter published in his paper which he thinks offends against journalistic ethics or public taste. He should also state whether any legal proceedings are pending in a court of law in respect of the same subject matter. When these formalities are completed, a show cause notice may be issued to the editor or newspaper asking it or him to submit statement in reply. The matter is considered by a committee of the Council called the Judicial Committee. Both parties can adduce evidence before the committee, either oral or documentary, in support of their respective contentions. The findings of the committee are placed before the Council which takes final decision on the matter. The parties are entitled to appear before the committee either in person or through a legal practitioner.

Most people are reluctant to go to a court or a tribunal because of the long-drawn-out procedures involved in them. There is no eagerness on the part of the people to bring to the notice of courts even matter which affect their rights. The procedure in the Press Council is fairly easy and, as stated above, demands practically no formality.

For a complaint to be lodged with the Press Council, it is not necessary that the complainant should have a personal interest in the matter complained against. A complaint can be made on grounds such as misrepresentation of facts in a news report, or because the

headlines therein are misleading or on the ground that an article in a newspaper has stated as fact which was a mere conjecture and so on. A complaint can be filed where the complainant has "reason to believe that a newspaper has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct or a breach of the code of journalistic ethics." The Act authorises the council to take notice of such misconduct of its own accord. It need not necessarily wait for someone to lodge a complaint. After examining the complaint and the statement of the opposite party in the manner explained earlier, the Council proceeds to express its opinion which, in gross cases, may be a censure.

The Council cannot impose any corporal or financial punishment on the offending journalist nor can the Council award damages to the aggrieved party. The strength of the Council lies in its appeal to conscience. The power conferred by section 12(2) requiring a newspaper to publish therein any particulars relating to any enquiry is, if properly used and constantly exercised can become extremely effective. The public rebuke that the Council administers and the obligation of the offending newspaper to publish its decisions operate both as a penalty and a deterrent. The reason given is that it is a serious matter for a newspaper to have to inform its readers on whose respect it depends that it has been convicted of a breach of journalistic standards.

The Council consists of a Chairman and 14 other members. The Chairman shall be a person who is, or is qualified to be appointed as a Judge of the Supreme Court of Bangladesh and shall be nominated by the President of Bangladesh.

(3) Of the other members,—

- (a) three shall be working journalists nominated by such association of working journalists as the Chairman may notify in this behalf ;
- (b) three shall be editors of newspapers and news agencies nominated by such association of editors of newspapers

and news agencies as the Chairman may notify in this behalf ;

- (c) three shall be persons who own or manage newspapers and news agencies nominated by such association of owners or managers of newspapers and news agencies as the Chairman may notify in this behalf ;
- (d) three shall be persons having special knowledge or practical experience in respect of education, science, art, literature and law of whom respectively one shall be nominated by the University Grants Commission, one by the Bangla Academy and one by the Bangladesh Bar Council ; and
- (e) two shall be member of Parliament nominated by the Speaker :

The Chairman holds office for three years and other members for a periods of two years. If a member is censured by the Council, he ceases to be a member of the Council'.

For the purpose of performing its functions or holding an enquiry under the Act, the Council has been clothed with powers exercisable throughout Bangladesh as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908. It can summon and enforce the attendance of persons and examine them. It can require discovery and production of documents, receive evidence on affidavits, requisition public records or copies thereof from any court or office, issue commissions for the examination of persons or documents and finally for any other matter which may be prescribed. The Act recognises immunity of a journalist from disclosing his source of information. It says that the Council cannot compel any newspaper or a journalist to disclose the source of any news or information, published by that newspaper or received or reported by news agency, editor or journalist.

The Government pays to the Council in each financial year such sums as are necessary for the performance of the functions of the Council under the Act.

The annual report of the Council is to consist of a summary of its activities during the previous year.

Immunity is conferred on the Council and the members from any legal action in respect of anything which is done in good faith or intended to be done under the Act. Where a newspaper publishes any report of the Council under the authority of the Council, no suit or other legal proceedings shall lie against any newspaper in respect of such publication.

CHAPTER XII

Preamble

THE COPYRIGHT ORDINANCE, 1962

ORDINANCE NO. XXXIV OF 1962

An ordinance to amend and consolidate the law relating to Copyright.

WHEREAS it is expedient to amend and consolidate the law relating to copyright ;

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, and in exercise of all powers enabling him in that behalf the President is pleased to make and promulgate the following Ordinance ;

CHAPTER I

PRELIMINARY

Extent and Commencement

1. (1) *This Ordinance may be called the Copyright Ordinance 1962.*

(2) it extends to the whole of Bangladesh.

(3) it shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

2. *Definitions*.—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “Adaptation” means,—

(i) in relation to a dramatic work, the conversion of the

- work into a non-dramatic work ;
- (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;
 - (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical ; and
 - (iv) in relation to a musical work, any arrangement or transcription of the work ;
- (b) Architectural work of art” means by building having an artistic character or design or any model of such building ;
- (c) “Artistic work” means—
- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph whether or not any such work possesses artistic quality ;
 - (ii) an architectural work of art ; and
 - (iii) any other work of artistic craftsmanship ;
- (d) “Author” means,—
- (i) in relation to a literary or dramatic work, the author of the work ;
 - (ii) in relation to a musical work, the composer ;
 - (iii) in relation to an artistic work other than a photograph, the artist ;
 - (iv) in relation to a photograph, the person taking the photograph ;
 - (v) in relation to a cinematographic work, the owner of the work at the time of its completion ; and
 - (vi) in relation to a record, the owner of the original plate from which the record is made at the time of the making of the plate ;

- (e) "Bangalee work" means a literary, dramatic, musical or artistic work the author of which is a citizen of Bangladesh and includes a cinematographic work or a record made or manufactured in Bangladesh ;
- (f) "Board" means the Copyright Board constituted under section 45 ;
- (g) "Book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan, separately printed or lithographed, but does not include a newspaper ;
- (h) "Broadcast" means communication to the public by any means of radio-diffusion including telecast or by wire or by both, and "broadcasting" shall be construed accordingly ;
- (i) "Broadcasting Authority" means any person who, or any authority which, operates a broadcast transmitting station ;
- (j) "Building" includes any structure ;
- (k) "Calendar year" means the year commencing on the first day of January ;
- (l) "Cinematographic work" means any sequence of visual images fixed on material of any description (whether translucent or not) so as to be capable of being shown as a moving picture and of being the subject of reproduction, whether silent or accompanied by sound ;
- (m) "Copy" means a reproduction in a written form or in the form of a sound recording or cinematographic work or in any other material form, whether in two or three dimensions ;
- (n) "Copyright" means copyright under this Ordinance ;
- (o) "Delivery" in relation to a lecture, includes delivery by means of any mechanical instrument or by broadcast or telecast.
- (p) "Dramatic work" includes any play for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematographic work ;

- (q) "Engravings" include etchings, lithographs, wood-cuts, print and other similar works, not being photographs ;
- (r) "Exclusive licence" means a licence which confers on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright), any right comprised in the copyright in a work and "exclusive" shall be construed accordingly ;
- (s) "Fixation" means the incorporation of sounds or images or both in a device by means of which they can later be made aurally or visually perceivable ;
- (t) "Government work" means a work which is made or published by or under the direction or control of—
 - (i) the Government or any department of the Government, or
 - (ii) any court, tribunal or other judicial or legislative authority in Bangladesh ;
- (u) "Infringing copy means"—
 - (i) in relation to a literary, dramatic, musical or artistic work, a reproduction in any material form of the whole work or a part thereof otherwise than in the form of a cinematographic work ;
 - (ii) in relation to a cinematographic work, a copy of the work or a record embodying the whole or a part of the recording in any part or the sound-track associated with the film ;
 - (iii) in relation to a record, any record embodying the same recording either in its original form or in any form derived from the original ; and
 - (iv) in relation to a programme in which broadcast reproduction right subsists under section 24, a cinematographic work or a record, recording the whole programme or a part thereof, if such reproduction, copy or record is made or imported in contravention of any of the provisions of this Ordinance ;
- (v) "Lecture" includes address, speech and sermon ;

- (w) "Licence" means a licence granted under Chapter VII of this ordinance ;
- (x) "Literary work" includes works on humanity, religion, social and physical sciences, tables and compilations ;
- (y) "Manuscript" means the original documents embodying the work, whether written by hand or not ;
- (z) "Musical work" means any combination of melody and harmony or either of them printed, reduced to writing or otherwise graphically produced or reproduced ;
- (za) "Newspaper" means a newspaper as defined in section 2(f) of the Printing Presses and Publications (Declaration and Regulation) Act, 1973 (XXIII of 1973), printed or published in conformity with the provisions of Part III of the said Act ;
- (zb) "Performance" includes any mode of visual or acoustic presentation, including any such presentation by the exhibition of a cinematographic work, or by means of broadcast, or by the use of a record, or by any other means and, in relation to a lecture, includes the delivery of such lecture ;
- (zc) "Performing rights society" means a society, association or other body, whether incorporated or not, which carries on in Bangladesh the business of issuing or granting licences for the performance in Bangladesh of any works in which copy-right subsists ;
- (ad) "Photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematographic work ;
- (ze) "Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative tape, wire, optical film, or other device used or intended to be used for printing or reproducing copies of any work, any matrix or other appliances by which records for the acoustic presentation of the work are or are intended to be made ;
- (xf) "Prescribed" means prescribed by rules made under this Ordinance ;

- (zg) "Public libraries" means the National Library of Bangladesh designated as such by the Government and any three other libraries as may be specified by the Government in this behalf by notification in the official Gazette ;
- (zh) "Rebroadcast" means a simultaneous or subsequent broadcast by one Broadcasting Authority of the broadcast of another Broadcasting Authority, whether situated in Bangladesh or abroad, and includes distribution of such broadcast over wires and "rebroadcasting" shall be construed accordingly ;
- (zi) "Record" means any disc, tape, wire, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a soundtrack associated with a cinematographic work ;
- (zj) "Recording" means the aggregate of the sound, embodied in, and capable of being reproduced by means of a record ;
- (zk) "Reproduction" in the case of a literary, dramatic or musical work, includes a reproduction in the form of a record or of a cinematographic work or the sorting of the work in a computer or other device by means of which it can be read or otherwise perceived and, in the case of an artistic work, includes a version produced by converting the work into a three dimensional form or if it is in three dimensions, by converting it into a two-dimensional form be construed accordingly ;
- (zl) "Registrar" means the Registrar of Copyrights appointed under section 44 and includes a Deputy Registrar of Copyrights discharging any function of the Registrar ;
- (zm) "Work" means any of the following works, namely ;
- (i) a literary, dramatic, musical or artistic work ;
 - (ii) a cinematographic work ;
 - (iii) a record ; and (iv) a broadcast ;

- (zn) "Work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors ; and
- (zo) "Work of sculpture" includes casts and models.

Meaning of Copyright

3. (1) For the purposes of this Ordinance, "Copyright" means the exclusive right, by virtue of, and subject to the provisions of, this Ordinance ;

- (a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely
- (i) to reproduce the work in any material form ;
 - (ii) to publish the work ;
 - (iii) to perform the work in public ;
 - (iv) to produce, reproduce, perform or publish any translation of the work ;
 - (v) to use the work in a cinematographic work or make a record in respect of the work ;
 - (vi) to broadcast the work or to communicate the broadcast of the work to the public by a loudspeaker or any other similar instrument ;
 - (vii) to make any adaptation of the work ;
 - (viii) to do in relation to a translation or an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (vi) ;
- (b) in the case of an artistic work, to do or authorize the doing of any of the following acts, namely ;
- (i) to reproduce the work in any material form ;
 - (ii) to publish the work ;
 - (iii) to use the work in a cinematographic work ;
 - (iv) to show the work in television ;
 - (v) to make any adaptation of the work ;

- (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv) ;
 - (c) in the case of a cinematographic work, to do or authorize the doing of any of the following acts, namely ;—
 - (i) to make a copy of the work ;
 - (ii) to cause the work in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds to be heard in public ;
 - (iii) to make any record embodying the recording in any part of the sound track associated with the work by utilising such sound track ;
 - (iv) to broadcast the work ;
 - (d) in the case of a record, to do or authorize the doing of any of the following acts by utilizing the record, namely.—
 - (i) to make any other record embodying the same recording ;
 - (ii) to use the record in the sound track of a cinematographic work ;
 - (iii) to cause the recording embodied in the record to be heard in public ;
 - (iv) to communicate the recording embodied in the record by broadcast.
- (2) Any reference in sub-section (i) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a part thereof.

Meaning of Publication

- 4.(i) For the purposes of this Ordinance, “Publication” means ;-
- (a) in the case of a literary, dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities ;

- (b) in the case of a cinematographic work, the sale or hire or offer for sale or hire of the work or copies thereof to the public
- (c) in the case of a record, the issue of records to the public in sufficient quantities ;

but does not, except as otherwise expressly provided in this Ordinance, include.

- (i) in the case of a literary, dramatic or musical work, the issue of any records recording such work ;
- (ii) in the case of a work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.

(2) If any question arises under sub-section (1) whether copies of any literary dramatic, musical or artistic work, or records issued to the public are sufficient in quantities, it shall be referred to the Board whose decision thereon shall be final.

**When the work not deemed to be published or performed in public,
When work deemed to be first published in Bangladesh**

5. Except for the purposes of infringement of copyright, a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public or delivered in public, without the licence of consent of the owner of the copyright.

6. (1) For the purposes of this Ordinance, a work published in Bangladesh shall be deemed to be first published in Bangladesh notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work ; and a work shall be deemed to be published simultaneously in Bangladesh and in another country if the time between the publication in Bangladesh and the publication in such other country does not exceed thirty days.

(2) If any question arises under sub-section (1) whether the term of copyright for any work is shorter in any other country than that

provided in respect of that work under this Ordinance, it shall be referred to the Board whose decision thereon shall be final.

Nationality of author where the making of unpublished work is extended over considerable period. Domicile of Corporation

7. Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Ordinance, be deemed to be citizen of, or domiciled in, the country of which he was a citizen of wherein he was domiciled during the major part of that period.

8. For the purposes of this Ordinance, a body corporate shall be deemed to be domiciled in Bangladesh if it is incorporated under any law in force in Bangladesh or if it has an established place of business in Bangladesh.

No copyright except as provided on this ordinance

9. No person shall be entitled to copyright or any similar right in any work whether published or unpublished, otherwise than under and in accordance with the provisions of this Ordinance, or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

Works in which copyright subsists

10. (1) Subject to the provisions of this section and to the other provisions of this Ordinance, copyright shall subsist throughout Bangladesh in the following classes of works, that is to say,—

- (a) Original literary, dramatic, musical and artistic works ;
- (b) Cinematographic works ;
- (c) Records ; and
- (d) Broadcasts.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 53 or section 54 apply, unless,—

- (i) in the case of a published work, the work is first published in Bangladesh, or where the work is first published outside Bangladesh, the author is at the date of such publication, or in a case where the author was dead at the date, was at the time of his death, a citizen of Bangladesh or domiciled in Bangladesh ;
- (ii) in the case of an unpublished work other than an architectural work of art, the author is at the date of the making of the work a citizen of Bangladesh or domiciled in Bangladesh
- (iii) in the case of an architectural work of art, the work is located in Bangladesh.
- (iv) in the case of a record, the recording is made in Bangladesh ; and
- (v) in the case of a broadcast, the broadcasting is transmitted from within Bangladesh.

(3) Copyright shall not subsist—

- (a) in any cinematographic work, if a substantial part of the work is an infringement of the copyright in any other work ;
- (b) in any record made in respect of a literary, dramatic or musical work, of, in making the record copyright in such work has been infringed ; and
- (c) in any broadcast, if a substantial part of the broadcast, is an infringement of the copyright in any other work.

(4) The copyright or the lack of copyright in a cinematographic work or a broadcast or a record shall not effect the separate copyright in any work in respect of which or a substantial part of which, the work or the broadcast or, as the case may be, the record is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to the processes or methods of construction.

Work of joint authors

(11) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Ordinance, the work shall be treated for the purpose of this Ordinance as if the other author or authors had been the sole author or authors thereof ;

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions.

Provisions as to designs registrable under act 11 of 1911

12. (1) Copyright shall not subsist under this Ordinance in any design which is registered under the Patents and Designs Act. 1911.

(2) Copyright in any design which is capable of being registered under the Patents and Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence by any other person.

First owner of Copyright

13. Subject to the provisions of the Ordinance, the author of a work shall be the first owner of the copyright therein ;

Provided that,—

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship., for the purpose of publication in a newspaper, magazine or

similar periodical, the said proprietor shall, in the owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work ;

- (b) subject to the provisions of clause (a) in the case of a photograph taken, or a painting or portrait down, or an engraving or a cinematographic work made, for valuable consideration at the instance of any person, such persons shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;
 - (c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein,
 - (d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;
 - (e) in the case of a work to which the provisions of section 53 apply, the international organization concerned shall be the first owner of the copyright therein.
14. (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof ;

Provided that, in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence :

Provided further that, where the owner of the copyright in a work is the author of the work, no assignment of the copyright in the work or of any interest in such copyright shall be made, or if made shall be effective (except where the assignment is made in favour of Government or an educational, charitable, religious or non-profit institution) for a period of more than ten years beginning from the calendar year next following the year in which the assignment is made ; if an assignment of the copyright in a work is made in contravention of this proviso, the copyright in the work shall, on the expiry of the period specified in this proviso, revert to the author (who may re-assign the copyright in the work subject to the provisions therein contained), or if the author be dead to his representatives in interest :

Provided further that the copyright in an unpublished work assigned by its author to any person or organisation for the specific purpose of publication shall revert to the author if it is not published within a period of three years from the date of its assignment, subject to the condition that prior to such assignment the work is registered under this Ordinance.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Ordinance as the owner of copyright and the provisions of this Ordinance shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

Mode of Assignment

15. No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

Transmission of copyright in manuscript by testamentary disposition

16. Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Right of owner to relinquish copyright

17 (1) The owner of the copyright in a work may relinquish all or any of the rights comprised in the copyright by giving notice in the prescribed form to the Registrar and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

(2) On receipt of a notice under sub-section (1), the Registrar shall cause it to be published in the official Gazette and in such other manner as he may deem fit.

