

**CENSORSHIP ON ARTISTIC FREEDOM IN  
CONTEMPORARY ILLIBERAL REGIMES: A  
COMPARATIVE ANALYSIS BETWEEN BANGLADESH AND  
INDIA**

Submitted by

Tashmia Sabera

Submitted to

Department of Legal Studies

Central European University

*In partial fulfillment of the requirements for the degree of LL.M. in Human Rights.*

Supervisor: Arun Kumar Thiruvengadam

*Vienna, Austria*

*2021*

## **Abstract**

Illiberal regimes derive legitimacy from the construction of dominant narratives. To perpetuate the regime, they use censorship (legal and extra-legal) as a tool. Bangladesh and India, two postcolonial countries, are known to have illiberal regimes since 2013/2014. This research aims to identify how the measures taken for securing the dominant narratives have impacted the censorship in artistic freedom of these two countries. To that end, the incidents of legal and extra-legal censorship in the post-2013/14 era are analyzed. The analysis suggests patterns of censorship with a substantial similarity between the two countries.

.

## **Acknowledgements**

I cannot express enough thanks to my supervisor Arun Kumar Thiruvengadam for his supervision and encouragement. I offer my sincere appreciation for the learning opportunities I received from him. Moreover, I would like to express gratitude to my professors at Central European University for their valuable guidance. I am thankful to my colleagues for keeping each other motivated throughout the academic year. Finally, I want to thank Naveed Mustahid Rahman and Zoie Zane McNeill for their intellectual and moral support.

## Table of Contents

Abstract .....	i
Acknowledgements .....	ii
Table of Contents .....	iii
List of Abbreviations .....	vi
CHAPTER ONE .....	1
Introduction .....	1
Background .....	1
Research Questions .....	4
Aims and Objectives .....	4
Methodology .....	5
Meaning of Words and Limitations .....	6
Research Planning .....	7
CHAPTER TWO .....	8
Theoretical Framework .....	8
Theoretical Basis of Artistic Freedom .....	8
Truth .....	8
Individual Autonomy .....	9
Democracy .....	10
Dignity .....	11

Legitimacy .....	11
A Contextual Understanding.....	12
Cultural Relativism .....	12
Postcolonialism .....	13
Equality and Human Dignity .....	14
CHAPTER THREE .....	17
Legal and Political Framework.....	17
The Politics of Censorship .....	17
Constitutional Framework .....	19
Commitment to International Human Rights.....	20
Standards of Regulation .....	21
Viewpoint-based Restriction.....	22
Prior and Subsequent Restriction.....	24
CHAPTER FOUR.....	25
Regime and Censorship .....	25
Power, Regime, and Censorship .....	25
Rise of Illiberalism in India .....	29
Rise of Illiberalism in Bangladesh.....	31
CHAPTER FIVE .....	34
Censorship in Illiberal Regimes: Bangladesh and India Contextualized.....	34
Upsurge of Censorship.....	35

Violence as a Censoring Tool.....	36
Growing Intolerance towards Political Satire .....	41
Religious Disapproval.....	43
Film Censorship and Viewpoint Neutrality .....	45
Cultural Regulation, Patriarchy and Regime .....	46
CHAPTER SIX.....	49
Conclusion .....	49
Bibliography .....	51

## **List of Abbreviations**

BJP	Bharatiya Janata Party
CAA	The Citizenship (Amendment) Act, 2019
DSA	The Digital Security Act, 2018
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization





# CHAPTER ONE

## Introduction

### Background

Censorship generally implies the imposition of restrictions or requirement of prior authorization by the state authority on the contents that are to be published or communicated in public spheres. This suppression is often done on the ground of public order, state security, or violation of the reputation of others. Although the essence of censorship can be traced back to ancient civilizations,<sup>1</sup> censorship in its present form was introduced with the invention and popularization of the press in 15<sup>th</sup> century Europe. As a result, the laws imposing censorship gradually developed in common law jurisprudence.

The British colonial subjugation of the Indian Sub-continent resulted in the legal transplantation of different doctrines and concepts of common law.<sup>2</sup> A series of censorship laws were enacted to regulate the public communication sphere.<sup>3</sup> These laws were often applied to maintain a double standard between colonial India and its mother country England.<sup>4</sup> In response, the Indian philosophers placed arguments based on responsible government and advocated for adopting a

---

<sup>1</sup> For instance, the punishment of Socrates for his “blasphemous” speech.

<sup>2</sup> Notably, Bangladesh was a part of Indian subcontinent until the partition of India and Pakistan in 1947. Afterwards Bangladesh, then being considered as East Pakistan, gained independence from Pakistan in 1971.

<sup>3</sup> The Press Act 1799, The Press and Registration of Books Act 1867 (It is still valid in India. In Bangladesh, the prevailing law is the Printing Presses and Publications (Declaration and Registration) Act, 1973.) See also The Code of Criminal Procedure 1898, the Newspaper (Incitement of Offences) Act 1908, the Official Secrets Act 1923, and the Indian Press (Emergency Powers) Act 1931.

<sup>4</sup> Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* (Penguin Random House 2017). See also Mohammad Nazmuzzaman Bhuiyan, “Development of the Western Concept of Press Freedom in South Asia under the British Raj and Aftermath: A Comparative Contextualisation with Special Reference to Bangladesh” (2015) 48(2) *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 124.

universal approach to freedom of expression.<sup>5</sup> However, those laws largely remained intact to sustain the colonial rule and suppress the voices of the nationalist movements. At the same time, the divide and rule policy of the British rulers played a significant role in igniting the communal violence between the Hindu and Muslim communities in the Indian subcontinent. In this context, the laws censoring expressions that offend religious communities were also given justification.

Both Bangladesh and India share this history of censorship till 1947. In 1950, India enacted its first constitution with recognition of freedom of expression. However, the list of restrictive ground was long enough to create an issue in the Constituent Assembly debate. In 1972 Bangladesh enacted its first constitution keeping similar restrictive grounds. Both Constituent Assemblies mitigated the objection as to colonial continuation of speech regulation on the ground of inception of a new era.

In the context of global human rights, freedom of expression was recognized first in 1948.<sup>6</sup> It became a binding obligation with its incorporation under International Covenant on Civil and Political Rights (ICCPR).<sup>7</sup> Both Bangladesh and India took a while to ratify the ICCPR. India ratified ICCPR in 1979, while Bangladesh underwent the ratification process in 2000. In the global Press Freedom Ranking of 2021, as published by Reporters without Borders, India ranked 142 and Bangladesh ranked 152 among 180 countries of the world. Overall, the press freedom situation does not indicate a promising sign.

Apart from the shared history of censorship and the parallel journey of legal recognition of free speech, the socio-political factors of these neighboring countries seem to have a deep impact on the nature and reality of censorship. For example, the demolition of the *Babri* mosque in India

---

<sup>5</sup> Arun K Thiruvengadam, “The Evolution of the Constitutional Right to Free Speech in India (1800-1950): The Interplay of Universal and Particular Rationales” (2013) University of Washington Trans-Pacific Comparative Constitutional Roundtable on Dec 06, 2013, Centre for Asian Legal Studies, National University of Singapore, Working Paper Series, <<https://ssrn.com/abstract=2470905>> accessed 20 February 2021.

<sup>6</sup> The Universal Declaration of Human Rights, Art 19.

<sup>7</sup> The International Covenant on Civil and Political Rights, Art 19.

resulted in communal violence against the Hindu minority of Bangladesh.<sup>8</sup> A novel depicting this communal violence against the Hindu community named “*Lajja*” by Taslima Nasreen was banned in Bangladesh on the ground of wounding religious sentiments. The Islamic fundamentalist groups declared a *fatwa*<sup>9</sup> setting the price of the head of the author. Afterward the author had been sent to exile and she has not been permitted to come back to Bangladesh yet. In 2009, the Central Board of Film Certification of India asked to remove certain parts of a film called “*Had Anhad*” which was made on the plot of demolition of *Babri* mosque. However, the court held the regulation unjustified on the ground of freedom of expression.<sup>10</sup> Overall, the incidents of communal violence and censorship seem to have a ripple effect in these two countries.

In terms of political power, Bangladesh experienced the absence of democracy for a long time.<sup>11</sup> Unlike Bangladesh, India was fortunate enough not to fall under the military rule. However, it experienced an emergency period from 1975 to 1977. Despite this diverging political journey the contemporary political regimes of Bangladesh and India seem to have similar illiberal tendencies. Scholars observe elements of authoritarianism and populism to be present in these countries. The situations of censorship, as it happens in illiberal regimes, got worse since 2013 and 2014 respectively in Bangladesh and India. The political oppositions and dissenting voices have been suppressed. Moreover, the state response to the Blogger killing cases made a way to self-censorship in Bangladesh. The democratization of the internet in both countries resulted in the enactment of harsh digital security laws in both countries. Although Section 66A of the IT Act, a restrictive provision curbing free expression, was declared unconstitutional in India,<sup>12</sup>

<sup>8</sup> Chronology for Hindus in Bangladesh (2004) by Minorities at Risk Project  
<<https://www.refworld.org/docid/469f3869c.html>> accessed 23 June 2021.

<sup>9</sup> Ruling on Islamic law prescribed by *Mufti* or legal scholars.

<sup>10</sup> *Sristi School of Art, Design and Technology v. The Chairperson, Central Board of Film Certification*, 178 (2011) 337.

<sup>11</sup> It underwent military rule, arguably, for more than fifteen years.

<sup>12</sup> *Shreya Singhal v Union of India*, AIR 2015 SC 1523.

similar laws continue to exist in Bangladesh.<sup>13</sup> Despite India's abolition of Section 66A, it experienced stringent speech regulations under other laws including the Penal Code 1860. Therefore, both countries have experienced an upsurge of censorship in the post 2013/2014 era.

## Research Questions

The research questions are-

1. How has the censorship on artistic freedom evolved in the contemporary illiberal regimes of India and Bangladesh?
2. Does the evolution of censorship in Bangladesh and India follow any general philosophical pattern?
3. How do the socio-political factors play role in shaping the general pattern of censorship in Bangladesh and India?

## Aims and Objectives

The research aims to identify the nature of censorship on artistic freedom and how it has been shaped by the contemporary illiberal regimes of Bangladesh and India. It further aims to understand the socio-political reasons behind the imposition of censorship on artistic expressions in Bangladesh and India. To find out the reasons and their relation with censorship the constitutional and human rights mechanism, their interpretation, and their link with socio-political factors will be analyzed. Moreover, the possible relationship among the socio-political factors, censorship, and illiberal regime will also be analyzed in the context of Bangladesh and India.

---

<sup>13</sup> Section 57 of the ICT Act 2006 was similar to Section 66A of the IT Act of India. Later Section 57 was replaced by more stringent legislation, the Digital Security Act 2018.

## Methodology

The research aims to find the nature of the evolution of censorship on artistic freedom in the contemporary illiberal regimes of India and Bangladesh. Comparing the two jurisdictions not only includes the laws, executive orders, and jurisprudence of the two countries but also involves understanding and evaluating the extra-legal censorship that is imposed due to lenience of the legal action to protect freedom of expression. The research also seeks to find the role of the socio-political factors that play role in imposition of censorship in these two countries. Moreover, the mutual impact of the socio-political factors and censorship between the two countries will be analyzed in this research. Overall, a comparative study will be made analyzing the socio-political factors and their impact in shaping the censorship on artistic freedom in Bangladesh and India.

The research paradigm is based on the idea of having no absolute truth or no plausible access to absolute truth. Although functional truth can be derived from scientific discovery to a certain extent, absence of single truth relating to moral issues renders this research to accept the multiplicity of truth. The multiplicity of truth and narratives forms the core ontological basis of the research. The research stands on rational school as qualitative research will be done on the research topic.

The research is comparative in nature. It compares Bangladesh and India for three reasons. Firstly, both countries share a common history of censorship. Secondly, these neighboring countries tend to have an impact on each other in terms of communal violence, censorship, and political regime. Therefore, how the impact works and how far the impact goes should be explored for the sake of bringing tolerance in both countries. Thirdly, both Bangladesh and India are known to have increasingly less tolerance towards dissenting and diverse opinions.

Therefore, it is worth investigating the complex reasons behind censorship and how they function.

In terms of discipline, the research is multi-disciplinary. It not only aims to analyze the laws, doctrines, and cases but also aims to understand the socio-political factors that shape these laws imposing censorship. Moreover, it covers extra-legal censorship or self-censorship.

The research is mainly normative in nature. The analysis of the laws, cases and socio-political events will be done considering the theoretical framework. However, the research also aims to find patterns in the events of censorship. Therefore, it can be considered as a combination of normative and empirical research.