(3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any right subsisting in favour of any person on the date of the notice referred to in sub-section (1).

Term of copyright in published literary, dramatic, musical and artistic work

18. Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the life time of the author until fifty years from the beginning of the calendar year next following the year in which the author dies.

Explanation—In this section, the reference to the author shall in the case of a work of joint authorship, be construed as a reference to the author who dies last.

Term of copyright in posthumous work

19. (1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author, who dies last but which or any adaptation of which, had not been published before that date, copyright shall subsist until fifty years from the beginning sbefore that date, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.

Term of copyright in cinematographic works, records and photographs

20.(1) In the case of a cinematographic work, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is published.

(2) In the case of a record, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the photograph is published.

(3) In the case of photograph, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the photograph is published.

Term of copyright in broadcast

20A. In the case of a broadcast, copyright shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast first took place.

Term of copy right in anoymous and psendonymous work

21. (1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the author dies.

(2) in sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship be construed.—

- (a) where the identity of one of the authors is disclosed as references to that author ;
- (b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors ;
- (c) in sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,—
 - (a) where the names of one or more (but not all) of the authors are pseudonym and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such one of those authors who dies last ;
 - (b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the authors who dies last from amongst the authors whose names are no pseudonyms and the authors whose names are pseudonyms and are disclosed ; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or, if the identity of two or more of such authors is disclosed, as references to such one of those authors who dies last.

Explanation—For the purposes of this section, the identity of an author shall be deemed to have been disclosed if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Board by that author.

Term of copyright in Govt. works and in works of international organisations

22. (1) Copyright in a Government work shall, where Government is the first owner of the copyright therein, subsists until fifty years from the beginning of the calendar year next following the year in which the work is first published.

(2) In the case of a work of an international organisation to which the provisions of section 53 apply, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

Term of copyright in unpublished work

23.(1) If a work, whose author's identity is known, is not published posthumously within fifty years after the death of the author, such work shall fall into the public domain after fifty years from the beginning of the calendar year next following the year in which the author dies.

(2) If a work, whose author's identity is not known, is not published within fifty years of its creation, such work shall fall into the public domain after fifty years from the beginning of the calendar year next following the year in which the work is created.

Rights of broadcasting organisation

24. (1) Broadcasting organizations shall enjoy the right to—

- (a) the rebroadcasting of their broadcasts ;
- (b) the fixation of their broadcasts ; and
- (c) the copying of fixations made of their broadcasts.

Application of other provisions of this ordinance to broadcasts

25. Any person who, without the authorization of the broadcasting organization, does or causes the doing of any of the acts referred to in section 24 shall be deemed to infringe the rights of the broadcasting organizations, and the provisions contained in Chapter XII to XVI shall, within the limits permitted by the nature of the matter, apply to broadcasting organizations and broadcasts as if they were authors and works, respectively.

26. Ommitted by Act LIV of 1974. x.x. 8 & 9.

Other rights not affected

27. For the removal of doubts, it is hereby declared that the rights conferred upon broadcasting organizations shall not affect the copyright in any literary, dramatic, musical, artistic or cinematographic work, or in any record used in the broadcast.

Protection of and term of protection

28. The publisher of an edition of a work shall enjoy the right to authorise the making, by any photographic or similar process, of copies, intended for sale in commerce, of the typographical arrangement of the edition, and such right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the edition was first published.

Infringements etc.

29. Any person who, without the authorization of the publisher makes or causes the making of, by any photographic or similar process, copies, intended for sale in commerce, of the typographical arrangement of the edition or any substantial part thereof, shall be deemed to infringe the right of the publisher, and the provisions contained in Chapter XII to XVI shall, within the limits permitted by the nature of the matter, apply to the publisher and the typographical arrangements of editions as if they were authors and works respectively.

Explanation—“Typographical arrangement” shall include calligraphy..

Protections to copyright

30. For the removal of doubts, it is hereby declared that the right conferred upon publishers by this chapter shall .—

- (a) subsist irrespective of the question whether the edition is that of a work protected or unprotected by copyright ;
- (b) not affect the copyright, if any, in the literary, dramatic, musical or artistic work itself.

Performaing rights society of file statements of fees, charges and royalties

31 (1) Every performing rights society shall within the prescribed time and in the prescribed manner, prepare, publish and file with the Registrar, statements of all fees, charges or royalties which it proposes to collect for the grant of licences for the performance in public or works in respect of which it has authority to grant such licences.

(2) If any such society fails, in relation to any work, to prepare, publish or file with the Registrar the statements referred to in sub-section (1) in accordance with the provisions of that sub-section, no action or other proceeding to enforce any remedy, civil or criminal, for infringement of the performing rights in that work shall be commenced except with the consent of the Registrar.

Objections relating to published statements

32. Any person having any objections to any fees, charges or royalties or other particulars included in any statement referred to in section 31 may at any time lodge such objections in writing at the Copyright Office.

Determination of Objections

33 (1) Every objection lodged at the Copyright Office under section 32 shall, as soon as may be, be referred to the Board, and the Board shall decide such objection in the manner hereinafter provided.

(2) The Board shall, notwithstanding that no objection has been lodged, take notice of any matter which, in its opinion, is one for objection.

(3) The Board shall give notice in respect of every objection to the performing rights society concerned and shall give to such society and the person who lodged the objection a reasonable opportunity of being heard.

(4) The Board shall, after making the prescribed enquiry, make such alterations in the statements as it may think fit, and shall transmit the statements thus altered or unchanged, as the case may be, to the Registrar, who shall thereupon as soon as practicable after the receipt of such statements publish them in the official Gazette and furnish the performing rights society concerned and the person who lodged the objection with a copy thereof.

(5) The statements of fees, charges or royalties as approved by the Board shall be the fees, charges or royalties which the performing rights society concerned may respectively lawfully sue for or collect in respect of the issue or grant by it of licences for the performance in public of works to which such fees, charges or royalties relate.

(6) No performing rights society shall have any right of action or any right to enforce any civil or other remedy for infringement of

the performing rights in any work claimed by such society against any person who has tendered or paid to such society the fees, charges or royalties which have been approved by the Board as aforesaid.

Existing rights not affected

34. Nothing in this chapter shall be deemed to affect—

- (a) any rights or liabilities in relation to the performing rights in work accrued or incurred before the commencement of this Ordinance ; and
- (b) any legal proceedings in respect of such rights or liabilities pending at such commencement.

Licence by owners of copyright

35. The owner of the copyright in any existing work of the prospective owner of the copyright in any future work may grant any interest in the copyright by licence in writing signed by him or by his duly authorised agent :

Provided that in the case of a licence relating to copyright in any future work ; the licence shall take effect only when the work comes into existence.

Explanation—When a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

Compulsory licence in work withhold from public

36 (1) If at any time during the term of copyright in any Bangalye's work which has been published or performed in public, an application is made to the Board that the owner of the copyright in the work.

- (a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work,

and by reason of such refusal the work is withhold from the public ; or

(b) has refused to allow communication to the public by broadcast of such work or, in the case of record the work recorded in such record, in terms which the applicant considers reasonable ;

the Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that such refusal is not in the public interest, or that the grounds for such refusal are not reasonable, direct the Registrar to grant to the applicant a licence to republish the work, perform the work in public or communicate the work to the public by broadcast as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other term and conditions as the Board may determine ; and thereupon the Registrar shall grant the licence to the applicant in accordance with the directions of the Board, on payment of such fees as may be prescribed.

(2) Where two or more persons have made applications under sub-section (1), the licence shall be granted to the applicant who, in the opinion of the Board, would best serve the interests of the general public.

Licence to produce and publish translations

37. (1) Any citizen of Bangladesh or a person domiciled in Bangladesh may apply to the Board for a licence to produce and publish a translation of a literary or dramatic work in Bengali or a language ordinarily used in Bangladesh.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar such fee as may be prescribed.

(4) When an application is made to the Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar to grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in the application, on condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public calculated at such rate as the Board may, in the circumstances each case, determine in the prescribed manner :

Provided that no such licence shall be granted, unless—

- (a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within seven years of the first publication of the work, or if a translation has been so published, it has been out of print ;
- (b) the applicant has proved to the satisfaction of the Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation or that he was unable to find the owner of the copyright ;
- (c) where the applicant is unable to find the owner of the copyright he has sent a copy of his request for such authorization to the publisher whose name appears from the work, not less than two months before the application for the licence ;
- (d) the Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section ;
- (e) the author has not withdrawn from circulation copies of the work ;
- (f) an opportunity of being heard is given wherever practicable to the owner of the copyright in the work ; and

- (g) the Board is satisfied, for reason to be recorded in writing, that the grant of the licence will be in the public interest.

Righter of Copyrights, Indexes form and inspection of Register

38. The Registrar shall keep at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which shall be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

(2) The Registrar shall also keep such indexes of Register of copyrights as may be prescribed.

(3) The Register of Copyrights and the indexes thereof kept under this section shall at all reasonable time be open to inspection, and any person shall be entitled to take copies of, or make extracts from, any such register or index on payment of such fee and subject to such conditions as may be prescribed.

Registration of copyrights

39. (1) The author or publisher of, or the owner of, or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar for entering particulars of the work in the Register of Copyrights.

(2) On receipt of an application in respect of any work under sub-section (1) the Registrar shall enter the particulars of the work in the Register of Copyrights and issue a certificate of such registration to the applicant unless, for reasons to be recorded in writing, he considers that such entry should not be made in respect of any work.

Registration assignment of copyright

40. (1) Any person interested in the grant of an interest in a copyright, either by assignment or licence may make an applica-

tion in the prescribed form, accompanied by the prescribed fee, the original instrument of such grant and a certified copy thereof, to the Registrar for entering the particulars of the grant in the Register of Copyrights.

(2) On receipt of an application in respect of any work under subsection (1), the Registrar shall, after holding such inquiry as he deems fit, enter the particulars of the grant in the Register of Copyrights unless, for reasons to be recorded in writing, he considers that such entry should not be made in respect of any grant.

(3) The certified copy of the grant shall be retained at the Copyright Office and the original shall be returned to the person depositing it, with a certificate of Registration endorsed thereon or affixed thereto.

Correction of entries in the Register of Copyright and indexes etc.

41. (1) The Registrar may in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights and the indexes by—

- (a) correcting any error in any name, address or particulars ;
or
- (b) correcting any other error which may have arisen therein by accidental slip or commission.

(2) The Board, on application of the Registrar or of any person aggrieved, may order the rectification of the Register of Copyrights by—

- (a) the making of any entry wrongly omitted to be made in the Register, or
- (b) the expunging of any entry wrongly made in or, remaining on, the Register, or
- (c) the correction of any error or defect in the Register.

42. (1) The Register of Copyrights and the indexes shall be *prima facie* evidence of the particulars entered therein and documents purporting to be copies of any entry therein or extracts therefrom

certified by the Registrar and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof of production of the original.

(2) A certificate of registration of copyright in a work shall be *prima facie* evidence that copyright subsists in the work and that the person shown in the certificate as the owner of the copyright is the owner of such copyright.

Copyright Office

43. (1) There shall be established for the purposes of this ordinance an office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyright who shall act under the superintendence and direction of the Government.

(3) The Copyright Office shall have a seal the impression whereof shall be judicially noticed.

Registrar and Deputy Registrar of Copyrights

44. (1) The Government shall, for the purposes of this Ordinance appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) The Registrar shall,—

(i) sign all entries made in the Register of Copyrights kept under this Ordinance ;

(ii) sign all certificate of registration of copyrights and certified copies under the seal of the Copyright Office ;

(iii) exercise the powers conferred and perform the duties imposed upon him by or under this Ordinance ;

(iv) be the Secretary of the copyright Board ; and

(v) shall perform such other functions as may be prescribed.

(3) A Deputy Registrar of Copyrights shall discharge, under the superintendence and direction of the Registrar, such functions of

the Registrar under this Ordinance as the Registrar may, from time to time, assign to him.

45. (1) The Government shall constitute a Board to be called the 'Copyright Board' consisting of the following members, namely :—

- (i) A Chairman appointed by the Government ;
- (ii) not less than three and not more than five other members appointed by the Government ; and
- (iii) the Registrar, ex-officio.

(2) The members, including the Chairman of the Board, other than the ex-officio member, shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman shall be appointed from among eminent jurists and educationists.

Powers and procedure of the Board

46. (1) The Board shall, subject to any rules that may be made under this Ordinance, have power to regulate its own procedure including the fixing of places and times of its sittings,.

(2) If there is a difference of opinion among the members of the Board in respect of any matter coming before it for decision under this Ordinance, the opinion of the majority shall prevail ;

Provided that where there is no such majority the opinion of the Chairman shall prevail.

(3) The Board may authorize any of its members to exercise any of its powers under section 78 and any order made or act done in exercise of any such power by the member so authorized shall be deemed to be the order or act, as the case may be, of the Board.

(4) No act done or proceeding taken by the Board under this Ordinance shall be questioned on the ground merely of the exercise of any vacancy in, or defect in the constitution of the Board.

(5) The Board shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal procedure, 1898, and all proceedings before the Board shall be deemed to be judicial

proceedings within the meaning of sections 193 and 228 of the Penal Code.

(6) No member of the board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

Delivery of books to Public Libraries

47(1) Subject to any rules that may be made under this Ordinance, but without prejudice to the provisions contained in section 24 of the Printing Presses and Publications (Declaration and Registration) Act, 1973 (XXIII of 1973), the publisher of every book published in Bangladesh after the commencement of this Ordinance, shall, notwithstanding any agreement to the contrary, deliver at his own expense, one copy of the book to each of the four public libraries within thirty days from the date of its publication.

(2) The copy delivered to the National Library of Bangladesh shall be a copy of the whole book with all maps and illustrations belonging thereto finished and coloured in the same manner as the best copies of the same, and shall be bound, sewed or stitched together and on the best paper on which any copy of the book is printed.

(3) The copy delivered to any other public library shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(4) Nothing contained in sub-section (1) shall apply to any second or subsequent edition of a book in which edition no additions or alterations either in the letter press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or any other edition of which book has been delivered under this section.

Delivery of newspapers to Public Libraries

48. Subject to any rules that may be made under this Ordinance,

but without prejudice to the provisions contained in section 26 of the Printing Presses and Publications (Declaration and Registration) Act, 1973 (XXIII of 1973), the publisher of every newspaper published in Bangladesh shall deliver at his own expense one copy of each issue of such newspaper as soon as it is published to each of the four public libraries.

Receipt for books delivered

49. The person in charge of a public library (whether called a librarian or any other name) or any other person authorized by him in this behalf to whom a copy of a book is delivered under section 47 shall give to the publisher a receipt in writing therefor,

Penalty

50. Any publisher who contravenes any provision of this chapter or of any rule made thereunder shall be punishable with fine which may extend to fifty taka and if the contravention is in respect of a book, shall also be punishable with the fine which shall be equivalent to the value of the book and the court trying the offence may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to the public library to which the book or newspaper, as the case may be, ought to have been delivered.

Cognizance of offences under this chapter

51. (1) No court shall take cognizance of any offence punishable under this chapter save on complaint made by an officer empowered in this behalf by the Government by a general or special order.

(2) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this chapter.

Application of this chapter, books and newspapers published by Government

52. This Chapter shall also apply to books and newspapers published by or under the authority of the Government, but shall not apply to books meant for official use only.

Provision as to works of certain international organization

53. (1) The Government may, by notification in the official Gazette, declare that this section shall apply to such organizations, as may be specified therein of which one or more sovereign powers or the Government or Government thereof are members.

(2) Where—

- (a) any work is made or first published by or under the direction or control of any organization to which this section applies ; and
- (b) there would, apart from this section, be no copyright in the work in Bangladesh at the time of the making or, as the case may be, of the first publication thereof ; and
- (c) either—
 - (i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright if any, in the work, or
 - (ii) under section 13 any copyright in the work would belong to the organization ;

there shall subsist copyright in the work throughout Bangladesh.

(3) Any organization to which this section applies which at the material time had not the legal capacity of a body corporate shall have, and be deemed at all material times to have had, the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

Powers to extend copyright foreign works

54. The Government may, by order published in the official Gazette, direct that all or any of the provisions of this ordinance shall apply—

- (a) to works first published in a foreign country to which the order related in like manner as if they were first published within Bangladesh ;
- (b) to unpublished works, or any class thereof, the authors whereof were at the time of making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of Bangladesh ;
- (c) in respect of domicile in a foreign country to which the order relates in like manner as if such domicile were in Bangladesh ;
- (d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order related in like manner as if the author was a citizen of Bangladesh at the date of time ;

and thereupon, subject to the provisions of this chapter and of the order, this ordinance shall apply accordingly ;

Provided that—

- (i) before making an order under this section in respect of any foreign country (other than a country with which Bangladesh has entered into a treaty or which is a party to a convention relating to copyright to which Bangladesh is also a party), the Government shall be satisfied that foreign country has made or has undertaken to make such provisions, if any, as it appears to the Government expedient to require for the protection in that country, of works entitled to copyright under the provisions of this Ordinance ;
- (ii) the order may provide that the provisions of this Ordinance shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order ;

- (iii) the order may provide that the term of copyright in Bangladesh shall not exceed that conferred by the law of the foreign country to which the order relates ;
- (iv) the order may provide that the provisions of this Ordinance as to delivery of copies of books to public libraries shall not apply to works first published in such foreign country except so far as is provided by the order ;
- (v) in applying the provisions of this Ordinance as to ownership of copyright the order may make such modification as appears necessary, having regard to the law of the foreign country ;
- (vi) the order may provide this Ordinance or any part thereof shall not apply to works made, or first published before the commencement of this order.

Power to restrict right in works of foreign authors first published in Bangladesh

55. If it appears to the Government that a foreign country does not give, or has not undertaken to give, adequate protection to the works of Bangladesh authors, the government may, by order published in the official Gazette, direct that such of the provisions of this ordinances as confer copyright on works first published in Bangladesh shall not apply to works, published after the date specified in the order the authors whereof are subjects or citizens of such foreign country and are not domiciled in Bangladesh, and thereupon those provisions shall not apply to such works.

The copyright infringed

56. Copyright in a work shall be deemed to be infringed—

- (a) when any person, without the consent of the owner of the copyright or without licence granted by such owner or the Registrar under this Ordinance or in contravention

of the conditions of a licence so granted or of any condition imposed by a competent authority under this Ordinance.

- (i) does anything, the exclusive right to do which is by this ordinance conferred upon the owner of the copyright ; or
 - (ii) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware, and had no reasonable ground for suspecting, that such performance would be an infringement of copyright ; or
 - (b) when any person
 - (i) makes for sale or hire, or sells or lets for hire or by way trade displays or offers for sale or hire ; or
 - (ii) distributes either for the purpose of trade to such an extent as to affect prejudicially the owner of the copyright ; or
 - (iii) by way of trade exhibits in public ; or
 - (iv) imports into Bangladesh.
- any infringing copies of the work.

Explanation—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematographic work shall be deemed to be an “infringing copy”.

Certain acts not to be infringement of copyright

57. (1) The following acts shall not constitute an infringement of copyright, namely :

- (a) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of—
 - (i) research for private study ;
 - (ii) criticism or review, whether of that work or of any other work ;

- (b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events—
 - (i) in a newspaper, magazine or similar periodical ; or
 - (ii) by broadcast or in a cinematographic work or by means of photograph ;
- (c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of judicial proceeding ;
- (d) the publication in a newspaper of a report of an address of political nature delivered at a public meeting unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given and, except whilst the building is being used for public worship, in a position near the lecture ; but nothing in this clause shall affect the provisions as to newspaper summaries ;
- (e) the reproduction of any literary, dramatic, or musical work in the certified copy made or supplied in accordance with any law for the time being in force ;
- (f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work ;
- (g) the publication in a collection, mainly composed of non-copyright matter, bonafide intended for the use of educational institutions and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists ;

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years ;

Explanation—In the case of a work of joint authorship references in this clause to passages from works shall include references to passages from works by any one or more of the authors or those passage: or by any one or more of those author's in collaboration with any other person.

(h) The production or adaptation of a literary, dramatic, musical or artistic work—

(i) in the course and for the sole purpose of instruction whether at an educational institution or elsewhere where the reproduction or adaptation is made by a teacher or a pupil otherwise than by the use of a printing process ; or

(ii) as part of the questions to be answered in an examination.
or

(iii) in answers to such questions :

(i) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematographic work or a record, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution. ;

(j) the making of records in respect of any literary, dramatic or musical work, if—

(i) records recording the work have previously been made by or with the licence or consent of the owner of the copyright in the works ; and

(i) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Board in this behalf.

Provided that in making the records such person shall not make any alterations in, or omissions from, the work, unless records recording the work subject to similar alterations and, omissions have

been previously made by, or with the licence or consent of the owner of the copyright, or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the records in question ;;

- (k) the causing of a recording embodied in a record to be heard in public utilising the record.
 - (i) at any premises where persons reside, as part of the amenities provided exclusively or mainly or residents therein, or
 - (ii) as part of the activities of a club, society or other organisation which is not established or conducted for profit ;
- (l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious, charitable or educational institution.
- (m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the owner of copyright of such article has expressly reserved to himself the right of such reproduction ;
- (n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered to public ;
- (o) the making of not more than three copies of a book (including a pamphlet, sheet of music, tape, disc, recording, map, chart or plan) by or under the direction of the person in charge of a public library or a non-profit library available for use by the public free of charge or a library attached to an educational institution for the use of such library if such book is not available for sale ;
- (p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access.

Provided that where the identity of the author of any such work, or in the case of a work of joint authorship, of any of the authors, is known to the library, museum or other institution as the case may

be, the provision of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known, from the death of such one of those authors who dies last ;

(q) the reproduction or publication of—

(i) any matter which has been published in any official Gazette, or the report of any committee, commission, council, board or other like body appointed by the Government unless the reproduction or publication of such matter or report is prohibited by the Government ;

(ii) Any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgement or order is prohibited by the court, tribunal or other judicial authority, as the case may be ;

(r) the making or publishing of a painting, drawing, engraving or photograph of an architectural work of art ;

(s) the making or publishing of a painting, drawing, engraving or photograph of a sculpture or other artistic work if such work is permanently situate in a public place or any premises to which the public has access ;

(t) the inclusion in a cinematographic work of—

(i) any artistic work permanently situate in a public place or any premises to which the public has access ; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the work ;

(u) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the works

Provided that he does not thereby repeat or imitate the main design of the work ;

- (v) the making of an object of any description in three dimensions of an artistic work in two dimensions, if the object would not appear, to persons who are not expert relation to objects of that description, to be a reproduction of the artistic work ;
- (w) the reconstruction of building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed ;

Provided that the original construction was made with the content or licence of the owner of copyright in such drawings or plans ;

- (x) in relation to a literary, dramatic or musical, work recorded or reproduced in any cinematographic work, the exhibition of such work after the expiration of the term of copyright therein :

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (f) (g) (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgement,

- (i) identifying the work by its title or other descriptions ; and
- (ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

Explanation—For the purposes of clause (a) or clause (b) of this sub-section—

- (i) in relation to a literary or dramatic work in prose : a single extract up to four hundred words, or a series of extracts (with comments interposed) upto a total of eight hundred words with no one extract exceeding three hundred words ; and
- (ii) in relation to a literary, or dramatic work in poetry, an extract or extracts upto a total of forty lines and in no case exceeding one-fourth of the whole of any poem may be deemed to be fair dealing with such work ;

Provided that in a review of a newly published work, reasonably longer extracts may be deemed fair dealing with such work.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic musical or artistic work as they apply in relation to the work itself.

Importation of infringing copies

58 (1) The Registrar, on application by the owner of copyright in any work or by his duly authorized agent and on payment of the prescribed fee, may after making such enquiry as he deems fit, order that copies made out of Bangladesh of the work which if made in Bangladesh would infringe copyright shall not be imported.

(2) Subject to any rules that may be made under this Ordinance, the Registrar or any person authorised by him in this behalf may enter any ship, vehicle, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies,

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the bringing into Bangladesh has been prohibited or restricted under section 16 of the custom Act, 1969 (IV of 1969), and all the provisions of that Act shall have effect accordingly.

Definition

59. For the purposes of this chapter, unless the context otherwise requires, the expression "owner of copyright" shall include—

- (a) an exclusive licensee ;
- (b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author

and the publisher or is otherwise established to the satisfaction of the Board by that author or his legal representatives.

Civil remedies for infringement of copyright

60. (1) Where copyright in any work which has been registered under this Ordinance or is otherwise deemed to have complied with the formalities of registration has been infringed, the owner of the copyright shall, except as otherwise provided by this Ordinance, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right :

Provided that if the defendant proves that at the date of the infringement he was not aware that copyright subsisted in the work and he had reasonable ground for believing that copyright did not subsist in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical, or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case on an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

Protection of separate rights

61. Subject to the provisions of this Ordinance, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to this Ordinance and may

individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit or proceeding.

Author's special rights

62 (1) Notwithstanding that the author of a work may have assigned or relinquished the copyright in the work, hee shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of any distortion, mutilation or other modification of the said work, or any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2) The right conferred upon an author of a work by sub-section (i) other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

Right of owner against persons possessing or dealing with infringing copies

63. All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof :

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves—

- (a) that he was not aware that copyright subsisted in the work and he had reasonable ground for believing that copyright did not subsist in the work of which such copies are alleged to be infringing copies : or
- (b) that he had reasonable ground for believing that such copies or plates do not involve infringement of the copyright in any work.

Restriction on remedies to the case of works of architecture

64. (1) Where the construction of a building or other structure which infringes or which, if completed would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2) Nothing in section 63 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

Jurisdiction of court and limitation

65. (1) Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the court of the District Judge

(2) Where all the parties to a suit or other proceeding regarding infringement of copyright, in any work agree in writing that the suit or proceeding, as the case may be, be referred to the decision of the Board, the suit or other proceeding shall, notwithstanding anything contained in sub-section (1) be referred to the Board for decision, and no court or other tribunal shall hear, try or entertain such suit or proceeding.

(3) The decision of the Board in any matter referred to it for decision under sub-section (2) shall, subject to the provisions as to appeal be final, and shall be executed in the manner provided in section 79.

Offences of infringement of copyright or other rights conferred by this Ordinance

66. Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Ordinance, shall be punishable, with fine which may extend to five thousand taka or with imprisonment which may extend to two years, or with both.

Explanation—Construction of a building or other structure which infringes or which, of completed, would infringe the copyright in some other work, shall not be an offence under this section.

Possession of plates for purpose of making infringing copies

67. If any person knowingly makes or has in possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which may extend to five thousand taka or with imprisonment which may extend to two years, or with both.

**Penalty for making false entries in the Register, etc.
or producing or tendering false evidence**

68. Any person who,—

- (a) makes or cause to be made a false entry in the Register of Copyrights, or
- (b) makes or causes to be made a writing falsely purporting to be a copy of any entry in the Register, or
- (c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

shall be punishable with fine which may extend to five thousand taka or with imprisonment which may extend to two years, or with both.

**Penalty for making false statements for the purpose of
deceiving or in influencing any authority or officer**

69. Any person who,—

- (a) with a view to deceiving any authority or officer in the performance of any of his functions under any of the provisions of this Ordinance, or

- (b) with a view to inducing or influencing the doing or omission of anything in relation to this Ordinance or any matter thereunder.

makes a false statement or representation knowing the same to be false, shall be punishable, with fine which may extend to five thousand taka or with imprisonment which may extend to two years, or with both.

False attribution of authorship etc. whosoever

70. Whosoever—

(1) inserts or affixes the name of any person in or on a work of which that person is not the author, or in or a reproduction of such a work, in such a way as to imply that such person is the author of the work ; or

(2) publishes, or sells or lets for hire, or by way of trade offers, exposes for sale or hire, or by way of trade exhibits in public a work in or on which the name of a person has been inserted or affixed in such a way as to imply that such person is the author of the work, or the publisher of the work, who to his knowledge is not the author or the publisher, as the case may be of such work ; or (3) does any of the acts mentioned in clause (2) in relation to, or distributes, reproductions of a work, being reproductions in or on which any persons name has been inserted or affixed in such a way as to imply that such person is the author of the work, who to his knowledge is not the author of such work, or performs in public, or broadcasts the work as being the work of a particular authors, who to his knowledge is not the author of such work ; shall be punishable with fine which may extend to five thousand taka, or with imprisonment which may extend to two years, or with both.

Offence by companies

71. (1) Where any offence under this Ordinance has been committed by 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 such offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any person liable to any punishment, 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.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Ordinance has been committed by company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

- (a) “company” means any body corporate and includes a firm or other association of persons ; and
- (b) “director” in relation to a firm means a partner in the firm.

Cognizance of offence

72. No court inferior to that of a Magistrate of the first class shall try any offence under this Ordinance.

Power of the court to dispose of infringing copies or places for purpose of making infringing copies

73. The court before which any offence under this Ordinance is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purposes of making infringing copies, be destroyed or delivered to the owner of the copyright or otherwise dealt with as the court may think fit.

Power of police to seize infringing copies

74. (1) Where a Magistrate has taken cognizance of any offence under section 72 in respect of the infringement of copyright in any work it shall be lawful for any police officer not below the rank of sub-inspector to seize with warrant from the Magistrate all copies of the work which appears to him to be infringing copies of the work and all copies to be seized shall as soon as practicable be produced before the Magistrate :

Provided that no such copy as is owned by any public library, or a library attached to an educational institution or a non-profit library available for use by the public free of charge or is in the possession of any person for his bonafide use shall be seized.

(2) Any person having an interest in any copies of a work seized under sub-section (1), may within fifteen days of such seizure make an application to the Magistrate for such copies being restored to him and the Magistrate after hearing the applicant and the complainant and making such further inquiry as may be necessary shall make such order on the application as he may deem fit.

Appeals against certain orders of Magistrate

75. Any person aggrieved by an order made under section 73 or sub-section (2) of section 74 may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

Appeals against orders of Registrar

76. Any person aggrieved by any final decision or order of the Registrar may, within three months from the date of the decision or order, appeal to the Board.

Provided that the Registrar shall not sit as a member of the Board when the Board hears an appeal under this section.

Appeals against order of the Board

77. (1) Any person aggrieved by any final decision or order of the Board, not being a decision or order made in an appeal under section 76 may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily reside or carries on business or personally works for gain ;

Provided that no such appeal shall be against a decision of the Board under sub-section (2) of section and sub-section (2) of section 6.

2. In calculating the period of three months provided for an appeal under section 76 and sub-section (1), the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

Registrar and Board to possess certain powers of civil court

78. The Registrar and the Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908 in respect of the following, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of any document ;

(c) receiving evidence on affidavits ;

(d) issuing commissions for the examination of witnesses or documents ;

(e) requisitioning any public record or copy thereof from any court or office ;

(f) any other matter of procedure which may be prescribed.

Explanation—For the purposes of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar or the Board, as the case may be, shall be the whole of Bangladesh.

**Order for payment of money passed by Registrar or Board
to be executable as a decree**

79. Every order made by the Registrar or the Board under this Ordinance for the payment of any money or by the High Court division in any appeal against any such order of the Board shall, on a certificate issued by the Registrar, the Board or the Registrar or the High Court Division as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

Indemnity

80. No suit or other legal proceeding shall be against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance.

Certain persons to be public servants

81. Every officer appointed under this Ordinance and every member of the Board shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.

Powers to make rules

82. (1) The Government may, after previous publication, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, the rules may provide or all or any of the following, namely :—

- (a) the term of office and conditions of service of the Chairman and other members of the Board ;
- (b) the form of complaints and applications to be made, and the licences to be granted, under this Ordinance ;
- (c) the procedure to be followed in connection with any proceeding before the Registrar or the Board ;
- (d) the manner of determining any royalties payable under this Ordinance, and the security to be taken for the payment of such royalties ;
- (e) the form of Register of Copyrights to be kept under this Ordinance and the particulars to be entered therein ;

- (f) the matters in respect of which the Registrar and the Board shall have powers of a civil court ;
- (g) the fees which may be payable under this Ordinance ;
- (h) the regulation of business of the Copyright Office and of all things by this Ordinance placed under the direction or control of the Registrar.

Repeal

83. The Copyright Act, 1914 and the Copyright Act of 1911 passed by the Parliament of the United Kingdom, as modified in its application to Bangladesh by the Copyright Act, 1914, are hereby repealed.

Savings and transitory provisions

84. (1) Where any person has, before the commencement of this ordinance, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction would, but for the coming into force of this Ordinance, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such actions which are subsisting and valuable at the said date, unless the person who, by virtue of this Ordinance, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Board.

(2) Copyright shall not subsist by virtue of this Ordinance in any work in which copyright did not subsist immediately before the commencement of this Ordinance under any Act repealed by section 83.

(3) Where copyright subsisted in any work immediately before the commencement of this Ordinance, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in section 3 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section the owner of such rights shall be—

- (a) in any case where copyright in the work was wholly assigned before the commencement of this Ordinance, the assignee or his successor-in-interest ; and
- (b) in any other case, the person who was the first owner of the copyright in the work under any act repealed by section 83 or his legal representatives ;

4. Except as otherwise provided in this Ordinance, where any person was entitled immediately before the commencement of this Ordinance to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Ordinance had not come into force.

(5) Nothing contained in this ordinance shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

SHORT NOTE

Infringement of Copyright is an offence punishable under section 66 of the Copyright Ordinance, 1962.

Section 13 of the ordinance provides that the author of a work shall be the first owner of the copyright therein ; Provided that,—

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper magazine or similar periodicals, the said proprietor shall in the absence of any agreement to the contrary, be the owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published but in all other respects the author shall be the first owner of the copyright in the work ;

- (b) subject to the provision of clause (a) in the case of photograph taken, or a painting or portrait drawn, or an engraving or a cinematographic work made, for valuable consideration at the instance of any person, such persons shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;
- (c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship to which clause (a) or clause (b) does not apply the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;
- (d) in the case of a Government work Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;
- (e) in the case of a work to which the provision of section 53 apply, the international organisation concerned shall be the first owner of the copyright therein.

However, Section 57(1) (m) of the Ordinance lays down that it is not infringement of copyright if there is a reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topic unless the owner of copyright of such article has expressly reserved to himself the right to such reproduction³

CHAPTER XIII

LAW ON OFFICIAL SECRETS

THE OFFICIAL SECRETS ACT, 1923

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PREAMBLE

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Act No. XIX of 1923**Preamble.**

An Act to consolidate and amend the law in Bangladesh relating to official secrets.

WHEREAS it is expedient that the law relating of official secrets in Bangladesh should be consolidated and amended ;

It is hereby enacted as follows :—

1. Short title, extent and application

(1) This Act may be called the Official Secrets Act, 1923.

(2) It extends to the whole of Bangladesh and applies also to all citizens of Bangladesh and persons in the service of the Republic wherever they may be.

2. In this Act, unless there is any thing repugnant in the subject or context,—

(1) any reference to a place belonging to Govt. includes a place occupied by any department of the Government whether the place is or is not actually vested in Government.