## Meaning of Words and Limitations

In this research, the term “artistic expression” shall mean and include expressions through literature, artwork, and artistic performance. The term artwork will not only include conventional arts such as painting, drawing, and sculpture but also includes modern arts like cartoons, and memes. Moreover, artistic performance shall include songs, dance performances, drama, films, and similar performing arts.

For the proper understanding of the nature of censorship and the socio-political factors behind it, the historical evolution of censorship will be considered. However, the main focus of the research is the period of 2013 to 2020 for Bangladesh and 2014 to 2020 for India. It is because the contemporary illiberal regime of India started in 2014 with the general election of 2014. Although the so-called general election of Bangladesh also took place in 2014, the regime of massive disregard of free expression started with the blogger killing in 2013. Therefore, the timeline will start from 2013 and 2014 for Bangladesh and India respectively.

## Research Planning

The first chapter introduces the background of the research with the research questions, their aims and objectives, methodology, the meaning of words, and their limitations. Brief planning as to the chapterization of the research has also been presented here. The theoretical framework has been dealt with under chapter two. While evaluating the theories, the central concern will be finding the appropriate free speech theory for maximum artistic freedom and appropriate theory for two postcolonial countries.

Chapter three covers the legal and political framework of censorship in Bangladesh and India. The nature of legal protection of freedom of speech and its limits is described in the context of political history. A basic discussion about the human rights framework and compatible human rights framework as per the theoretical framework is covered in this chapter.

Chapter four explores the connection between regime and censorship. Common features of populism and fascism are identified following different theories. Finally, the contemporary political context of Bangladesh and India is discussed to contextualize the theories relating to the regime.

Chapter five covers the analysis of artistic freedom in the contemporary regimes of Bangladesh and India. Chapter six critically summarizes the findings and concludes the research.

## CHAPTER TWO

### Theoretical Framework

Since a considerable portion of speech regulations of Bangladesh and India suffer from the continuation of colonial legacy, a postcolonial theoretical framework of free speech requires critical engagement with the issue. Therefore, the theoretical framework of the research will be chosen not only considering the soundness of the theory but also the appropriateness of the theory in the postcolonial South Asian context. Moreover, the universal application of freedom of expression is often challenged from a cultural relativist point of view. Such criticisms shall also be addressed in this chapter.

For the convenience of discussion, I will mention the regulatory approaches to free speech as a wider approach to free speech and a narrower approach to free speech. By wider approach to free speech, I mean speech regulation in a liberal and least restrictive way. On the other hand, by narrower approach, I mean speech regulation that includes a wide range of restrictions.

#### Theoretical Basis of Artistic Freedom

The level of protection availed to artistic expressions changes in different theories. The widely accepted theories relating to freedom of expression, truth, individual autonomy, democracy, human dignity, and legitimacy are discussed below.

#### Truth

The classical justification for free speech comes from J.S. Mill.<sup>14</sup> Mill regarded press freedom as a protection against the tyranny of the government.<sup>15</sup> He also considered freedom of expression important because of its role in creating a free marketplace of ideas. In his view, ideas or

---

<sup>14</sup> John Stuart Mill, *On Liberty* (HUP 1859).

<sup>15</sup> Ibid 18.



opinions should not be restricted even if they are wrong. When all kinds of ideas are expressed, a free marketplace is created. This process best offers the likelihood of finding the truth. Therefore, for the sake of finding the truth, freedom of expression should be protected.

Later, J. Holmes developed the “clear and present danger test” as an exception to this theory.<sup>16</sup> However, how far a fair marketplace guarantees the truth to prevail is questionable. Moreover, Mill considered the colonial subjects unprepared for freedom of expression because he believed this right belongs to mature people.<sup>17</sup> Therefore, a postcolonial theoretical framework of freedom of expression cannot be grounded on Mill’s theory without confronting his perspective on colonial subjects.

### **Individual Autonomy**

Thomas Scanlon relied primarily on Mill’s theory of free speech to develop his own.<sup>18</sup> However, he showed how depending on “harm” for regulating speech can be self-defeating as regulations may, at times, cause more harm. He also challenged the theory by arguing that content neutrality of the free marketplace of ideas cannot explain defamation cases. He attempted to solve the loopholes of Mill’s theory by adding a non-instrumental basis of free speech. To that end, he presented two possible alternatives. Either, free speech has justifications both in morality and artificial institutions. In other words, free speech is to be protected for both instrumental and non-instrumental reasons. Alternatively, free speech derives justification from only one of those. Scanlon defended the first option and showed free speech is necessary for both non-instrumental reasons like individual autonomy and instrumental reasons like ensuring a free marketplace of ideas.<sup>19</sup>

---

<sup>16</sup> *Schenck v US*, 249 U.S. 47 (1919).

<sup>17</sup> Mill (n 14).

<sup>18</sup> Thomas Scanlon, “A Theory of Freedom of Expression” (1972) 1 *Philosophy & Public Affairs* 204.

<sup>19</sup> *ibid* 206.

Scanlon grounded his arguments in favor of autonomy on the basis of human rationality. He argued that autonomous individuals should be able to decide whether they are willing to take the risk of harmful consequences of an expression. Bhatia observed that this may provide a wide scope for free and controversial expressions.<sup>20</sup> At the same time, it opens up the scope for medical malpractice and consumer protection for which he criticizes Scanlon's theory. This criticism, however, disregards the scope in Scanlon's theory for individual trust in government for a certain level of paternalism. Under Scanlon's contractarian framework, the individual can and does trust the government to take care of certain areas. Scanlon penned against paternalism only in its strong form.<sup>21</sup> Therefore, it is not impossible to accommodate a certain level of speech regulation in Scanlon's theory. For Bangladesh and India, this can be a potential theoretical basis of freedom of artistic expression.

### **Democracy**

Freedom of expression is a vital element or precondition for democracy.<sup>22</sup> Countries with fragile democracy tend to have more restrictions on free expression. Therefore, protecting free expression can be regarded as a means to reach the democratic end of modern states. Since both Bangladesh and India are constitutionally and politically committed to democracy, it can be regarded as a justification of free expression. However, artistic freedom, as the focus of this research, does not derive full protection if democracy is taken as the sole purpose of free speech. The democratic basis does not answer complex questions relating to artistic autonomy when they are allegedly obscene or biased against certain social groups.

---

<sup>20</sup> Gautam Bhatia, *Offend, Shock, or Disturb Free Speech under Indian Constitution* (OUP 2015).

<sup>21</sup> Ibid 221.