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received ;

expression referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document ; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document ;

(6) “Offices under Government” includes any office or employment in or under any department of the Government ;

(7) "Photograph" includes an undeveloped film or plate ;

(8) "prohibited place" means

- (a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, Government, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any amunitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war ;
- (b) any place not belonging to Government where any amunitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, Government, or otherwise on behalf of Government ;
- (c) any place belonging to or used for the purpose of Government which is for the time being declared by the Government, by notification in the official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to any enemy, and to which a copy of the notification in respect thereof has been affixed in English and in Bengali ;
- (d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any amunitions of war or any sketches, models

plans, or documents relating thereto, are being made, repaired or stored otherwise than on behalf of Government, which is for the time being declared by the Government, by notification in the official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and Bengali :

Provided that where for declaring a prohibited place under sub-clause (c) or sub-clause (d) a notification in the official Gazette is not considered desirable in the interest of the security of the state, such declaration may be made by an order a copy or notice of which shall be prominently displayed at the point of entry to or a conspicuous place near, the prohibited place."

- (9) "Sketch" includes any photograph or other made of representing any place or thing ; and
- (10) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Government.

Penalties for spying

3.—(1) If any person for any purpose prejudicial to the safety or interests of the state—

- (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place ; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy ; or
- (c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or

other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy ;

he shall be guilty of an offence under this section.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the state, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the state ; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the state, such sketch, plan, model, article, note, documents or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the state.

(3) A person guilty of an offence under this section shall be punishable,—

- (a) where the offence, committed is intended or calculated to be, directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval military or air force affairs of Bangladesh or in relation to any secret official code with death, or with

imprisonment for a term which may extend to fourteen years ; and

- (b) in any other case with imprisonment for a term which may extend to three years.

3A Restriction against photographs, sketches, etc. of prohibited and notified areas

(1) No person shall, except under the authority of a written permit granted by or on behalf of the Government make any photograph, sketch, plan, model, note or representation of any kind of any prohibited place or of any other place or area, noticed by Government as a place or area, with regard to which such restriction appears to Government to be expedient in the interests of the security of Bangladesh or of any part of or object in any such place or area.

(2) The Government may, by general or special order make provision for securing that no photograph, sketch, plan, model, note or representation of any kind made under the authority of a permit granted in pursuance of sub-section (1) shall be published unless and until the same has been submitted to and approved by such authority or person as may be specified in the order, and may retain or destroy or otherwise dispose of anything so submitted.

(3) If any person contravenes any of the provisions of this section he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

4. Communications with foreign agents to be evidence of commission of certain offences

(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, foreign agent, whether within or without Bangladesh shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety of interests of the state, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

- (a) a person may be presumed to have been in communication with a foreign agent if—
 - (i) he has, either within or without Bangladesh visited the address of a foreign agent or consorted or associated with a foreign agent, or
 - (ii) either within or without Bangladesh, the name or address, of or any other information regarding, a foreign agent has been found in his possession or has been obtained by him from any other person ;
- (b) the expression “foreign agent” includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without Bangladesh prejudicial to the safety or interests of the state, or who has or is reasonably suspected of having, either within or without Bangladesh, committed or attempted to commit, such an act in the interests of a foreign power ;
- (c) any address, whether within or without Bangladesh in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. Wrongful communication etc., of information

(1) If any person having in his possession of control any secret official code or pass word or any sketch, plan, model, article, note,

document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as person who is or has been employed under a person who holds or has held such an office or contract—

- (a) wilfully, communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the state, his duty to communicate it ; or
- (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the state ; or
- (c) retains the sketch, plan, model, article, note or document in his possession or control when he has not right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof ; or
- (d) fails to take reasonable care of, or so conducts himself as to endanger the safety or, the sketch, plan, model, article, note, document, secret official code or pass word or information ;

he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in

contravention of this Act, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable,—

- (a) where the offence committed is a contravention of clause (a) of sub-section (1) and intended or calculated to be directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Bangladesh or in relation to any secret official code with death, or with imprisonment of a term which may extend to fourteen years ; and
- (b) in any other case, with imprisonment for a term which may extend to two years, or with fine, or with both—

6. Unauthorised use of uniforms ; falsification of reports, forgery, personation, and false documents

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the state—

- (a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform ; or
- (b) orally, or in writing in any declaration or application or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission ; or
- (c) forges, alters, or tampers with any passport or any naval, military, air force, or official pass, permit, certificate,

licence, or other document of a similar character, (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document ; or

- (d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement ; or
- (e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval military or air force authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp.

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the state—

- (a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof, or

- (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself or, on obtaining possession of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer ; or
- (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid ;

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the state, to any prosecution for an offence under this section relating to the naval military or air force affairs of Government or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the state, to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

7. Interfering with officers of the police or members of the armed forces of Bangladesh

(1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of the armed forces of Bangladesh engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

8. Duty of giving information as to commission of offences

(1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police officer not below the rank of Inspector, empowered by the Inspector General of Police or, in the Dhaka Metropolitan area, the Police Commissioner * * * in this behalf, or to any member of the armed forces of Bangladesh engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

9. Attempts, incitements etc.

Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

10. Penalty for harbouring spies

(1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

(2) It shall be the duty of every person having harboured any such person as aforesaid or permitted to meet or assemble in any premises in his occupation or under his control any such persons as

aforesaid, to give on demand to a Superintendent of Police or other a police officer not below the rank of Inspector powered by the Inspector General of Police or, in the Dhaka Metropolitan area, the Police Commissioner in his behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

11. Search warrants

(1) If a ** Magistrate of the first class or Sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the state immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police officer under subsection (2) he shall, as soon as may be, report such action, *** to the District or Sub-divisional Magistrate.

12. Power to arrest

Notwithstanding anything in the Code of Criminal Procedure,
1898— *** *** ***

- (b) an offence under this Act, other than an offence punishable with imprisonment for a term which may extend to fourteen years, shall be a cognizable and bailable offence ; and
- (c) any member of the armed forces of Bangladesh may, without an order from a Magistrate and without a warrant, arrest in or in the vicinity of a prohibited place, any person who has been concerned in an offence under section 3, or under section 3 read with section 9 or under clause (a) or clause (b) of sub-section 5, (1) of section 5, or under clause (a) of sub-section (I) of section 6, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, and shall without unnecessary delay take or send the person arrested before a Magistrate having jurisdiction in the case or before an officer in charge of a police-station, and thereupon the provisions of the said code applicable in respect of a person who, having been arrested without warrant, has been taken or sent before a Magistrate or before an officer in charge of a police-station shall apply to him.

13. Restriction on trial of offences

(1) No Court other than that of a Magistrate of the first class specially empowered in this behalf by the Government which is inferior to that of a District Magistrate shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not

discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from the Government or some officer empowered by the Government in this behalf.

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in Bangladesh in which the offender may be found.

(6) The Government may if it thinks fit, by general or special order direct that the procedure for the trial of an offence under section 3, or under section 3 read with section 9, or under clause (a) or clause (b) of sub-section (1) of section 5, or under clause (a) of sub-section (1) of section 6 shall be that prescribed for offence under the Enemy Agents Ordinance, 1943, or under the Bangladesh Criminal Law Amendment Act, 1958 (XL of 1958).

14. Exclusion of public from proceedings

In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the state, that all or any portion of the public shall be excluded during any part of the hearing the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

15. Offences by companies etc.

Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence.

16. Repeals Rep. by the Repealing Act, 1927 (XII of 1927) S. 2 and Schedule.**SHORT NOTES**

It is an act which consolidates the law relating to official secret and deals with offences like spying and wrongful communication of secret information. Section 3 of the Act makes it an offence if any person for any purpose prejudicial to the public safety and the interests of the state—(a) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place ; or (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy ; or (c) obtains, collects, records or publishes or communicates to any other person any sketch, plan, model, article or note or document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy. In a prosecution for an offence punishable under s. 3(1) of the Act, with imprisonment for a term which may extend to 14 years, it is not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the state, and notwithstanding that no such act is proved against him, he may be convicted, if from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the state ; and if any sketch, plan, model, article, not documents, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting

under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interest of the state. Under section 5, which is another important section, it is an offence if any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, or note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of the Act or which has been entrusted in confidence to him by any person holding a governmental office, wilfully communicates the same to any person other than a person to whom he is authorised to communicate or it is his duty to communicate. Further, the section makes it an offence if any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information, knowing or having reasonable ground to believe, at the time when he receives it, that the same has been communicated in contravention of the Official Secret Act. Any publication by a newspaper of an official secret, whether in the form of a note, documents, code or pass word, sketch, plan or model, makes not only the correspondent, editor, printer and publisher, liable to punishment but also every director and officer of the company or corporation with whose knowledge and consent the offence was committed become guilty of a like offence. Undoubtedly, the sweep of this section is very wide. Yet another important section is 14. Under this section powers have been vested in the courts in addition and without prejudice to any powers which a court may possess to exclude all or any portion of the public from any proceeding by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the state. Obviously, under this provision in cases of the nature mentioned therein, even the newspaper reporters may be excluded from the court proceedings.

CHAPTER—XIV

Laws on forfeiture, stoppage and Interception of Newspaper and other restrictions on them.

- (1) Special Power Act, 1974.
- (2) Criminal Procedure Code.
- (3) Telegraph Act, 1885.
- (4) Post Office Act.
- (5) The Children Act, 1974.
- (6) The Indecent Advertisements Prohibition Act, 1963.

SPECIAL POWER ACT

Section 2(6), 16 and 18.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

* * * * *

- (f) “prejudicial act” means any act which is intended or likely—
- (i) to prejudice the sovereignty or defence of Bangladesh ;
 - (ii) to prejudice the maintenance of friendly relations of Bangladesh with foreign states ;
 - (iii) to prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order ;
 - (iv) to create or excite feelings of enmity or hatred between different communities, classes or sections of people ;
 - (v) to interfere with or encourage or incite interference with the administration of law or the maintenance of supplies and services essential to the community ;
 - (vii) to cause fear or alarm to the public or to any section of the public ;
 - (viii) to prejudice the economic or financial interests of the state ;

(g) "Prejudicial report" means any report, statement or visible representation, whether true or false, or the publishing of which, is, or is an incitement of the commission of, a prejudicial act ;

(h) "Prescribed" means prescribed by rules made under this Act.

16. *Prohibition of prejudicial acts, etc.* (1) No person shall—

(a) do any prejudicial act ; or

(b) make, print, publish, possess or distribute any document containing, or spread by any other means whatsoever, any prejudicial report.

(2) The author, editor, printer and publisher of, and any person who otherwise makes or produces, any prejudicial report and any person who distributes or sells any report of that nature knowing it to be of such nature, shall be deemed to have contravened the provision of this section.

(3) If any person contravenes any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both :

Provided that in any proceedings arising out of a contravention of this section—

(a) in relation to the making or printing of any document, it shall be a defence for the accused to prove that the said document was made or printed, as the case may be,—

(i) with the permission or under the authority of Government, or

(ii) as a proof intended for submission to Government or to a person or authority designated by Government in this behalf with a view to obtaining permission for its publication ;

(b) in relation to the publication of any document, it shall be a defence for the accused to prove that the said document was published with the permission or under the authority of Government.

17. *Proscription etc. of certain documents.*—(1) The Government, if satisfied that any document made, printed or published, whether before or after the commencement of this Act, contains any prejudicial report may by order —

- (a) require the editor, printer, publisher or person in possession of such document to inform the authority specified in the order of the name and address of any person concerned in the making of such report ;
- (b) require the delivery of such document and any copy thereof to an authority specified in the order ;
- (c) prohibit the further publication, sale or distribution of such document or any extract therefrom or of any translation thereof, including, in the case of a newspaper or other periodical, the publication, sale or distribution of any subsequent issue thereof ;
- (d) declare such document and every copy or translation thereof or extract thereof to be forfeited to Government ;
- (e) require the editor, printer, publisher or the keeper of the press to furnish security for such amount not exceeding twenty-five thousand taka as, as the Government thinks reasonable.

(2) Where an order has been made under sub-section (1), the authority making the order shall, as soon as may be, communicate to the person affected thereby the grounds on which the order has been made to enable him to make a representation against the order, and it shall be the duty of such authority to inform such person of his right of making such representation and to afford him the earliest opportunity of doing so :

Provided that nothing in this sub-section shall require the authority to disclose the facts which it considers to be against the public interest to disclose.

(3) Where in pursuance of sub-section (1) (b) any document is required to be delivered to a specified authority, that authority may

enter upon and search any premises wherein such document or any copy thereof is or is reasonably suspected to be, but such authority shall not so enter after sunset and before sunrise.

(4) Where in pursuance of sub-section (1) (d) any document has been declared to be forfeited to Government, any police officer may seize any copy thereof, and any Magistrate may, by warrant, authorise any police officer not below the rank of Sub-Inspector to enter upon and search any premises whereon or wherein such document or any copy thereof is or is reasonably suspected to be, but such police officer shall not so enter after sunset and before sunrise.

(5) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(6) If, after the furnishing of security under sub-section (1) (e), any document is made, printed or published containing any prejudicial report, the Government may, without prejudice to any other penalty to which the person guilty of making, printing or publishing such document is liable and after giving the person concerned an opportunity of being heard, declare such security, or any person thereof, to be forfeited to it.

18. *Regulation of publication of certain matters.—*

(1) Where the government is satisfied that in the interests of the security of Bangladesh, friendly relations of Bangladesh with foreign states, or public order, it is necessary so to do, it may, by order addressed to a printer, publisher or editor, or printers, publishers, editors generally require that all matters, relating to a particular subject or class of subjects affecting the security of Bangladesh, friendly relations of Bangladesh with foreign states, or public order shall, before being published in any document or class of document be submitted for security to any authority specified in the order, who shall, within seventy two hours of its submission, either approve of or prohibit its publication whereof has been so prohibited shall be published.

(2) Any person affected by an order under sub-section (1) prohibiting the publication of any matter within seven days of the communication of the order, appeal against it to the Government and the Government shall refer the appeal to the District Judge of the district in which such person resides :

Provided that where appeals against the same order have been made by persons who reside in different districts all such appeals shall be referred to the senior of the District Judges of such districts.

Explanation.—A person shall be deemed to reside in the district in which he ordinarily resides or carries on business or personally works for gain.

(3) The District Judge to whom a reference has been made under sub-section (2) shall, after giving the appellant an opportunity of being heard, consider the appeal as speedily as possible and submit his report together with his recommendations to the Government and the Government shall pass orders on such appeal in accordance with the recommendations of the District Judge.

(4) If any person contravenes any order made under sub-section (1), then, without prejudice to the provision of sub-section (5), the Government may declare to be forfeited to Government every copy of any document published or made in contravention of such order.

(5) If any person contravenes any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

CRIMINAL PROCEDURE CODE

99A (1) Where

(a) any newspaper, or book as defined in the Printing Presses and Publications (Declaration and Registration) Act, 1973 or

Power to declare certain publications forfeited and to issue a search warrant for the same.

(b) any document.

Where-ever printed, appears to the Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred

between different classes of the citizens of Bangladesh of deliberately and maliciously intended to outrage the religious of any such class by insulting the religion or the religious beliefs of that class, that is to say any, matter the publication of which is punishable under section 123A or section 124A or section 153A or section 295 of the Penal Code, the Government may, by notification in the official Gazette, stating the grounds of its opinion declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to government and thereupon any police-officer may seize the same wherever found in Bangladesh and any Magistrate may by warrant authorise any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

99B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the High Court Division to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any treasonable or seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A.

99C. Every such application shall be heard and determined by Special Bench of the High Court Division composed of three Judges.

Hearing by
Special Bench.

99D. (1) On receipt of the application, the Special Bench shall if it is not satisfied that the issue of the newspaper, or the book

Evidence to
prove nature
or tendency of
newspaper.

or other document, in respect of which the application has been made, contained treasonable or seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those Judges.

99E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.

Evidence to
prove nature
or tendency
of newspaper,

99F. The Supreme Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such application, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

Procedure in
High Court
Division.

99G. No order passed or action taken under section 99A shall be called in question in any court otherwise than in accordance with the provisions of section 99B.

Jurisdiction
barred.

THE TELEGRAPH ACT.

Power for Government to take possession of licensed telegraphs and to order interception of messages

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the (Government) or any officer specially authorized in this behalf by the (Government) may,

- (a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act ; or

- (b) order that any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to (the Government making the order) or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, (a certificate of the Central or, as the case may be, the Government) shall be conclusive proof on the point.

THE POST OFFICE ACT.

Power to detain newspapers and other articles being transmitted by Post 27B. (1) Any officer of the Post Office authorised by the Post Master General in this behalf may detain any postal article in course of transmission by post which he suspects to contain,

- (a) (i) any newspaper or book as defined in the Printing Presses and Publications (Declaration and Registration Act, 1973, or
XXIII of 1973
(ii) any document.

containing any treasonable or seditious matter that is to say, any matter the publication of which is punishable under section 123A or section 124A as the case may be, of the penal Code ; or
XIV of 1869

(b) any newspaper as defined in the Printing Presses and Publications (Declaration and Registration) Act, 1973 edited, printed or published otherwise that in conformity with the rules laid down in that Act ;
XXIII of 1973

and shall deliver any postal article so detained to such officer as the government may appoint in this behalf.

(2) Any officer detaining any postal article under the provisions of sub-section (1) shall forthwith send by post to the addressee of such article notice of the fact of such detention.

(3) The Government shall cause the contents of any postal article detained under sub-section (1) to be examined, and if it appears to the government that the article contained any newspaper, book or other document, of the nature described in clause (a) or clause (b) of sub-section (1), may pass such orders as to the disposal of the article and its contents as it may deem proper, and, if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force ;

Provided that any person interested in any article detained under the provisions of clause (a) of sub-section (1) may, within two months from the date of such detention, apply to the government for release of that same, and the government shall consider such application and pass such orders thereon as it may deem to be proper ;

Provided also that, if such application is rejected, the application may, within two months from the date of the order rejecting the application, apply to the High Court Division for release of the article and its contents on the ground that the article did not contain any newspaper, book or other document containing any treasonable or seditious matter.