<sup>22</sup> Alexander Meiklejohn, *Free speech and its relation to self-government* (Harper Brothers 1948).

## Dignity

Jeremy Waldron argued freedom of expression should be considered in the context of the society where human dignity functions as a basic social standing.<sup>23</sup> His pragmatic view on freedom of expression entails two aspects. Firstly, one needs to accept that their group co-exists with other very different kinds of groups in society. Secondly, one also needs to appreciate that acceptance is mutual among different groups of society. Unlike the classical theories of free speech, Waldron claims the existence of harm in hate speech.

However, in this approach freedom of artistic expression can be compromised for the sake of maintaining an inclusive and peaceful society. The relevance of Waldron's theory, however, continues as it challenged the legitimacy theory of Dworkin. Further analysis on both theories will be made in a later part of this chapter where the question of equality and hate speech comes into play.

## Legitimacy

Ronald Dworkin relied on the legitimacy of law to find the limits and justification of freedom of expression. He provided a general framework that works even in situations where fallibility of the human knowledge is not accepted. In cases of India and Bangladesh, where the firm followers of religious doctrines believe their truth to be the only truth this theory can be applied. Dworkin proposed that the state or the government can legitimately impose restrictions on dissenting individuals. However, such restrictions must be imposed in a manner that respects the individual's status as a free and equal member of the community. Here, Dworkin prevents the possibility of tyranny of majority in silencing the voices of dissents. At the same time, as long as individual rights are protected, and the individuals are treated as equal members of the society

---

<sup>23</sup> Jeremy Waldron, *Harm in Hate Speech* (HUP 2012).

the state can legitimately impose some restrictions. More discussion on Dworkin will be made within the framework of the hate speech debate.

## A Contextual Understanding

### Cultural Relativism

The cultural relativist critics of free speech regard freedom of expression as a western value. They argue Asian values prioritize collective well-being over individual liberty. Therefore, a wider approach to free speech is incompatible with the “Asian values”.<sup>24</sup>

The counter-arguments towards cultural relativism come from two main grounds. Firstly, cultural relativism is often used as an excuse for depriving people of their rights.<sup>25</sup> Sen showed from his historical analysis that unlike the stereotyped claims Asian values do accommodate freedom and tolerance. The discourse of Asian values does not mean any single set of values due to the cultural diversity in the region. Therefore, in absence of a uniform understanding of Asian values, it cannot be concluded that a liberal understanding of free speech is inconsistent with the Asian values. Moreover, recent researches show that a considerable portion of Asians are in support of wide protection of freedom of expression.<sup>26</sup> Apart from these, the liberal values found in the anti-colonial movement, Bengal Renaissance movement, and Freedom of Intellect Movement<sup>27</sup> could have provided a flourishing environment for liberal values including free speech.

---

<sup>24</sup>Mahathir Mohammad “Asian Values Debate.” Speech at the 29<sup>th</sup> International General Meeting of the Pacific Basin Economic Council in Washington, 21 May 1996.

<sup>25</sup>Amartya Sen, “Human Rights and Asian Values” (2003) Carnegie Council on Ethics and International Affairs. ISBN 978-0-87641-049-3. Amartya Sen, “Human rights and Asian values: what Kee Kuan Yew and Le Peng don’t understand about Asia.” (1997) 217 The New Republic 33.

<sup>26</sup>Fei Shen and Lokman Tsui, “Revisiting the Asian Values Thesis: An Empirical Study of Asian Values, Internet Use, and Support for Freedom of Expression” (2018) 58 Societies Asian Survey 535.

<sup>27</sup>Shahadat H. Khan, *The Freedom of Intellect Movement (Buddhir Mukti Andolan) in Bengali Muslim thought, 1926-1938*(Edwin Mellen Press2007).

## Postcolonialism

A wider approach to free speech is also criticized from a postcolonial point of view. In this view, the postcolonial countries should not follow the approaches taken by their colonial rulers to further the ends of decolonization. Although it has a similarity with cultural relativism, postcolonial arguments engage with the question of decolonization of the legal system.

Chakravarty presented a way out for decolonizing the knowledge of postcolonial societies.<sup>28</sup> In his view, decolonization requires critical engagement with the dominant values that are regarded as universal. It neither entails blind acceptance of western values nor mandates any cultural relativist approach. Rather, each value should be seen from a critical point of view.

Against this backdrop, I argue that the basis of decolonization can be anything but the repetition of the wrong of colonialism. Lea Ypi described that the wrong of colonialism lies in the violation of equality and reciprocity in political relation.<sup>29</sup> Therefore, decolonization cannot happen in a framework where the political relationship between the government and the people are not based on equality and reciprocity. Moreover, decolonization need not necessarily be illiberal because liberal theories, as Ypi relied on Kantian cosmopolitanism for her arguments, can justify for the wrong of colonialism.

As mentioned earlier, the colonial speech regulations did not apply the universal values of free speech. The double standard maintained in colonies makes it clear that colonial laws do not represent and reflect the so-called universal values. Therefore, it is not the values, rather the wrong of colonialism that should not be continued.

The postcolonial reality of India and Bangladesh requires decolonization of knowledge and jurisprudence. To decolonize the legal systems, citizens must have agency over themselves.

---

<sup>28</sup> Dipesh Chakravarty, *Provincializing Europe* (PUP 2000).

<sup>29</sup> Lea Ypi, ‘‘What’s Wrong with Colonialism’’ (2013) 41(2) *Philosophy & Public Affairs* 158.

Notably, Tagore, one of the celebrated poets of the Indian subcontinent and a philosopher of Bengal Renaissance, considered the matter of agency as the basis of the right to humanity.<sup>30</sup> He argued that taking the agency could solve many issues of the Indian Subcontinent under British rule. Sen argued in favor of agency for ensuring justice.<sup>31</sup> To him, the agency is vital for the capability to flourish as a human being. He further explained the value of freedom in his *Idea of Justice*. The value of freedom has two aspects. Firstly, it gives opportunity to pursue to the ends. However, there may be situations where a person meets the end they were pursuing but with an inappropriate means. Therefore, the second aspect of freedom is the process aspect. This entails that the process pursuing the ends should be compatible with the concept of freedom too. In this regard, the autonomy theory of Scanlon can be relied upon to derive a theoretical basis of free speech that concerns agency. Overall, apart from the concept of legitimacy, autonomy can be the philosophical justification of freedom of expression in India and Bangladesh.