(4) In this section "document" includes also any painting, drawing or photograph, or other visible representation.

27C. Every application made under the second proviso to sub-section (3) of section 27B shall be heard and determined in this manner provided by section 99D to 99F of the Code of Criminal Procedure, 1898, by a Special Bench of the (High Court Division) constituted in the manner provided by section 99C of that Code.

Procedure for disposal by High Court Division of applications for release of newspapers and articles so detained.

27D. No order passed or action taken under section 27B shall be called in question in any court otherwise than in accordance with the second proviso to sub-section (3) of that section.

Jurisdiction barred.

THE CHILDREN ACT, 1974

Act No. XXXIX of 1974.

1. *Short title and commencement* :—(1) This Act may be called the Children Act, 1974.

2. Definitions

(f) “Child” means a person under the age of sixteen years, and when used with reference to a child sent to a certified institute or approved home or committed by a court to the custody of a relative or other fit person means that child during the whole period of his detention notwithstanding that he may have attained the age of sixteen years during that period

17. *Prohibition on publication of report disclosing identity, etc. of child involved in cases.*—No report in any newspaper, magazine or news-sheet or any news-giving agency shall disclose any particular or any case or proceeding in any court under this Act in which a child is involved and which leads directly or indirectly to the identification of such child, nor shall any picture of such child be published ;

Provided that, for reasons to be recorded in writing, the court trying the case or holding the proceeding may permit the disclosure of any such report, if, in its opinion, such disclosure is in the interest of child welfare and is not likely to affect adversely the interest of the child concerned.

THE INDECENT ADVERTISEMENTS PROHIBITION

ACT, 1963

Act No. XII 1963

18th June, 1963

An Act to prohibit indecent advertisement.

WHEREAS it is expedient to provide for the prohibition of indecent advertisements ;

AND WHEREAS the national interest of **Pakistan** in relation to the achievement of uniformity within the meaning of clause (2) of Article 131 of the Constitution requires Central legislation in the matter ;

It is hereby enacted as follows :—

1.—(1) This Act may be called the Indecent Advertisement Prohibition Act, 1963

(2) It extends to the whole of **Pakistan**.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the Definition subject or context.—

- (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 ;
- (b) “indecent” includes whatsoever may amount to any incentive to sensuality and excitement of impure thought in the mind of an ordinary man of normal temperament, and has the tendency to deprave and corrupt those

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 ;

(c) "taking any part in the publication of any advertisement" includes—

(i) the writing, typing, stamping, drawing, announcing , printing or transmitting of the advertisement ;

(ii) the publication of any advertisement outside **Pakistan** by or, at the instance of a person residing in **Pakistan** ;

(d) "public place" means any place where an advertisement can be seen or heard by members of the public .

3. Subject to the provisions of this Act—

Prohibition against persons advertising displaying, etc., indecent advertisements.

(i) no person shall take any part in the publication of any advertisement which is indecent ; and

(ii) no person having the ownership, possession or control of any property or public place shall knowingly allow any advertisement which is indecent to be displayed on such property or place, or to be

announced therefrom.

4. Whoever contravenes any of the provisions of this Act shall, Penalty. on conviction, be punishable—

(a) in the case of the 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 the fine, or with both.

5. Any person authorised by the Central 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

Confiscation of documents, etc. containing indecent advertisements.

the court trying such contravention may direct that such document (including all copies thereof), article or thing shall be forfeited to the Government.

6. (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 :

Offences by
companies

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.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director manager, secretary or other officer shall of the company, such director, secretary or other officer also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) ‘company’ means any body corporate and includes a firm or other association of individuals, and

(b) ‘director’ in relation to a firm means a partner in the firm.

7. 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.

8. No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

9. Every person authorised under section 5 shall be deemed to be a public servant within the meaning of section 21 of the **Pakistan Penal Code**.

10. 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.

11. The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.

12. If, in the opinion of the Central Government, public interest so requires, it may, by notification in the official Gazette, direct that the provisions of sections 3 shall not apply, or shall apply subject to such conditions as may be specified in the notification to, or in relation to, the advertisement of any specified drug or class of drugs.

13. The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

14. The Karachi Indecent Advertisement Prohibition Act, 1951, and the Punjab Suppression of Indecent Advertisement Act, 1941, are hereby repealed,

CHAPTER—XV

LAWS ON SERVICE CONDITION OF NEWSPAPER EMPLOYEES

1. Newspaper Employees (Conditions of Service) Act, 1974.
2. The Industrial Relations (Regulation) Ordinance, 1982.
3. The Employment of Labour (Standing Orders) Act, 1965.

Act No. XXX of 1974.

An Act to regulate certain conditions of service of newspaper employees.

WHEREAS it is expedient to regulate certain conditions of service of newspaper employees ;

It is hereby enacted as follows :

1. *Short title.*—This Act may be called the Newspaper Employees (Conditions of Service) Act, 1974.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

- (a) “Board” means the Wage Board constituted under section 9;
- (b) “newspaper” means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as the Government may by notification in the official Gazette, declare to be newspaper ;
- (c) “newspaper employees” means a working journalist, an administrative employee or a newspaper press worker ;
- (d) “working journalist” means a person who is a whole-time journalist and is employed as such in or in relation to, any newspaper establishment, and includes an editor, a leader writer, news editor, sub-editor, feature-writer, reporter, corres-

pondent, copy tester, cartoonist, news-photographer, calligraphist and proof-reader ;

- (e) “administrative employee” means a person who is employed on a whole-time basis in, or in relation to, any newspaper establishment in any capacity other than that of a working journalist or a newspaper press worker ;
- (f) “newspaper press worker” means a person who is employed on a whole-time basis in any newspaper establishment for doing any printing work ;
- (g) “newspaper establishment” means an establishment for the printing, production or publication of any newspaper or for conducting any news agency or news or feature syndicate ;
- (h) “prescribed” means prescribed by rules made under this Act ;
- (i) “wages” means all remuneration, capable of being expressed in terms of money, payable to a newspaper employee and, except for the purpose of section 5, includes any gratuity or other sum or payment declared as wages by the Board in its decision published under section 11 ;
- (j) all words and expressions used but not defined in this Act and defined in the Industrial Relations Ordinance, 1969 (XXIII of 1969), shall have the meanings respectively assigned to them in that Ordinance.

3. Industrial Relations Ordinance, 1969 to apply to newspaper employees.—Subject to the other provisions of this Act, the provisions of the Industrial Relations Ordinance, 1969 (XXIII of 1969), shall apply to or in relation to, newspaper employees as they apply to, or in relation to, workers within the meaning of that Ordinance.

4. Letter of appointment.—Every newspaper establishment shall, at the time of appointing a newspaper employee, furnish such newspaper employee a letter of appointment containing—

- (a) his name, father’s name and address ;
- (b) the date and nature of his appointment ; and
- (c) the terms and conditions of his appointment.

5. *Provident Fund*.—(1) Every newspaper establishment shall constitute, for the benefit of its newspaper employees, a provident fund in such manner as may be prescribed.

(2) The provident fund shall be held and administered by a board of trustees consisting of an equal number of representatives of the newspaper establishment constituting the fund and of the newspaper employees employed in it, chosen and appointed in such manner as may be prescribed.

(3) Every newspaper employee shall, after the completion of the first two years of his service with any newspaper establishment subscribe to the provident fund, every month, a sum not less than $6\frac{1}{2}$ per cent and not more than 8 per cent, of his monthly wages, and the employer shall contribute to it an equal amount.

(4) During the first two years of his service, a newspaper employee may or may not, at his option subscribe to the provident fund, and if he so subscribes, the newspaper establishment employing him may or may not, at its option, contribute to it.

(5) A newspaper establishment shall be deemed to be a public institution for the purpose of the Provident Fund Act, 1925 (XIX of 1925).

6. *Hours of work*.—Subject to any rules that may be made under this Act, no newspaper employee shall be required to work in any newspaper establishment for more than forty-eight hours in a week, exclusive of the time for meals.

Explanation.—For the purpose of this section, 'week' means a period of seven days beginning at mid-night on Saturday.

7. *Leave for working journalist*.—Without prejudice to such holiday as may be prescribed, every working journalist shall be entitled to—

- (a) earned leave on full wages for not less than one-eleventh of the period spent on duty ;
- (b) leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service ; and

- (c) ten days' casual leave of absence with wages in a calendar year.

8. *Medical care*.—Every newspaper employee and his dependents shall be entitled to medical care at the cost of the newspaper establishment in such manner and to such extent as may be prescribed.

Explanation.—For the purpose of this section, “dependents” means wife or husband, as the case may be, widowed-mother, invalid parents and legitimate sons and daughters of a newspaper employee residing with and wholly dependent upon him.

9. *Wage Board*.—(1) The Government may, by notification in the official Gazette, constitute a Wage Board for fixing rates of wages in respect of newspaper employees in accordance with the provisions of this Act.

(2) The Board shall consist of a Chairman and an equal number of members to represent the employers in relation to newspaper establishments and newspaper employees, all being appointed by the Government.

10. *Fixation of wages*.—(1) In fixing rates of wages in respect of newspaper employees the Board shall have regard to the cost of living, the prevalent rates of wages of comparable employments, in Government, Corporations and other private sectors, the circumstances relating to the newspaper industry in different regions of the country, and to any other circumstances which to the Board may seem relevant.

(2) The Board may fix rates of wages for time work and for piece work.

(3) That decision of the Board fixing rates of wages shall be communicated as soon as practicable to the Government.

11. *Publication of the decision of the Board*.—(1) The decision of the Board shall, within a period of one month from the date of its receipt and examination by the Government, be published in the official Gazette.

(2) The decision of the Board published under sub-section (1) shall come into operation with effect from such date as may be specified in the decision, and where no date is so specified, it shall come in to operation on the date of its publication and shall remain in force until it is

modified or varied by a later decision of the Board published in the manner provided in sub-section (1).

12. *Powers and procedures of the Board.*—Subject to any rules of procedure which may be prescribed, the Board may, for the purpose of fixing rates of wages, exercise the same powers and follow the same procedure as a Labour Court exercises or follows for the purpose of adjudicating a labour dispute referred to it.

13. *Decision of the Board to be binding on all employers.*—The decision of the Board shall be binding on all employers in relation to newspaper establishments, and every newspaper employee shall be entitled to be paid wages at a rate which shall, in no case, be less than the rate of wages fixed by the Board.

14. *Power of Board to fix interim rates of wages.*—(1) Notwithstanding anything contained in this Act, where the Board is of the opinion that it is necessary so to do, it may by notification in the official Gazette fix interim rates of wages.

(2) Any interim rate of wages so fixed shall be binding on all employers in relation to newspaper establishments, and every newspaper employee shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rate of wages fixed under sub section (1).

(3) Any interim rate of wages fixed under sub-section (1) shall remain in force until the decision of the Board comes in to operation under sub-section (2) of section 11.

15. *Employment of Labour (Standing Orders) Act, 1965, to apply to certain newspaper establishments.*—The provisions of the Employment of Labour (Standing Orders) Act, 1965 (E.P. Act VIII of 1965), shall, subject to the provisions of this Act, apply to every newspaper establishment wherein 20 or more newspaper employees are employed or were employed on any day of the preceding 12 months as if such newspaper establishment were an industrial establishment to which the aforesaid Act applies under sub-section (4) of section 1 thereof, and as if a newspaper employee were a worker within the meaning of that.

16. *Effect of laws and agreements inconsistent with this Act*—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service whether made before or after the coming into force of this Act :

Provided that where under any such award, agreement, contract of service or otherwise, a newspaper employee is entitled to benefits in respect of any matters which are more favourable to him than those to which he would be entitled under this Act, the newspaper employee shall continue to be entitled to the more favourable benefits in respect of that matter notwithstanding that he receives benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude any newspaper employee from entering into an agreement with an employer for granting him rights or privileges in respect of any matters which are more favourable to him than those to which he would be entitled under this Act.

17. *Inspectors*.—(1) The Government may, by notification in the official Gazette, appoint such persons or class of persons as it thinks fit to be inspectors for the purposes of this Act within the local limits as may be assigned to each.

(2) An inspector may, for carrying out the purposes, of this Act, enter into the premises of any newspaper establishment and inspect, examine or seize such record, register or other document relevant to the enforcement of the provisions of this Act and require such explanation from the employer in respect of such record, register or other document and take on the spot or otherwise such evidence of any person as he deems necessary.

(3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Penal Code (XLV of 1860.)

18. *Offences and penalties*.—(1) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall be punishable with fine which may extend to taka 1,000/-

(2) Where the person guilty of an offence under this Act is a company or other body corporate every director, manager, secretary and other officer thereof who is knowingly a party to the offence shall also be guilty of the same offence and liable to the same punishment.

(3) No court shall take cognizance of an offence under this Act except upon complaint made by or with the previous permission, in writing, of an Inspector appointed under section 17.

19. *Indemnity*.—No suit, prosecution or other legal proceedings shall lie against any person or authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

20. *Power to make rules*.—(1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) hours of work of newspaper employees ;
- (b) holidays, earned leave, leave on medical certificate, casual leave or any other kind of leave admissible to newspaper employees ;
- (c) the constitution of provident fund ;
- (d) the constitution of board of trustees for the administration of provident fund ;
- (e) the procedure for regulating the management and administration of provident fund and the conditions subject to which such fund shall operate ;
- (f) the procedure to be followed by the Board in fixing rates of wages ; and
- (g) any other matter which has to be or may be prescribed.

21. *Repeal and Savings*.—(1) The Working Journalists (Conditions of Service) Ordinance, 1960 (XVI of 1960) is hereby repealed.

(2) Notwithstanding such repeal, anything done, any action taken, any rule made under the said Ordinance shall, so far as it is not inconsistent with provisions of this Act, be deemed to have been done, taken or made under the corresponding provision of this Act.

(Published in the Bangladesh Gazette, Extraordinary,
dated the 30th August, 1982).

Government of the People's Republic of Bangladesh
Ministry of Law and Land Reforms

(Law & Parliamentary Affairs Division)

NOTIFICATION

Dhaka, the 30th August, 1982.

No. 509-Pub. —The following Ordinance made by the Chief Martial Law Administrator of the People's Republic of Bangladesh, on the 27th August, 1982, is hereby published for general information :

THE INDUSTRIAL RELATIONS (REGULATION)

ORDINANCE, 1982

Ordinance No. XXVI of 1982.

AN

ORDINANCE

to regulate industrial relations with a view to achieving higher national productivity and maintaining industrial peace and discipline.

Whereas it is expedient to regulate industrial relations with a view to achieving higher national productivity and maintaining industrial peace and discipline ;

Now, Therefore, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf the Chief Martial Law Administrator is pleased to make and promulgate the following Ordinance :—

1. *Short title.*—This Ordinance may be called the Industrial Relations (Regulation) Ordinance, 1982.

2. *Definitions.*—All words and expressions used in this Ordinance shall, unless the context otherwise requires, have the meanings

assigned to them in the Industrial Relations Ordinance, 1969 (XXIII of 1969), hereinafter referred to as the said Ordinance.

3. *Ordinance to over-ride other laws, etc.*—The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument or document.

4. *Determination of collective bargaining agents.* (1) Unless the Government otherwise directs, there shall not be any election for determination of collective bargaining agents under the said Ordinance.

(2) On the expiry of the term of an existing collective bargaining agent in any establishment or group of establishments, or where there is no collective bargaining agent in any establishment or group of establishments, the Registrar shall, upon an application by a registered trade union in such establishment or group of establishments or by the employer concerned, declare any registered trade union in such establishment or group of establishments as collective bargaining agent for such establishment or group of establishments for two years.

(3) No trade union shall be declared as a collective bargaining agent under sub-section (2), unless—

(a) it has as its members not less than one-third of the total number of workers employed in the establishment or group of establishments; and

(b) where there are more registered trade unions than one in the establishment or group of establishments, the total number of its members exceeds the total number of members of each of the other trade unions.

(4) The declaration of the Registrar under this section shall be final and shall not be called in question by or in any Court.

5. *Settlement of industrial disputes by negotiations.*—(1) If, at any time, an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and any of the workmen, the employer or, as the case may be, the collective bargaining agent, shall communicate his or its views in writing to the other party.

(2) Within twenty-one days of the receipt of communication under sub-section (1), the party receiving it shall, in consultation with the representatives of the other party, arrange meetings with the representatives of the other party for collective bargaining on the issue raised in the communication with a view to reaching an agreement there on through the procedure of a dialogue

(3) If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded by the employer to the Conciliator, the Director of Labour, and the Secretary, Labour and Manpower Division.

(4) If not settlement is reached within the period of twenty-one days the negotiation may be continued for such further period as may be agreed upon in writing by the parties.

6. *Settlement of industrial disputes by conciliation.*—(1) Where the parties to an industrial dispute fail to reach a settlement by negotiation under section 5, any of them may request the Conciliator, in writing, to conciliate in the dispute and the Conciliator shall, on receipt of such request, proceed to conciliate in the dispute.

(2) The Conciliator shall, as soon as possible, call a meeting of the parties to the dispute for the purpose of bringing about a settlement.

(3) The parties to the dispute shall appear before the Conciliator in person or shall be represented before him by persons nominated by them and authorised to negotiate and enter into an agreement binding on the parties.

Provided that in the case of dispute in which a state-owned manufacturing industry is involved, the representatives of the Ministry of Division administratively concerned with that industry may also appear before the Conciliator.

(4) If a settlement of the dispute or any matter in dispute is arrived at in the course of the proceedings before him, the Conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute.

(5) If not settlement is arrived at within the period of thirty days o receipt of such request by the Conciliator, the conciliation proceedings may be continued for such further period as may be agreed upon in writing by the parties.

(6) If no settlement is arrived at during the course of conciliation proceedings, the Conciliator shall, within three days after the expiry of the period fixed for conciliation, issue a certificate of failure to the parties to that effect :

Provided that the Conciliator may, in special circumstances to be recorded in writing, issue a certificate of failure of the conciliation proceedings before the expiry of the said period.