### **Equality and Human Dignity**

Another major criticism against the wider approach to free speech comes from the basis of equality and human dignity. As per this group of thinkers, speeches should be restricted if they are discriminatory against the historically oppressed groups.<sup>32</sup> Such discriminations against women are committed mainly by way of sexual objectification of women in different forms of artwork and pornography. Moreover, the racist and hateful comments towards oppressed class of people are also regarded as discrimination. The following points elaborately discuss the arguments based on equality and human dignity.

<sup>30</sup> Rabindranath Tagore, “কর্তার ইচ্ছায় কর্ম” (At the Mercy of Authority) available at <<https://rabindra-rachanabali.nltr.org/node/14763>> accessed on 23 January 2021.

<sup>31</sup> Amartya Sen, *The Idea of Justice* (HUP 2009).

<sup>32</sup> Mari J. Matsuda, “Public Response to Racist Speech: Considering the Victim's Story” (1989) 87(8) MLR 2320.

### *Sexual Objectification and Pornography*

The arguments for restricting sexual objectification of women in different art forms derive theoretical basis in the arguments introduced by Catharine MacKinnon and Andrea Dworkin against pornography.<sup>33</sup> MacKinnon questioned the categorization of pornography as an expression. In her view, pornography, being a form of rape, is conduct as well as expression. She regarded consensual pornographies as the consequence of manipulation and coercion. Since pornography perpetuates women's dehumanized position in society, she advocated for the imposition of legal restrictions on it. Andrea Dworkin complemented her idea by arguing that pornography, by definition, is related to male sexual domination.<sup>34</sup> Jeremy Waldron also supported banning pornography because of the violation of equality and human dignity.

Bangladesh and India are constitutionally committed to ensure equality and non-discrimination. Therefore, censoring pornography and certain work of art that present women in a dehumanizing manner can seem justified. However, Ronald Dworkin showed how the laws protecting equality in terms of conduct derive legitimacy from ensuring the free flow of ideas.<sup>35</sup> He named the laws protecting equality in terms of conduct as downstream laws, and laws protecting equality in terms of expression as upstream laws. In his view, unrestricted speeches transmit legitimacy to the downstream laws. Moreover, Kapur argued that regulation of pornography and similar materials have often relied upon male-dominated sexual norms.<sup>36</sup> Sex-positive feminists criticized MacKinnon for disregarding women's consent by equating consensual and non-consensual pornography.<sup>37</sup> Therefore, the eradication of discrimination against women often becomes self-defeating when pornography and similar expressions are restricted.

<sup>33</sup> Catharine MacKinnon, *Only Words* (HUP 1993). See also Andrea Dworkin, *Pornography: Men Possessing Women* (G. P. Putnam's Sons 1981).

<sup>34</sup> Andrea Dworkin, *Pornography: Men Possessing Women* (G. P. Putnam's Sons 1981).

<sup>35</sup> Ronald Dworkin, "A New Map of Censorship" (1994) 1(2) Index on Censorship.

<sup>36</sup> Ratna Kapur, "Who Draws the Line?" (1996) EPW 31.

<sup>37</sup> Emily Jackson, "Catharine MacKinnon and Feminist Jurisprudence: A Critical Appraisal" (1992) 19 (2) JLS 200. See also Nadine Strossen, *Defending Pornography: Free Speech & the Fight for Women's Rights* (NYUP 2000).

### *Blasphemy and Incitement of Communal Violence*

A wider approach to free speech approves regulation in cases of incitement of communal violence. On the other hand, the narrower approach allows the restriction of speeches that offend the sentiments of a religious community. The existence of such blasphemy law narrows down the scope of freedom of artistic expression. Both Bangladesh and India have inherited blasphemy law from the colonial period when communal violence was shown as justification of the regulation.<sup>38</sup> Since communal violence is still an issue for countries, the question remains whether the narrow approach to speech protection should continue.

The contemporary justification of the narrow approach comes from Jeremy Waldron. He showed the harm in hate speech as a violation of human dignity. Dworkin's response to Waldron is relevant for understanding the legitimacy of law. In his view, hate speeches against the community should be allowed to sustain the legitimacy of the downstream laws that protect communities from discrimination. Other than the question of legitimacy, the protection of sentiments in fear of violent consequence functions as Heckler's veto.<sup>39</sup> Moreover, protection of religious sentiments ends up in violation of viewpoint neutrality of the legislation. It is implausible to expect the court to determine the contents that offend a particular religious group. The expressions or texts of one religious group can seem offensive to another religious group, women, or other sexual minorities. Therefore, ideological content should not be restricted.<sup>40</sup>

In general, the theoretical framework stands on individual autonomy as it provides a safeguard for artistic freedom. Additionally, it relies on Dworkin's theory of the legitimacy of law in a democratic society.

---

<sup>38</sup> The Penal Code 1860, Sec 298.

<sup>39</sup> "Heckler's Veto" The First Amendment Encyclopedia <<https://www.mtsu.edu/first-amendment/article/968/heckler-s-veto>> accessed 21 June 2021.

<sup>40</sup> *R.A.V. v City of St Paul*, 505 U.S. 377 (1992).



## CHAPTER THREE

### Legal and Political Framework

#### The Politics of Censorship

The laws relating to censorship in India and Bangladesh date back to the colonial period when the growing popularity of newspapers made the British rulers enact the Press Act 1799 (later replaced by the Act of 1807 to cover all kinds of publication) to suppress the rise of nationalist resistance. For further controlling the content of the newspapers published in the vernacular languages they enacted the Vernacular Press Act 1878.<sup>41</sup> Moreover, the Penal Code 1860, as heavily influenced by Benthamian utilitarianism and Stephan Fitzames Stephan's legal moralism, criminalized expressions under Section 124A, 292 and 298 on the ground of sedition, obscenity and wounding religious sentiments. The books or relevant materials that caused the abovementioned offences were forfeited too.<sup>42</sup> Overall, the British Indian press was “more fettered than free”.<sup>43</sup>

The colonial policy of “divide and rule” played role in justifying the rigid censorship mechanism by compartmentalizing Hindus and Muslims and instigating them against each other. This systematic discrimination against one group over the other was nothing but an artificial categorization basing on religion which eventually gave rise to *Hindutva* (Hindu nationalism) and political Islam. Sen explains this exclusive prioritization of a single identity over the diverse identities of people often leads to violence of illusion.<sup>44</sup> The identity based politics, in the same

---

<sup>41</sup> Thiruvengadam (n 5).

<sup>42</sup> In Bangladesh, section 99A of the Code of Criminal Procedure, and in India, Section 95 of the Code of Criminal Procedure empowers the government to forfeit the materials.

<sup>43</sup> Shashi Tharoor, *Inglorious Empire: What the British Did to India* (Aleph Book Company 2017).

<sup>44</sup> Amartya Sen, *Identity and Violence: The Illusion of Destiny* (Penguin Books India 2007).

way, gave rise to the communal violence of 1940s and afterwards, formation of extreme right-wing political parties, and the division of India as per the religion based two-nation theory.<sup>45</sup> Bangladesh, a Muslim majority, became an anti-thesis of the two-nation theory when it achieved independence from Pakistan through liberation war and formed a state on language-based nationalism in 1971.

On the other hands, India adopted a secular constitution by a reasonably inclusive constituent assembly in 1950. Yet, Khosla and Vaishnav note the presence of *Hindutva*-based “ethnic state” since its very beginning.<sup>46</sup> The exclusion of Muslims from the protective clause of the Citizenship Act 1955 is one of the many symptoms of ethnic state. The Act aimed at protecting persecuted people of the region from the ongoing communal unrest created by the partition of 1947. The Act did not include Muslims although *Ahmadis* in Pakistan and *Hazaras* in Afghanistan were also at fear of persecution. Such exclusionary politics continued in parallel with the pluralist, diverse, and secular India. The exclusion became more systematic and vilification of Muslims became open since the BJP take over in 2014.

On the other hand, experiencing the horror of religion-based politics in 1971 the Constitution of Bangladesh adopted secularism with the purpose of abolishing political abuse of religion and religion-based politics.<sup>47</sup> However, the religion-based politics re-entered through the military dictatorship during 1975-1990. In this era, *Bismillah*, an Islamic phrase, was added in the constitution, “secularism” was replaced by “Islam as the state religion” and some of the noted war criminals were appointed as ministers of Bangladesh. When democracy was restored in 1990, the unfinished issue of trial of the war criminals arose, and movement went on for

---

<sup>45</sup> In 1947, India was partitioned into two states based on religious majority, namely India and Pakistan. See Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart Publishing 2017).

<sup>46</sup> Madhav Khosla and Milan Vaishnav, “The Three Faces of the Indian State” (2021) 32 *Journal of Democracy* 111.

<sup>47</sup> From the role of *Jamaat-e-Islami* in supporting, aiding and joining the war crimes, genocide, and crimes against humanity

arranging trial for the war criminals. A mock public trial was also arranged by *Ghatak Dalal Nirmul Committee (GhaDaNiK)*, a civil society organization, in 1992 where some of the leaders of *Jamaat-e-Islami* were held convicted and punished with fictitious death penalty. In response to that, *Jamaat-e-Islami* tagged the *GhaDaNiK* leaders as “*nastik*” and anti-Islamic, and proposed a bill punishing blasphemy of Islam with death penalty and imprisonment for life.<sup>48</sup> Although, this inherently discriminatory bill was never passed in the parliament, many of the religious atrocities of 1990s can be linked with the dialect between political Islam and a secular and pro-liberation war Bangladesh.

Overall, the political and violent use of religion forms an integral part of politics in both countries. A discussion of censorship cannot be made without addressing this inevitable role of this understanding of Hinduism and Islam in these countries.

## Constitutional Framework

Although express recognition of freedom of artistic expression is absent in the constitution of both countries, it is impliedly recognized under freedom of expression and freedom of press.<sup>49</sup> The right, being a fundamental right in both countries, is judicially enforceable.<sup>50</sup> However, it can be derogated from in cases of emergency.<sup>51</sup> Judicial review is permitted in cases a law or executive decision violates the right to freedom of expression. The Constituent Assembly of both countries discussed on the superfluity of the grounds for restrictions.<sup>52</sup> Analyzing the Constituent Assembly Debate and the jurisprudence of Indian Supreme Court Bhatia shows that the so called

---

<sup>48</sup> Sara Hossain, “Apostates”, Ahmadis and Advocates: Use and Abuse of Offences Against Religion in Bangladesh” in Ali Riaz (ed), *(Re) Reading Taslima Nasrin: Contexts, Contents and Constructions* (Shrabon Prokashoni 2009).

<sup>49</sup> Mahmudul Islam, *The Constitutional Law of Bangladesh* (Mullick Brothers 2012) 330.

<sup>50</sup> Article 26, 44 and 102 of the Constitution of the People’s Republic of Bangladesh and Article 13 and 32 of the Constitution of India.

<sup>51</sup> The Constitution of the People’s Republic of Bangladesh, Art 141A and the Constitution of India, Art 352.

<sup>52</sup> The Constituent Assembly Debate of India, 1949 and the Constituent Assembly Debate of Bangladesh, 1972. See also Tashmia Sabera, ‘Voices of Dissent’ in Mohammad Shahabuddin (ed) *Bangladesh and International Law* (Routledge 2020).

“transformative constitution” was never so transformative in practice.<sup>53</sup> It was rather a conservative constitution in terms of nature and structure of the fundamental rights. He discards Justice Vivian Bose’s “transformative constitution”. The achievement of the liberal members of the assembly was limited to removal of sedition as a constitutional ground.<sup>54</sup>

## Commitment to International Human Rights

The recognition of the commitment of respecting international law and treaty obligation in the constitutions further justifies the obligation.<sup>55</sup> Both Bangladesh and India are obliged to protect free expression for ratifying ICCPR and ICESCR.<sup>56</sup> Moreover, for being the members of the United Nations Educational, Scientific and Cultural Organization (UNESCO), they have obligation under its Recommendation concerning the Status of the Artist, the first global document specifically focused on artistic freedom, in 1980. As per its definition of artistic freedom right to create without censorship or intimidation and right to have artistic work supported, distributed and remunerated are included. Moreover, Bangladesh and India ratified the Convention on the Protection and Promotion of the Diversity 2005. Farida Shaheed published the Report of the Special Rapporteur in the field of cultural rights that specifically focuses on the right to freedom of artistic expression and creativity.<sup>57</sup> The report points out measures and practices impacting on the right to freedom of artistic expression which includes violence such as assassination, death threat, beating, burning cinemas etc. It mentions unclear regulation, prior censorship, classification and rating, regulation over use of public place, restricted access to state support and cuts in financial support as challenges to freedom of artistic expression.

<sup>53</sup> Gautam Bhatia, “The Conservative Constitution: Freedom of Speech and the Constituent Assembly Debates” (2015) Yale University Law School <<https://ssrn.com/abstract=2679215>> accessed 20 June 2021.