(7) The Director of Labour may, after recording his reasons in writing, at any time, take over any conciliation proceedings pending before any Conciliator and proceed to conciliate in the dispute himself or transfer such proceedings to any other Conciliate in the dispute himself or transfer such proceedings to any other Conciliator for the purpose of conclusion of the same, but such taking over or transfer shall not affect the period fixed for conciliation.

(8) Any party to whom a certificate of failure has been issued under sub-section (6) may, within thirty days of issue of such certificate, make an application to a Labour Court for adjudication of the dispute.

(9) If no application is made to the Labour Court under sub-section (8), the dispute shall be deemed to have ceased to exist from the date of expiry of the period mentioned in that sub-section.

(10) Notwithstanding anything contained in this section, the Government may, at any time, refer any industrial dispute to a Labour Court for adjudication of such dispute.

7. Meetings of trade union.—(1) No meetings of any trade union including a meeting for election of its executive committee, shall be held without the prior permission of the Government or of such other

authority as the Government may, by notification in the official Gazette, specify.

(2) Whoever convenes any meeting in contravention of the provision of this section shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka, or with both.

8. *Strikes and lock outs prohibited* (1) All strikes and lock-outs in any establishments shall be illegal.

(2) Any workman or employer who commences, continues or otherwise acts in furtherance of any strike or, as the case may be, lock-out, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka, or with both.

H.M. Ershad, NDC, PSC

Dhaka,
The 27th August, 1982.

Lieutenant General
Chief Martial Law Administrator

Shamsur Rahman
Deputy Secretary

The following Acts of Parliament received the assent of the President on the 18th February, 1974, and are hereby published for general information :—

Act No. XXX OF 1974

An Act to regulate certain conditions of service of newspaper employees

WHEREAS it is expedient to regulate certain conditions of service of newspaper employees ;

It is hereby enacted as follows :

1, **Short title.**—This Act may be called the Newspaper Employees (Conditions of Service) Act, 1974.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

- (a) “Board” means the Wage Board constituted under section 9 ;
- (b) “newspaper” means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as the Government may, by notification in the official Gazette, declare to be newspaper ;
- (c) “newspaper employees” means a working journalist, an administrative employee or a newspaper press worker ;
- (d) “working journalist” means a person who is a whole-time journalist and is employed as such in, or in relation to, any newspaper establishment, and includes an editor, a leader writer, news editor, sub-editor, feature writer ; reporter, correspondent, copy tester, cartoonist, news-photographer, caligraphist and proof-reader ;
- (e) “administrative employee” means a person who is employed on a whole-time basis in, or in relation to, any newspaper establishment in any capacity other than that of a working journalist or a newspaper press worker ;
- (f) “newspaper press worker” means a person who is employed on a whole-time basis in any newspaper establishment for doing any printing work ;
- (g) “newspaper establishment” means an establishment for the printing, production or publication of any newspaper or for conducting any news agency or news or feature syndicate ;
- (h) “prescribed” means prescribed by rules made under this Act ;
- (i) “wages” means all remuneration, capable of being expressed in terms of money, payable to a newspaper employee and, except for the purpose of section 5,

includes any gratuity or other sum or payment declared as wages by the Board in its decision published under section 11 ;

- (j) all words and expressions used but not defined in this Act and defined in the Industrial Relations Ordinance, 1969 (XXIII of 1969), shall have the meanings respectively assigned to them in that Ordinance.

3. *Industrial Relations Ordinance, 1969 to apply to newspaper employees.*—Subject to the other provisions of this Act, the provisions of the Industrial Relations Ordinance, 1969 (XXIII of 1969), shall apply to, or in relation to, newspaper employees as they apply to, or in relation to, workers within the meaning of that Ordinance.

4. *Letter of appointment.*—Every newspaper establishment shall, at the time of appointing a newspaper employee, furnish such newspaper employee a letter of appointment containing—

- (a) his name, father's name and address ;
- (b) the date and nature of his appointment ; and
- (c) the terms and conditions of his appointment.

5. *Provident Fund.*—(1) Every newspaper establishment shall constitute, for the benefit of its newspaper employees, a provident fund in such manner as may be prescribed.

(2) The provident fund shall be held and administered by a board of trustees consisting of an equal number of representatives of the newspaper establishment constituting the fund and of the newspaper employees employed in it, chosen and appointed in such manner as may be prescribed.

(3) Every newspaper employee shall, after the completion of the first two years of his service with any newspaper establishment, subscribe to the provident fund, every month, a sum not less than $6\frac{1}{4}$ % per cent and not more than 8 per cent, of his monthly wages, and the employer shall contribute to an equal amount.

(4) During the first two years of his service, a newspaper employee may or may not, at this option, subscribe to the provident fund,

and if he so subscribes, the newspaper establishment employing him may or may not, at its option, contribute to it.

(5) A newspaper establishment shall be deemed to be a public institution for the purpose of the Provident Fund Act, 1925 (XIX of 1925).

6. *Hours of work.*—Subject to any rules that may be made under this Act, no newspaper employee shall be required to work in any newspaper establishment for more than forty-eight hours in a week, exclusive of the time for meals.

Explanation.—For the purpose of this section, ‘week’ means period of seven days beginning at mid-night on Saturday.

7. *Leave for working journalist.*—Without prejudice to such holidays as may be prescribed, every working journalist shall be entitled to—

- (a) earned leave on full wages for not less than one-eleventh of the period spent on duty ;
- (b) leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service and
- (c) ten days’ casual leave of absence with wages in a calendar year.

8. *Medical care.*—Every newspaper employee and his dependents shall be entitled to medical care at the cost of the newspaper establishment in such manner and to such extent as may be prescribed.

Explanation.—For the purpose of this section, “dependents” means wife or husband, as the case may be, widowed-mother, invalid parents and legitimate sons and daughters of a newspaper employee residing with and wholly dependent upon him.

9. *Wage Board.*—(1) The Government may, by notification in the official Gazette, constitute a Wage Board for fixing rates of wages in respect of newspaper employees in accordance with the provisions of this Act.

(2) The Board shall consist of a Chairman and an equal number of members to represent the employers in relation to newspaper establishments and newspaper employees, all being appointed by the Government.

10. *Fixation of wages.*—(1) In fixing rates of wages in respect of newspaper employees the Board shall have regard to the cost of living, the prevalent rates of wages of comparable employments, in Government, corporations and other private sections, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant.

(2) The Board may fix rates of wages for time work and for piece work.

(3) That decision of the Board fixing rates of wages shall be communicated as soon as practicable to the Government.

11. *Publication of the decision of the Board.*—(1) The decision of the Board shall, within a period of one month from the date of its receipt and examination by the Government, be published in the official Gazette.

(2) The decision of the Board published under sub-section (1) shall come into operation with effect from such date as may be specified in the decision, and where no date is so specified, it shall come into operation on the date of its publication and shall remain in force until it is modified or varied by a later decision of the Board published in the manner provided in sub-section (1).

12. *Powers and procedures of the Board.*—Subject to any rules of procedure which may be prescribed, the Board may, for the purpose of fixing rates of wages, exercise the same powers and follow the same procedure as a Labour Court exercises or follows for the purpose of adjudicating a labour dispute referred to it.

13. *Decision of the Board to be binding on all employers.*—The decision of the Board shall be binding on all employers in relation to newspaper establishments, and every newspaper employee shall be entitled to be paid wages at a rate which shall, in no case, be less than the rate of wages fixed by the Board.

14. *Power of Board to fix interim rates of wages.*—(1) Notwithstanding anything contained in this Act, where the Board is of the opinion that it is necessary so to do, it may, by notification in the official Gazette, fix interim rates of wages.

(2) Any interim rate of wages so fixed shall be binding on all employers in relation to newspaper establishments, and every newspaper employee shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rate of wages fixed under sub-section (1).

(3) Any interim rate of wages fixed under sub-section (1) shall remain in force until the decision of the Board comes into operation under sub-section (2) of section 11.

15. *Employment of Labour (Standing Orders) Act, 1965, to apply to certain newspaper establishments.*—The provisions of the employment of Labour (Standing Orders) Act, 1965 (E.P. Act VIII of 1965), shall, subject to the provisions of this Act, apply to every newspaper establishment wherein 20 or more newspaper employees are employed or were employed on any day of the preceding 12 months as if such newspaper establishment were an industrial establishment to which the aforesaid Act applies under sub-section (4) of section 1 thereof, and as if a newspaper employee were a worker within the meaning of that Act.

16. *Effect of laws and agreements inconsistent with this Act.*—

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service whether made before or after the coming into force of this Act :

Provided that where under any such award, agreement, contract of service or otherwise, a newspaper employee is entitled to benefits in respect of any matters which are more favourable to him than those to which he would be entitled under this Act, the newspaper employee shall continue to be entitled to the more favourable benefits in respect of that matter notwithstanding that he receives benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude any newspaper employee from entering into an agreement with an employer for granting him rights or privileges in respect of any matters which are more favourable to him than those to which he would be entitled under this Act.

17. *Inspectors*.—(1) The Government may, by notification in the official Gazette, appoint such persons or class of persons as it thinks fit to be Inspectors for the purposes of this Act within the local limits as may be assigned to each.

(2) An Inspector may, for carrying out the purposes of this Act, enter into the premises of any newspaper establishment and inspect, examine or seize such record, register or other document relevant to the enforcement of the provisions of this Act and require such explanation from the employer in respect of such record, register or other document and take on the spot or otherwise such evidence of any person as he deems necessary.

(3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Penal Code (XLV of 1860).

18. *Offences and penalties*.—(1) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall be punishable with fine which may extend to taka 1,000/-

(2) Where the person guilty of an offence under this Act is a company or other body corporate every director, manager, secretary and other officer thereof who is knowingly a party to the offence shall also be guilty of the same offence and liable to the same punishment.

(3) No court shall take cognizance of an offence under this Act except upon complaint made by or with the previous permission, in writing, of an Inspector appointed under section 17.

19. *Indemnity*.—No suit, prosecution or other legal proceedings shall lie against any person or authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

20. *Power to make rules.*—(1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) hours of work of newspaper employees ;
- (b) holidays, earned leave, leave on medical certificate, casual leave or any other kind of leave admissible to newspaper employees ;
- (c) the constitution of provident fund ;
- (d) the constitution of board of trustees for the administration of provident fund ;
- (e) the procedure for regulating the management and administration of provident fund and the conditions subject to which such fund shall operate ;
- (f) the procedure to be followed by the Board in fixing rates of wages ; and
- (g) any other matter which has to be or may be prescribed.

21. *Repeal and Savings.*—(1) The Working Journalists (Conditions of Service) Ordinance, 1960 (XVI of 1960) is hereby repealed.

(2) Notwithstanding such repeal, anything done, any action taken, any rule made under the said Ordinance shall, so far as it is not inconsistent with provisions of this Act, be deemed to have been done, taken or made under the corresponding provision of this Act.

THE EMPLOYMENT OF LABOUR

(STANDING ORDERS) ACT, 1965.

(ACT. VIII of 1965)

(As amended by P.O. No. 100 of 1972).

An Act to repeal and, with certain amendments, re-enact the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960.

WHEREAS it is expedient to repeal and, with certain amendments, re-enact the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960 (Ordinance No. III of 1960) for regulating conditions of service of workers employed in Shops and Commercial and Industrial Establishments and for matters connected therein ;

It is hereby enacted as follows :—

1. *Short title extent commencement and application.* (I) This Act may be called the Bangladesh Employment of Labour (Standing Orders) Act, 1965 (as adapted) :

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

(4) It shall apply to—

(a) every shop or commercial establishment to which the the East Bengal Shops and Establishments Act, 1951 applies ;

(b) every industrial establishment in the areas in which the East Bengal Shops and Establishments Act, 1951 applies ;

(c) every industrial establishment in all other areas of the country in which five or more workers are employed, or were employed on any day of the preceding twelve months :

Provided that the provisions of this Act shall not apply to any shop or commercial or industrial establishment, owned and directly managed by the Government and the persons employed therein are governed by the Government Servants' Conduct Rules.

2. *Definitions*.—In this Act, unless there is anything repugnant in the subject or context—

- (a) 'apprentice' means a learner who is paid an allowance during the period of his training ;
- (b) 'badli' means a worker who is appointed in the post of a permanent worker or of a probationer who is temporarily absent ;
- (c) 'casual worker' means a worker whose employment is of a casual nature ;
- (d) 'commercial establishment' means an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the official establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment employs workers, a unit of a joint-stock company, an insurance company, a banking company or a bank, a broker's office or stock exchange, a club, a hotel or a restaurant or an eating house, a cinema or theatre, or such other establishment or class thereof as the Governments may by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Act ;
- (e) 'Director of Labour' means an officer also appointed by the Government ;
- (f) 'discharge' means the termination of services of a worker by the employer for reasons of physical or mental incapacity or continued ill health of the worker or such other similar reasons not amounting to misconduct.
- (g) 'dismissal' means the termination of services of a worker by the employer for misconduct ;
- (h) 'employer' means a person, a body of persons or body corporate, company or institutions owning or managing

a shop, commercial establishment or industrial establishment or their heirs, successors or assigns, as the case may be, and includes—

- (i) in a factory, any person working as manager of the factory ;
 - (ii) in any shop, commercial establishment or industrial establishment, carried on by or on behalf of a local authority, the officer appointed, the chief executive officer of that authority, and
 - (iii) in relation to any other shop, commercial establishment, or industrial establishment, every Director, Manager, Secretary, Agent or other officer or person concerned with management thereof and responsible to the owner for the supervision and control of such shop, commercial establishment or industrial establishment ;
- (i) “go-slow” means an organised deliberate and purposeful slowing down of normal output of work by a body of workers in a concerted manner, and which is not due to any mechanical defect, breakdown of machinery, failure or defect in power supply or in the supply of normal materials and spare parts of machinery.
- (j) ‘industrial establishment’ means any workshop or other establishment in which articles are produced, adapted or manufactured or where the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance, with a view to their use, transport, sale, delivery or disposal, is carried on or such other class of establishments including water transport vessels or any class thereof which the Government may, by notification in the official Gazette, declare to be an industrial establishment for the purpose of this Act, and includes—

- (i) any tramway or motor omnibus service, any dock, wharf or jetty.
- (ii) any mine, quarry, gas-field or oil-field.
- (iii) any plantation, or
- (iv) a factory as defined in the Factories Act, 1934 ;
- (k) 'Labour Court' means a court constituted under the Industrial Disputes Ordinance, 1959 ;
- (l) 'lay-off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stock or the breakdown of machinery or for any other reason, to give employment to an worker whose name is borne on the muster-rolls of his shop, commercial establishment or industrial establishment ;
- (m) 'permanent worker' means a worker who has been engaged on a permanent basis or who has satisfactorily completed the period of his probation in the shop or the commercial or industrial establishment ;
- (n) 'plantation' means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea and includes agricultural farms under sugar mill for growing sugarcane, employing twenty-five or more persons for that purpose ;
- (o) 'public servant' shall have the same meaning as in section 21 of the Penal Code, 1860 (as adapted) ;
- (p) 'probationer' means a worker who is provisionally employed to fill a permanent vacancy in a post and has not completed the period of his probation ;
- (q) 'retrenchment' means the termination by the employer of services of workers, not as a measure of punishment inflicted by way of disciplinary action, but on the ground of redundancy ;

- (r) 'shop' means a shop as defined in the East Bengal Shops and Establishments Act, 1951 ;
- (s) 'temporary worker' means a worker who has been engaged for work which is essentially of temporary nature and is likely to be finished within a limited period ;
- (t) 'trade union' means a trade union registered under the Trade Unions Act, 1926 ;
- (u) 'wage' means wages as defined in the Payment of Wages Act, 1936.
- (v) 'worker' means any person including an apprentice employed in any shop, commercial establishment or industrial establishment to do any skilled, unskilled manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person—
 - (i) who is employed mainly in a managerial or administrative capacity ; or
 - (ii) who, being employed in a supervisory capacity, exercises, either by nature of the duties attached to the office or by reason of power vested in him, functions mainly of managerial or administrative nature.

3. *Conditions of employment.*—(1) In every shop or commercial or industrial establishment, employment of workers and other matters incidental thereto shall be regulated in accordance with the provisions of this Act :

Provided that any shop or commercial or industrial establishment may have its own rules regulating employment of workers or any class thereof, but no such rules shall be less favourable to any worker than the provisions of this Act.

(2) The service rules regulating employment of workers or any class thereof in any shop or commercial or industrial establishment as mentioned in the proviso to sub-section (1) shall be submitted by the employer of such shop or commercial or industrial establishment

to the Inspector appointed under section 30 for approval and such service rules shall not be put into effect until such approval of the Inspector has been obtained.

(3) Any person aggrieved by the order of the Inspector may within thirty days of the issue of such order, appeal to the Chief Inspector who may either confirm modify or set aside the order of the Inspector.

(4) A second appeal from the order of the Chief Inspector shall lie to the Government if made within thirty days of the issue of the order of the Chief Inspector and decision of the Government shall be final.

4. *Classification of workers and period of probation*—(1) A worker employed in any shop or commercial or industrial establishment shall be classified in any of the following classes according to the nature and condition of work and in the manner provided in this Act

- (a) apprentices,
- (b) badlis,
- (c) casual,
- (d) permanent,
- (e) probationer, and
- (f) temporary.

(2) The period of probation for a worker whose function is of clerical nature, shall be six months and for other workers such period shall be three months, including breaks due to leave, illegal lock-out or strike (not being an illegal strike) in the shop or commercial or industrial establishment :

Provided that in the case of a skilled worker, the period of probation may be extended by an additional period of three months if, for any circumstances, it has not been possible to determine the quality of his work within three months' period of his probation.

(3) If any worker, whose service has been terminated during his probationary period, including the extended period of three months in

case of a skilled worker as mentioned in sub-section (2). is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to be a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.

(4) If a permanent worker is employed as a probationer in a new post, he may, at any time during the probationary period, be reverted to his old permanent post.

5. Leave and holidays.—(1) Workers employed in shops or commercial or industrial establishments shall be entitled to leave and holidays with wages as provided in the East Bengal Shops and Establishments Act, 1951, the Factories Act, 1934, or in any other law for the time being in force, as the case may be, and other holidays which the Government may specially declare to be holidays for worker by notification in the official Gazette .

(2) A worker who desires to obtain leave of absence shall apply to the employer for the same, in writing, stating his leave-address therein, and the employer or his authorised officer shall issue orders on the application within a week of its submission to two days prior to the commencement of leave applied for. whichever is earlier :

Provided that if, due to emergent reasons, the leave applied for is to commence on the date of application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained by the employer for the purpose. If the worker, after proceeding on leave, desires an extension thereof, he shall, if such leave is due to him, apply sufficiently in advance before the expiry of the leave to the employer who shall, as far as practicable, send a written reply either granting or refusing extension of leave to the worker to his leave-address.

(3) If the worker remains absent beyond the period of leave originally granted or subsequently extended, he shall be liable to

lose his lien to his appointment unless he returns within ten days of the expiry of his leave and explains to the satisfaction of the employer his inability to return earlier :

Provided that in case any worker loses his lien to his appointment under this section, he shall not be deprived of the benefites and privileges which have already accrued to him under the law due to his past services and, in addition, he shall also be kept on the badli list, if any :

Provided further that if such a worker fails to explain to the satisfaction of the employer the reason of his failure to return at the expiry of the leave, the employer may, on consideration of extenuating circumstances, if any, suspend him, as a measure of punishment for a period not exceeding seven days from the date of his return and the worker shall not be entitled to wages for such periods of unauthorised absence and of suspension ; but he shall not lose the lien to the appointment.

(4) If the services of a worker, to whom any annual leave is due under the provision of the East Bengal Shops and Establishments Act, 1951, the Factories Act, 1934, or of any other law for the time being in force, as the case may be, is dispensed with whether as a result of retrenchment, discharge, dismissal, termination, retirement or by reason of his resignation before he has availed of any such leave the employer shall pay his wages in lieu of the unavailed leave of the rate he is entitled to the payment of wages during the period of leave in accordance with the provisions of those laws and such payments shall be made before the expiry of the second working day after the day on which his employment is dispensed with.

6. *Stoppage of work.*—(1) The employer may, at any time, in the event of fire, catastrophe, break-down of machinery, or stoppage of power supply, epidemics, civil commotion or other cause beyond his control stop any section or sections of the shop or the commercial or industrial establishment, wholly or partly, for any period.

(2) In the event of such stoppage occurring at any time beyond working hours, the employer shall notify the workers affected, by

notices posted, in the case of a factory, on the notice board in the section or department concerned and, in other cases, at a conspicuous place before the work is due to begin next, indicating as to when the work will be resumed and whether such workers are to remain at their place of work at any time before the actual resumption.

(3) In the event of such stoppage occurring at any time during working hours, the workers affected shall be notified, as soon as practicable, by notices posted, in the case of a factory on the notice board in the section or department concerned, and, in other cases, at a conspicuous place, indicating as to when the work will be resumed and whether such workers are to leave or remain at their place of work.

(4) In the case of detention of workers following such stoppage—

- (a) the workers so detained may not be paid for the period of such detention if it does not exceed one hour ;
- (b) the workers so detained shall be paid wages for the whole period of such detention if it exceeds one hour.

(5) If the period of stoppage of work does not exceed one working day, a worker, unless entitled to wages under clause (b) of sub-section (4) for detention beyond one hour, may not be paid any wages : but if the period of stoppage of work continues for more than a working day, a worker affected (other than a casual or badli worker), shall be paid wages for the day or days by which it will exceed one, working day, and if the stoppage of work extends beyond three working days, the workers may be laid-off in accordance with the provisions of section 9 and such lay-off shall be effective from the day of stoppage of work and any wage paid to a worker for the first three days may be adjusted against the compensation payable for such subsequent lay-off ;

Provided that for the piece-rated workers affected, their average for the purposes of the foregoing sub-sections.

(6) The employer may, in the event of a strike by any section or department of a shop or commercial or industrial establishment,

close down either wholly or partly, such section or department or any other section or department affected by such closing down and the workers affected may not be paid any wages for such closure.

Provided that the fact of such closure shall be notified by the employer, as soon as practicable, by notice posted, in the case of a factory, on the notice board in the section or department concerned and in the time-keeper's office, if any, and in any other case in a conspicuous place and the fact of resumption of work, following such closure shall likewise be notified.

7. Calculation of 'one year' or 'six months' of continuous service. —(I) For the purpose of this Act, a worker who, during the preceding twelve calendar months, has actually worked in a shop or commercial or industrial establishment for not less than two hundred and forty days and one hundred and forty days, as the case may be, shall be deemed to have completed 'one year' or six months respectively, of continuous service in the shop or the commercial or the commercial or industrial establishment.

Explanation.—In computing the number of days on which a worker actually worked in a shop or commercial 'or industrial establishment the days on which—

(a) he has been laid-off under an agreement or as permitted under this Act or under any other law applicable to the shop or the commercial or industrial establishment the total number of days during which he has been so laid-off ;

(b) he has been on leave with or without wages due to sickness or accident ;

(c) in the case of a female, she has been on maternity leave not exceeding twelve weeks ; shall be counted.

8. Restrictions of application of sections 6, 9, 10 and 11.—Notwithstanding anything contained elsewhere in this Act—

(a) the provisions of sections 6, 9, 10 and 11 shall not apply to any shop, commercial or industrial establishment in which five or more workers are not employed, or were ; not employed on any day of the preceding twelve months ;

- (b) the provisions of section 9 to 11, both inclusive, shall not apply to a shop, commercial or industrial establishment which is of seasonal character or in which work is performed only intermittently, irrespective of the number of workers employed therein :

Provided that if a question arises whether a shop or commercial or industrial establishment is of seasonal character or whether work is performed therein intermittently, the decision of the Government shall be final :

Provided further that it will not be necessary for an employer to follow the provisions of sections 9 to 11, in respect of any lay-off, due to stoppage of work extending beyond three days as provided in sub-section (5) of section 6, in a shop, commercial or industrial establishment to which clause (b) of this section applies.

9. Right of laid-off workers of compensation.—(I) Whenever a worker (other than a badli or casual worker), whose name is borne on the muster-rolls of a shop or commercial or industrial establishment and who has completed not less than one year of continuous service under the employer is laid-off, he shall be paid by the employer, for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to half of the total of the basic wages and dearness allowance, and the full amount of housing allowance, if any, that would have been payable to him had he not been so laid-off ;

Provided that a badli worker whose name is borne on the muster-rolls of the shop or commercial or industrial establishment shall cease to be regarded as such for the purpose of this section, if he has completed one year of continuous service in the shop or the commercial or industrial establishment :

Provided further that no worker shall, unless there is an agreement to the contrary between him and the employer, be entitled to the payment of compensation in the aforesaid manner for more than forty-five days during any calendar year.

(2) Notwithstanding anything contained in the proviso to sub-section (1), if during a calendar year a worker is laid-off for more than forty-five days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises period or periods of fifteen days or more, the worker shall, unless there is an agreement to the contrary between him and the employer, be paid for all the days comprised in every subsequent period of lay-off for fifteen days or more, compensation which shall be equal to one-fourth of the total of the basic wages and dearness allowance, and the full amount of housing allowance if any, that would have been payable to him had he not been so laid-off.

(3) In any case where, during a calendar year, a worker is to be laid-off, after the first forty-five days as aforesaid, for any continuous period of fifteen days or more, the employer may, instead of laying-off such a worker, retrench him under section 12.

10. *Muster-roll for laid-off workers.*—Notwithstanding that the workers or any section thereof employed in a shop or commercial industrial establishment have been laid-off, it shall be the duty of every employer to maintain one muster-roll, and to provide for the making of entries therein by or for the laid-off workers who may present themselves for work at the shop or the commercial or industrial establishment at the appointed time during normal working hours.

11. *Workers not entitled to compensation in certain cases.* Notwithstanding anything contained elsewhere in this Act, no compensation shall be payable to a worker who has been laid-off—

- (a) if he refuses to accept, on the same wages, any alternative employment not requiring any special skill or previous experience, in the same shop or the commercial or industrial establishment from which he has been laid-off or in any other shop or commercial or industrial establishment belonging to the same employer and situated in the same town or villa or situated within a radius of five miles from the shop or the commercial or industrial establishment ;

- (b) if he does not present himself for work at the shop or the commercial or industrial establishment at the appointed time during normal working hours at least once a day if so required by the employer ; or
- (c) if such lay-off is due to a strike in another part of the shop or the commercial or industrial establishment.

Explanation.—For the purpose of clause (b) every laid-off worker who presents himself for work at the shop or the commercial or industrial establishment, as the case may be, at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this section ; and if the worker instead of being given employment at the commencement of any shift for any day, is asked to present himself for the purposes during the second half of the shift for the day, and if he so presents himself, he shall be deemed to have been laid-off only for one-half of that day the other half being treated as on duty, irrespective of the fact whether he is given work or not.

12. *Conditions of retrenchment.*—No worker employed in any shop or commercial or industrial establishment who has been in continuous service or not less than one year under an employer shall be retrenched by the employer unless—

- (a) the worker has been given one month's notice in writing, indicating the reasons for retrenchment or the worker has been paid in lieu of such notice, wages for the period of notice ;
- (b) a copy of the notice in respect of the retrenchment is sent to the Chief Inspector or any other officer authorised by him ; and
- (c) the worker has been paid, at the time of retrenchment, compensation which shall be equivalent to fourteen days' wages for every completed year of service or for any

part thereof in excess of six months, or gratuity, if any, whichever is higher :

Provided that in case of retrenchment of a worker under sub-section (3) of section 9, no notice as mentioned in clause (a) will be necessary ; but the worker shall be paid fifteen days' wages in addition to the compensation or gratuity, as the case may be, which may be payable to him under clause (c).

Explanation.—For the purpose of calculation of compensation under this section, wages shall mean the average of the basic wages plus dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of retrenchment.

13. *Procedure for retrenchment.*—Where any worker is to be retrenched and he belongs to a particular category of workers, the employer shall, in the absence of any agreement between him and the worker in this behalf, ordinarily retrench the worker who was the last person to be employed in that category, unless, for reasons to be recorded in writing, the employer retrenches any other worker.

14. *Re-employment of retrenched workers.*—Where any number of workers are retrenched, and the employer proposes to take into him employ any person within a period of one year from the date of such retrenchment, he shall give an opportunity to the retrenched workers belonging to the particular category concerned by sending a notice to their last known addresses, to offer themselves for re-employment, and the retrenched workers who so offer themselves for re-employment shall have preference over other persons each having priority according to the length of his service under the employer.

15. *Fine.*—A worker may be fined in accordance with the provisions of the Payment of Wages Act, 1936.

16. *Discharge from service.*—A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health or such other reasons not amounting to misconduct :

Provided that a worker having completed not less than one year of continuous service, so discharged, shall be paid by the employer compensation at the rate of fourteen days' wages for every completed year of service or for any part thereof in excess of six months, or gratuity, if any, whichever is higher :

Explanation.—For the purpose of calculation of wages under this section, wages shall mean the average of the basic and dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of discharge.

17. *Dismissal from service.*—(1) Notwithstanding anything regarding lay off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may be dismissed without prior notice or pay in lieu thereof or any compensation—

- (a) if he is convicted for an offence involving moral turpitude :
- (b) if he is found guilty of misconduct under section 18.

(2) Any worker found guilty of misconduct but not dismissed under the provisions of sub-section (1) in consideration of any extenuating circumstances, may be discharged, or suspended, as a measure of punishment, without wages as well as subsistence allowance, for a period not exceeding seven days and such period may be within or in addition to the period of suspension of the worker for enquiry under sub-section (2) of section 18, if any, or he may be otherwise punished less severely.

(3) The following acts and omissions shall be treated as misconduct.

- (a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful or reasonable order of a superior ;
- (b) theft, fraud or dishonesty in connection with the employer's business or property ;
- (c) taking or giving bribes or any illegal gratification in connection with his or any other worker's employment under the employer ;

- (d) habitual absence without leave or absence without leave for more than ten days ;
- (e) habitual late attendance ;
- (f) habitual breach of any law or rule or regulation applicable to the shop or commercial or industrial establishment ;
- (g) riotous or disorderly behaviour in the shop or commercial or industrial establishment, or any act subversive of discipline ;
- (h) habitual negligence or neglect of work ;
- (i) frequent repetition of any act or omission for which a fine may be imposed ;
- (j) resorting to illegal strike or 'go-slow' or inciting others to resort to illegal strike or 'go-slow'. ;
- (k) falsifying, tampering with, damaging or causing loss of employer's official records.

18. *Procedure for punishment.*—(1) No order for discharge or dismissal of a worker shall be made unless

- (a) the allegations against him are recorded in writing ;
- (b) he is given a copy thereof and not less than three day's time to explain ;
- (c) he is given a personal hearing if such a prayer is made, and
- (d) the employer or the manager approves of such order.

(2) A worker charged for misconduct may be suspended pending enquiry into the charges against him and unless the matter is pending before any court, the period of such suspension shall not exceed sixty days :

Provided that during the period of such suspension, a worker shall be paid by his employer a subsistence allowance equivalent to half of his average including dearness allowance, if any.

(3) An order of suspension shall be in writing and may take effect immediately on delivery to the worker.

(4) (a) If, on enquiry, a worker is found guilty of any of the charge alleged and is punished under sub-section (1) of section 17, he shall

not be entitled to his wages for any period of suspension for enquiry but shall be entitled to the subsistence allowance under the proviso to sub-section (2).

(b) If the worker is found not guilty, he shall be deemed to have been on duty for the period of suspension for enquiry, if any, and shall be entitled to his wages for such period of suspension and the subsistence allowance shall be adjusted accordingly.

(c) In cases of punishment, a copy of the order inflicting such punishment shall be supplied to the worker concerned.

(5) If a worker refuses to accept any notice, letter, charge-sheet, order or any other document addressed to him by the employer, it shall be deemed that such notice, letter, charge-sheet, order or the document has been delivered to him if a copy of the same has been exhibited on the notice board and another copy has been sent to the address of the worker as available from the records of the employer, by registered post.

(6) In awarding punishment under this Act the employer shall take into account the gravity of the misconduct, the previous record, if any, of the worker and any other extenuating or aggravating circumstances that may exist.

(7) Notwithstanding anything contained in the foregoing sub-sections or elsewhere in this Act, an employer, in cases of 'go-slow' or illegal strike, may discharge or dismiss one or more workers or inflict such other punishment on him or them, individually or collectively, by notice posted on the notice board, after obtaining permission from the Labour Court.

19. Termination of employment.—(1) For terminating the employment of a permanent worker by the employer, otherwise than in manner provided elsewhere in this Act, ninety days' notice in the case of monthly rated workers and forty-five days' notice in the case of other workers, in writing, shall be given by the employer :

Provided that wages for ninety days or forty-five days, as the case may be paid in lieu of such notice.

Provided further that the worker whose employment is so terminated shall be paid by the employer compensation at the rate of fourteen days' wages for every completed year of service or for any part thereof in excess of six months, in addition to any other benefit to which he may be entitled under this Act or any other law for the time being in force.

Explanation.—For the purpose of calculation of wages under this sub-section, wages shall mean the average of the basic wages and dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of termination.

(2) If a permanent worker desires to terminate his employment, one month's notice in the case of monthly rated workers, and fourteen days' notice in the case of other workers in writing, shall be given by him to his employer :

Provided that a worker who terminates his employment under this sub-section shall not be entitled to the payment of any compensation mentioned in sub-section (1) ; but he shall be entitled to other benefits, if any, under this Act or under any other law for the time being in force.

(3) For terminating the employment of a temporary worker by the employer, otherwise than in the manner provided elsewhere in this Act, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work which he was appointed to perform, one month's notice in the case of monthly rated workers and fourteen days' notice in other cases, in writing, shall be given by the employer ;

Provided that wages for one month or fourteen days as the case may be, may be paid in lieu of such notice.

20. *Provident Fund.*—No worker, who is a member of any Provident Fund, shall be deprived, due to retrenchment, discharge or termination of service in any other manner provided in this Act other than by way of dismissal for misconduct, of the benefit of that Provident Fund including the employer's contribution thereto, if he is entitled to it under the rules of that Fund :

Provided that, in case of dismissal for misconduct no worker shall be deprived of any portion of his own contribution to such Provident Fund.

21. *Certificate of service.* Every worker (other than a casual or badli worker) shall be entitled to a certificate of service at the time of his retrenchment, discharge, dismissal, retirement or termination of service.

22. *Protection of existing conditions of employment.*—Nothing in this Act shall affect any law, custom, usage or any award, agreement or settlement, in force immediately before the commencement of this Act, if such law, custom, usage, award, agreement or settlement ensures conditions of employment more favourable to the workers than those provided in this Act.

23. *Power to exempt.*—The Government may, by notification in the official Gazette, exempt, on such conditions as may be imposed, any shop or commercial or industrial establishment or any class thereof from the operation of all or any of the provisions of this Act.

24. *Eviction from residential accommodation.*—(1) A worker occupying a residential accommodation provided by his employer, who has been retrenched, discharged, dismissed or whose services have been terminated, shall vacate such residential accommodation within a period of fifteen days from the date of his retrenchment, discharge, dismissal or termination of service, as the case may be, unless a case in respect of such retrenchment, discharge, dismissal or termination of service is pending before any court.

(2) On default of a worker in vacating the residential accommodation under sub-section (1), the employer may lodge a complaint to a Magistrate of the first class, having jurisdiction.