<sup>54</sup> Aakash Singh Rathore & Garima Goswamy, *Rethinking Indian Jurisprudence: An Introduction to the Philosophy of Law* (Routledge 2020) 131.

<sup>55</sup> Article 25 of the Constitution of the People’s Republic of Bangladesh and Article 51 of the Constitution of India. Notably, Article 25 of the Constitution of Bangladesh refers its support for struggle against colonialism which further justifies the postcolonial approach of this paper.

<sup>56</sup> ICCPR Art 19 and ICESCR Art 15.

<sup>57</sup> Report of the Special Rapporteur in the field of cultural rights, by Farida Shaheed.

## Standards of Regulation

The constitutions of both Bangladesh and India accept reasonable restriction as the basis of imposition of restrictions. On the other hand, the ICCPR applies the tests of proportionality and necessity to the cases and communications under Article 19.<sup>58</sup> The Indian Supreme Court linked reasonableness and proportionality in *State of Madras v. V. G. Row*.<sup>59</sup> Apart from this, the test of “imminent lawless action” and “clear and present danger”, as developed in US jurisprudence, require an element of incitement of violence as opposed to mere expression of hatred or disregard.<sup>60</sup> However, in *Chaplinsky*<sup>61</sup> the US Supreme Court held certain contents such as libel or child pornography to have low social value and therefore can be restricted. Later, the idea of viewpoint neutrality was developed in order to provide a standard even within content-based restrictions.<sup>62</sup>

In cases of artistic freedom and the question of obscenity, the Miller test has been developed in US.<sup>63</sup> This test requires fulfillment of three criteria for censoring artistic expressions. Firstly, court considers whether the work would seem as prurient to an average person. Court would also see whether the work describes sexual or excretory functions in a patently offensive way. Finally, the court would consider the literary, artistic, political or scientific value of the work. Although, this tripartite test of Miller has criticisms for giving art evaluation authority to the court it continues to be the most widely accepted test in the field.

Overall, wider approach to free expression would consist of standards like imminent lawless action, viewpoint neutrality, restriction on prior censorship, and the Miller test of obscenity and artistic freedom.

---

<sup>58</sup> General Comment 34.

<sup>59</sup> AIR 1952 SC 196.

<sup>60</sup> *Brandenburg v Ohio*, 395 U.S. 444 (1969).

<sup>61</sup> *Chaplinsky v. New Hampshire*, 315 U.S. 568.

<sup>62</sup> *City of St. Paul* (n 40).

<sup>63</sup> *Miller v. California*, 413 U.S. 15 (1973).

## Viewpoint-based Restriction

While in Bangladesh the definition of sedition has never been judicially ascertained, Indian Court's narrowed down definition is often not applied by the executive bodies while arresting under sedition charges.<sup>64</sup> The criminalization of wounding religious sentiments is also a violation of viewpoint neutrality.<sup>65</sup> Bangladesh further criminalizes propaganda or campaign against liberation war, spirit of liberation war, father of the nation, national anthem or national flag which clearly disregards viewpoint neutrality.<sup>66</sup>

The laws relating to pornography and obscenity in both countries criminalize buying, selling, manufacturing, importing and all kinds of production. However, no distinction has been made between consensual and non-consensual pornography. The common law standard for obscenity originates from *R v. Hicklin*.<sup>67</sup> This acontextual standard only required the proof that a part of the alleged content had tendency to corrupt people's minds. Obscenity in this way became a tool for cultural regulation. While India continues to base its obscenity cases under section 292 and 293 of the Penal Code 1860, Bangladesh enacted the Pornography Control Act 2012. The new Act of Bangladesh may seem progressive as it excludes artworks from pornographic restriction. However, in practice films are still being censored for having obscene elements. On the other hand, the Indian Supreme Court refused to block pornographic websites by reasoning that watching pornography in private is not a crime.<sup>68</sup> However, the government continues to ban websites for showing pornographic materials.

---

<sup>64</sup> Anushka Singh, "Politics, Dissent and India's Sedition Law, National Security Conversation" Happymon Jacob <[https://www.youtube.com/watch?v=\\_aufu\\_kQ-WU&t=549s](https://www.youtube.com/watch?v=_aufu_kQ-WU&t=549s)> accessed 20 June 2021.

<sup>65</sup> The Penal Code 1860, Sec. 295A and 298. See also The Digital Security Act 2018, Sec 28.

<sup>66</sup> The Digital Security Act, 2018, Sec 21.

<sup>67</sup> Bhatia (n 20) 106.

<sup>68</sup> Harish V Nair, "Supreme Court Says India Can't Ban Porn: CJI Says A Total Ban On Sex Sites Would Violate Privacy and Personal Liberty" *Mainonline India* (Delhi, 8 July 2015). <<https://www.dailymail.co.uk/indiahome/indianews/article-3153957/Supreme-Court-says-India-t-ban-porn-CJI-says-total-ban-sex-sites-violate-privacy-personal-liberty.html>> accessed 21 June 2021.

In *Ranjit Udeshi* the Court relied on the truth and democracy justification to deny speech protection which is allegedly obscene. Bhatia emphasizes to take into account the constitutional morality which he uses to justify ban on pornography as hate speech against women.<sup>69</sup> I have argued why the apparently effective arguments of MacKinnon does not consider the autonomy of woman as an individual.<sup>70</sup> Instead of putting a generic ban on pornography, restriction of non-consensual pornography would be effective and protective of women's agency.

In *Sadia Chowdhury Parag*, the plaintiff argued that the impugned film defamed the mystic poet Hason Raja by portraying him as a womanizer.<sup>71</sup> Comparing to other contemporary films the Court did not find objectionable content and refused to impose censorship. Although the Court followed the first two part of the Miller test by examining the contemporary standard and the patently offensive way, it did not examine the artistic value of the film. This can be this as a progressive step towards viewpoint neutrality. However, *Hridoy Vanga Dheu* was initially banned for the attire of the villain which resembles to the iconic attire of the father of the nation of Bangladesh.<sup>72</sup> Surat Kumar Sarker, the vice-chairman of the censor board explained “*we have rejected the film because it clearly violates the country's film censor rules. It goes against a political philosophy of the country.*”

The meaning of viewpoint neutrality was explained in *Anand Patwardhan v Union of India*.<sup>73</sup> In this case, the defendant argued that the impugned documentary film had a one-sided view about the terrorism of Punjab. It showed communism as the only solution to communal violence. Relying on Mill's marketplace of ideas, the Court rejected the argument of the defendant. The Court allowed one-sided viewpoint in the free marketplace of ideas.