(3) The Magistrate, on hearing the parties, may, notwithstanding anything contained in any other law for the time being in force, summarily decide the case and may pass an order of eviction giving the worker reasonable time to quit.

(4) The Magistrate may also pass an order directing a police-officer to evict such a worker, if necessary, by force, in case he fails to

quit the residential accommodation within the time allowed under sub-section (3).

(5) The police-officer, while acting under an order of the Magistrate under sub-section (4), shall notify the occupants of the premises in question, the contents of the Magistrate's order and his intention to enter into such premises and shall allow at least two hours' time to the occupants to vacate the premises and shall give all reasonable facilities to the children before applying any force for taking over the possession of such premises.

25. Grievance Procedure—(I) Any individual worker who has a grievance in respect of any matter covered under this Act and intends to seek redress thereof under this section, shall observe the following procedure :—

- (a) the worker concerned shall bring his grievance to the notice of his employer, in writing, within fifteen days of the occurrence of the cause of such grievance and the employer shall within thirty days of receipt of such grievance, enquire into the matter and give the worker concerned an opportunity of being heard and communicate his decision, in writing to the said worker :
- (b) if the employer fails to give a decision under clause (a) or if the worker is dissatisfied with such decision, he may make a complaint to the Labour Court having jurisdiction, within thirty day from the last date under clause (a) or within thirty days from the last date of the decision, as the case may be, unless the grievance has already been raised or has otherwise been taken cognizance of as labour dispute under the provisions of the Industrial Disputes Ordinance, 1959 ;

Provided that no complaint shall lie against an order of termination of employment of a worker under section 19, unless the worker concerned is an officer of a registered trade union and his employment is alleged to have been terminated for his trade union activities or unless the worker concerned, whether an officer of a registered trade union or not, has been deprived of the benefits specified in that section.

(c) on receipt of any complaint under clause (b), the Court after notice and given the parties hearing, may decide the matter in such summary way as it deems proper ;

(d) in deciding the matter the court may pass such orders including orders regarding cost, as it may deem just and proper and it may, in appropriate cases, require, by such order, the reinstatement of the complainant thereof and such order shall be final :

Provided that any complaint under this sections shall not amount to prosecution under section 27 of this Act ;;

(e) no court fee shall be payable for filing or exhibiting of any complaint or document of any kind in the court.

26. Penalty for non-compliance of Courts order under section 25.
—(1) Whoever refuses or fails to comply with an order passed by the court under section 25, may be punished with simple imprisonment for a term not exceeding three months or with fine not exceeding taka one thousand or with both.

(2) No Court shall take cognizance of an offence under sub--section (1) except on complaint made by the aggrieved person.

27. Penalties and procedure.—(1) An employer who contravenes any provision of this Act, as applicable to his shop or commercial or industrial establishment, shall, for the first offence, be punishable with fine not exceeding taka five hundred and in the case of a continuing offence, with a further fine which may extend to taka fifty for every day after the first during which the offence continues and for each of the subsequent offence with a fine which may extend to taka five hundred or with simple imprisonment not exceeding one month or with both and in the case of a continuing offence arising out of such subsequent offence with further fine which may extend to taka fifty or every day after the first during which such offence continues.

(2) Whoever contravenes any of the provisions of this Act shall, if not other penalty is elsewhere provided by or under this Act for

such contravention, be punishable, for the first offence, with a fine which may extend to taka two hundred and for each of the subsequent offence with a fine which may extend to taka two hundred or with simple imprisonment not exceeding one month or with both.

(3) No prosecution for an offence punishable under this section, shall be instituted except by, or under the authority of, or with the previous permission, in writing, of the Chief Inspector or his authorised officers.

(4) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this section as well as under section 26.

28. *Display of notice of abstracts of the Act.*—An abstract of the provisions of this Act and rules made thereunder as well as the rules of service regulating employment as mentioned in the proviso to section 3, if any, shall be prominently posted and kept in a legible condition by the employer in Bengali, English and where the mother tongue of the majority of the workers is other than Bengali, in Urdu, on special boards to be maintained for the purpose, in conspicuous places of the shop or commercial or industrial establishment :

Provided that this section shall not apply to any shop or commercial or industrial establishment where the total number of workers employed is less than seven.

29. *Liability of employer.*—The employer of every shop or commercial or industrial establishment shall personally be held responsible for proper and faithful observance of the provisions of this Act.

30. *Chief Inspector and Inspectors.*—(1) The Chief Inspector of Factories and Establishment shall be the Chief Inspector, who shall, in addition to the powers conferred on the Chief Inspector under this Act, have the powers of an Inspector throughout the country and shall also have powers of supervision and control over the Inspectors :

Provided that the Chief Inspector may authorise any other officer or officers under him to exercise all or any of his powers for such person as may be specified by him.

(2) The Government may, by notification in the official Gazette, appoint such persons or class of persons as it thinks fit to be Inspectors

for the purposes of this Act, within the local limit as may be assigned to each.

(3) An Inspector may at all reasonable hours enter any premises and make such examination of any record, register or other document relevant to the enforcement of the provisions of this Act and take, on the spot or otherwise, such evidence of any person and may require the owner or the occupant of such premises to render all reasonable assistance which may be necessary for carrying out the purposes of this Act.

(4) The Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Penal Code, 1860 (as adapted).

31. *Powers to make rules.*--(1) The Government may, subject to the conditions of previous publication in the official Gazette, make rules for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any matter which is to be or may be prescribed under this Act.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding taka one hundred..

32. (*Repealed*) *Rep. by the Repealing and Amending Ordinance..* 1966 (Ord. XIII of 1966.)

CHAPTER XVI
LAW ON NEWS AGENCY
THE BANGLADESH SANGBAD SANGSTHA ORDINANCE, 1979
Ordinance No. XX of 1979

An Ordinance to provide for the establishment of the Bangladesh Sangbad Sangstha.

WHEREAS it is expedient to provide for the establishment of the Bangladesh Sangbad Sangstha as a national news agency for undertaking and promoting news agency service in Bangladesh, obtaining international news agency service, mobilisation of national news, and for matters connected therewith or incidental thereto ;

Now, THEREFORE, in pursuance of the proclamations of the 20th August, 1975, and the 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :—

1. *Short title.*—This Ordinance may be called the Bangladesh Sangbad Sangstha Ordinance, 1979.

2. *Definitions.*—In this Ordinance, unless context otherwise requires,

- (a) “Board” means the Board of Directors of the Sangstha constituted under section 7 ;
- (b) “Chairman” means the Chairman of the Board ;
- (c) “Director” means a Director of the Board ;
- (d) “Managing Director” means the Managing Director of the Board
- (e) “prescribed” means prescribed by rules or regulations made under this Ordinance ;

- (f) “Sangstha” means the Bangladesh Sangbad Sangstha established under section 3.

3. *Establishment and Incorporation of the Sangstha.* (I) There shall be a Sangstha to be called the Bangladesh Sangbad Sangstha for carrying out the purposes of this Ordinance.

(2) The Sangstha shall be a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

4. *Head office of the Sangstha.*—(I) The Head Office of the Sangstha shall be at Dhaka.

(2) The Sangstha may establish its branches at such other places as the Board may decide.

5. *Functions and the Sangstha.*—The functions of the Sangstha shall be—(a) to carry out the responsibility of national news agency of Bangladesh by securing news from home and abroad, disseminating the same to the people of Bangladesh in general through mass media and organising transmission of national news abroad ;

(b) to secure world-wide news—political, diplomatic, financial, economic and commercial, cultural and sports from international news agencies and exchange news with national news agencies of other countries ;

(c) to sell all kinds of news, general, economic and commercial features and photo to all mass media and news agencies within and outside Bangladesh ;

(d) to sign agreements with international news agencies, national news agencies of their countries for securing and disseminating news and facilities for the same ;

(e) to organise systematic programme for news agency business ; and

(f) to do such other acts and things as may be connected with or incidental to the carrying out of the functions of the Sangstha.

6. *Management of the Sangstha*.—(1) Subject to the rules and regulations made under the Ordinance, the general direction, management and administration of the affairs of the Sangstha shall vest in a Board which may exercise all powers and do all acts and things which may be exercised or done by the Sangstha.

(2) The Board in discharging its functions shall, as far as practicable, act having due regard to public interest generally and be guided by such general or special instruction as may be given to it from time to time by the Government.

7. *Constitution of the Board*.—The Board shall consist of

- (a) a Chairman who shall be appointed by the Government ;
- (b) the Managing Director, ex-officio ;
- (c) three Directors to be appointed by the Government, from amongst the officers not below the status of Joint Secretary, one each from the Ministry of Information and Broadcasting, Ministry of Finance and the Posts, Telegraph and Telephone Division ;
- (d) five Directors to be appointed by the Government from the editors of newspapers who subscribe news from the Sangstha, of which at least three must be from Dhaka ;
- (e) one person to be appointed by the Government from amongst the employees of the Sangstha.

8. *Terms of office of the Chairman and other Directors*.—(1) Save as otherwise provided, the Chairman and other Directors shall hold office during pleasure of the Government for a period not exceeding three years from the date of appointment but are removable by the Government for permanent incapacity or other cause ; and a retiring Chairman or Director shall be eligible for reappointment for another term only.

(2) When a person appointed as Director, ceases to represent the particular interest which he was appointed to represent shall also cease to be the Director, and his seat shall be deemed to have been vacated and a person shall thereupon be appointed to fill the vacancy.

(3) Any vacancy in the office of a Director shall be filled in by fresh appointment and a Director so appointed shall hold office for the remaining period for which the Director in whose place he is appointed would have held office.

(4) The Chairman and other Directors shall serve without remuneration but may be paid such travelling and other expenses when engaged on business of the Board as may be prescribed.

9. *Vacating the office, disqualifications, etc.*—(1) No person shall be or shall continue to be the Chairman or a Director who—

- (a) is a salaried official of the Sangstha other than the Managing Director and an employee appointed as Director;
- (b) is or, at any time, has been convicted of an offence which in the opinion of the Government, is an offence involving moral turpitude ; or
- (c) stands declared by a competent court to be of unsound mind ; or
- (d) is a person who is subject to a disqualification imposed by or under any law for the time being in force to hold any public office ; or
- (e) is or, any time, has been adjudicated an insolvent ; or
- (f) absents himself from three consecutive meetings of the Board without leave of absence granted by the Chairman or, in case of the Chairman, by the Government.

(2) If the Chairman or any other Director, by reason of illness or other incapacity or absence from Dhaka, is unable, at any time, to perform the duties of his position, or if the position of the Chairman or any other Director is, at any time, vacant, the Government may make a temporary appointment of any person to act in his place or in such position upon such terms and conditions and for such time as the Government may determine.

10. *Meeting of the Board.*—(1) Meetings of the Board shall be held at such times and places as may be prescribed ;

Provided that the meeting of the Board may otherwise be convened by the Managing Director in consultation with the Chairman.

(2) Seven Directors including the Chairman shall form the quorum at a meeting of the Board.

(3) Meeting of the Board shall be presided over by the Chairman and, in his absence, by a person elected for the purpose by the Directors present from amongst themselves.

(4) All matters of a meeting of the Board shall be decided by the votes of the majority of the Directors present and voting.

(5) At a meeting of the Board each Director shall have one vote, in the event of equality of votes, the person presiding shall have a second or casting vote.

11. *Validity of the proceeding.*—(1) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in the Board or a defect in the constitution of the Board ; and a vacancy in the Board or a temporary absence of a Director for any reason shall not impair the right of the remaining Directors to act.

(2) All acts done by the person acting in good faith as the Chairman or a Director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in any law for the time being in force ;

Provided that nothing in this section shall be deemed to give validity to any act of the Chairman or a Director after his appointment has been shown to be invalid or to have been terminated.

12. *Managing Director.*—(1) The Managing Director shall be appointed by the Government from amongst the journalists having not less than fifteen years experience in journalism on such terms and conditions as may be determined by the Government and he shall also be the Chief Editor of the Sangstha.

(2) The Managing Director shall be a whole time officer and the Chief Administrative Officer of the Sangstha and, subject to the pro-

visions of this Ordinance, he shall administer and manage the affairs and fund of the Sangstha, and shall have supervision over and direction of the work of the Sangstha and of the officers and employees, technical or otherwise employed for the purpose of carrying out the work of the Sangstha, and shall also discharge such duties as may be assigned to him by the Board or as may be prescribed.

13. *Appointment of officers, etc.*—(1) The Sangstha may, subject to such general or special orders as the Government may give from time to time and subject to such terms and conditions as the Government may determine, appoint such officers and other employees as it considers necessary for the efficient performance of its affairs.

(2) The Board, subject to approval of the Government and in accordance with the general and specific standing orders of the Government, shall prescribe the procedure for appointment of its officers and employees and for taking disciplinary action against them.

14. *Delegation of Powers.*—The Board may, by general or special order in writing, direct that such of its powers shall, in such circumstances and under such conditions, if any, as may be specified in the order be exercisable also by the Chairman, or by such director or officer of the Sangstha as may be so specified

15. *Indemnity, etc.*—The Chairman, Director and every officer and employee of the Sangstha shall be indemnified by the Sangstha against all losses and expenses incurred by him in or in relation to the discharge of his duties, except such as have been caused by his wilful act or default.

16. *Funds of the Sangstha.*—(1) The Sangstha shall have its own fund which shall be utilised by it to meet charges in connection with the affairs of the Sangstha.

(2) The fund of the Sangstha shall consist of—

- (a) grants made by the Government ;
- (b) loans obtained from the Government ;
- (c) fees from the subscribers of the news ;

- (d) gifts and endowments ;
- (e) sale proceeds and royalties of news items, features, photos and such other allied matters ;
- (f) grants and contributions from agencies, foundations and organisations ; and
- (g) other sources

(3) All money of the Sangstha shall be kept in any bank or banks approved by the Board.

17. *Budget*.—The Sangstha shall, by such date before the commencement of every financial year as the Government may direct, submit to the Government for approval a budget, in such form as the Government may specify, for each financial year showing the estimated receipts and expenditure and the sums which are likely to be required from the Government during that financial year.

18. *Accounts*.—The Sangstha shall maintain its accounts in such manner and form as the Government may direct.

19. *Audit*.—(1) The accounts of the Sangstha shall be audited every year by the Comptroller and Auditor-General of Bangladesh, hereinafter referred to as the Auditor-General, in such manner as may be proscribed :

Provided that the Auditor-General may in addition to the yearly audit either of his own motion or upon a request received in this behalf from the Government undertake such audit of the accounts of the Sangstha at such time as may be considered necessary.

(2) For the purpose of audit, the Auditor-General or any person authorised by him shall have access to all records, books, documents, accounts and other properties of the Sangstha and may examine, the Chairman, any Director or any officer or other employee of the Sangstha and the Sangstha shall at the time of such audit, produce the account books and connected documents and furnish such explanations and informations as the Auditor-General or an officer authorised by him in this behalf may ask for.

(3) The Auditor-General shall submit an audit report to the Government with a copy to the Sangstha, in which he shall state whatever, in his opinion, accounts of the Sangstha are properly drawn up and, if he has called for any explanation or information from the Sangstha whether it has been given and whether it is satisfactory.

(4) The Sangstha, shall comply with any directive issued by the Government for the modification of the matters objected to in audit.

20. *Reports, etc*—(1) The Sangstha shall furnish to the Government such returns, reports and statements as the Government time to time acquire.

(2) The Sangstha shall, as soon as possible after the end of every financial year furnish to the Government, a statement of accounts audited by the Auditor-General together with an annual report giving therein a true and faithful account of its activity during that year and its proposal for the next financial year.

(3) The copies of the audited accounts and annual report received by the Government under sub-section (2) shall be published in the official Gazette and shall be laid before parliament.

21. *Winding up of the Sangstha*.—No provision of law relating to the winding up of companies or corporations shall apply to the Sangstha and the Sangstha shall not be wound up save by an order of the Government and in such manner as the Government may direct.

22. *Power to make rules and regulations*.—(1) The Government may make rules for the purpose of giving effect of the provisions of the Ordinance.

(2) The Sangstha may, with the previous approval of the Government, make regulations, not inconsistent with the provisions of the Ordinance and the rules made by Government, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Ordinance.

(3) All rules and regulations made under this section shall be published in the official Gazette and shall come into force on such publications.

3. *Transfer of assets, etc.*—Notwithstanding anything contained in any other law for the time being in force or in any contract or agreement or in any other instrument or notification or order, on the commencement of this Ordinance,—

- (a) all assets, rights, powers, authorities and privileges and all properties, movable and immovable, cash and Bank balances, grants and funds of the erstwhile Associated Press in Bangladesh and vested in the Government under the Bangladesh (Vesting of Property and Assets) Order 1972 (P.O. No. 29 of 1972), and all other rights and interests in, or arising out of, such properties and all books of accounts, register, records and all other documents of whatever nature relating thereto shall stand transferred to, and vested in, the Sangstha.
- (b) all debts, liabilities and obligation of whatever kind of the erstwhile Associated Press in, and in relation to, Bangladesh shall, unless the Government otherwise directs, be the debts, liabilities and obligations of the Sangstha ;
- (c) every officer or other employee of the erst while Associated Press serving in Bangladesh immediately before the commencement of the Ordinance shall stand transferred to the Sangstha and continue to be in the service of the Sangstha on the same terms and conditions as were applicable to them immediately before the commencement of the Ordinance ;

Provided that if an officer or other employee is considered by the Sangstha as surplus of requirement, his employment shall be terminated by the Sangstha with due notice and with such compensation as may be prescribed :

Provided further that, notwithstanding anything contained in any terms and conditions of service or in any award, settlement or agreement for the time being in force, the Government or the Sangstha, with the prior approval of the Government, may alter the remuneration, whether by way of reduction or otherwise, and other terms and conditions of service of any officer or other employee.

Dhaka :

The 30th March, 1979.

ZIAUR RAHMAN, BU, PSC.

LIEUTENANT GENERAL,
PRESIDENT.

N.Z. Choudhury
Deputy Secretary.

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