---

<sup>69</sup> Bhatia (n 20) 127.

<sup>70</sup> Chapter 2.

<sup>71</sup> *Sadia Chowdhury Parag v Chairman*, Film Censors Board, Writ Petition No. 7677 of 2002.

<sup>72</sup> Afp, Dhaka, “Film Banned as Villain Wears Mujib Coat” *The Daily Star* (Dhaka 6 July 2011) <<https://www.thedailystar.net/news-detail-193084>> accessed 3 June 2021.

<sup>73</sup> AIR 1997.

A similar view was taken in *Srishti School of Art, Design and Technology v The Chairperson, Central Board of Film Certification*.<sup>74</sup> In this case, a film named *Had Anhad* was denied of clearance for its possibility of wounding religious sentiments and creating public disorder. Court rejected the argument saying that such censorship would violate the right of the viewer to take informed decision autonomously. However, the executive censorship does not show a consistent adoption of the viewpoint neutrality standard. Overall, in both countries viewpoint neutrality is not a predominant standard of regulation.

### Prior and Subsequent Restriction

Prior censorship is generally regarded as more speech restrictive due to its scope of abuse of power and it is not allowed in speech protective jurisdictions.<sup>75</sup> Film censorship in Bangladesh and India has always been content based prior restriction.<sup>76</sup> The scope of restrictions is not limited to the conventional exceptions to content-based restrictions such as defamation, child pornography, or fighting words. Moreover, Bangladesh does not have an updated system of film categorization which makes censorship more arbitrary.<sup>77</sup> However, Kaur and Mazarella show how such prior censorship has become acceptable some film makers in India.<sup>78</sup> Overall, prior and subsequent restriction has been normalized in Bangladesh and India.

---

<sup>74</sup> 178 (2011) DLT 337

<sup>75</sup> *United States v. Washington Post Co.* (1971). Moreover Article 13 of the American Convention of Human Right expressly prohibits prior censorship.

<sup>76</sup> The Censorship of Film Act 1963, Bangladesh Censorship of Films Rules 1977 and the Code for Censorship of Films 1985 in Bangladesh and the Cinematograph Act 1952 and other laws in India.

<sup>77</sup> Md. Zahidul Islam, “Film Censorship Regulators in Malaysia and Bangladesh” (2019) 7 IJRTE.

<sup>78</sup> Raminder Kaur and William Mazarella, *Censorship in South Asia: Cultural Regulation from Sedition to Seduction* (IUP 2009).



## CHAPTER FOUR

### Regime and Censorship

#### Power, Regime, and Censorship

Censorship is a manifestation of power. The narrative of the powerful excludes and silences the narrative of the powerless. This relation between censorship and power can be explained by the Foucauldian understanding of power.<sup>79</sup> Robert C. Post discusses how the Foucauldian analysis of power can explain the pervasive nature of censorship in society.<sup>80</sup> As power constructs knowledge, the knowledge produced by artwork is defined by the agent who holds power in a given society.

However, the type of regime has an intrinsic connection with how power functions in society. Liberal democracies generally prioritize protecting the rights of the individual and thereby, artistic freedom is less likely to be censored and silenced by the state authority or social institutions. However, in illiberal regimes, the state tends to exercise more power than its legitimate scope. Moreover, if such illiberal regimes have populist intonation then censorship also comes from majoritarian groups. For example, Gafaïti shows in postcolonial Algeria in the 60s and 70s the writers and the artists had to accommodate their work as per the demands of the “views of the masses controlled by those organic ideologies”.<sup>81</sup> Referring to Walter Benjamin he also argues the censorship often depends on ‘implicit and explicit cooperation by cultural producers [...] who engage in ongoing negotiation with this system of permission and prohibition’.<sup>82</sup> Gafaïti remarks that the cooperation between cultural producers and regimes

---

<sup>79</sup> Michel Foucault, *Discipline and Punish* (Pantheon Books 1977).

<sup>80</sup> Robert C. Post, “Censorship and Silencing” (1998) 51 *Bulletin of the American Academy of Arts and Sciences*.

<sup>81</sup> Hafid Gafaïti, “Power, Censorship, and the Press: The Case of Postcolonial Algeria” *Research in African Literatures* (1999) 30 (3) *Dissident Algeria* 51.

<sup>82</sup> *Ibid* 60.

provides “further legitimacy to the censor”. This understanding of censorship can be helpful for both India and Bangladesh given the increasing traits of populism and illiberal regimentation noticed by political scientists.<sup>83</sup>

Illiberal democracies have been identified as democracies without the protection of civil liberties, independence of judiciary, and rule of law.<sup>84</sup> Therefore, freedom of expression is generally at stake in illiberal regimes. Among many forms of illiberal democracies, populism is one of the most common forms in the contemporary world.<sup>85</sup> The contemporary regimes of Bangladesh and India are often described as populist and fascist.<sup>86</sup> This chapter will engage with the basic concept of populism and fascism to understand whether such categorization is appropriate for Bangladesh and India.

Mudde and Cristóbal base their definition of populism on the core concept of nationalism.<sup>87</sup> This nationalism is more like nativism or tribalism which is contrary to a pluralist understanding of the nation. It is essentially “a xenophobic form of nationalism asserting that “states should be inhabited exclusively by members of the native group (“the nation”), and that non-native elements (persons and ideas) are fundamentally threatening to the homogeneous nation-state”.

Populist regimes create a narrative where the authentic people are victimized and humiliated.<sup>88</sup>

Muller suggests populism is about moralistic imagination of politics where factual or empirical understanding of people is distorted by the imaginary classification of authentic people within

<sup>83</sup> The populist intonation of Bangladesh and India is explained later in this chapter.

<sup>84</sup> Fareed Zakaria, “The Rise of Illiberal Democracy” (1997) 76 (6) Foreign Affairs 22.

<sup>85</sup> Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism in Europe and the Americas: threat or corrective for democracy?* (CUP 2012).

<sup>86</sup> Sk. Tawfique M. Haque and Syeda Lasna Kabir, “Rise of Populism in South Asia: Issues and Challenges for Economic Globalization” <<https://www.ipsa.org/wc/paper/rise-populism-south-asia-issues-and-challenges-economic-globalization>> accessed 1 May 2021.

<sup>87</sup> Cas Mudde and Cristóbal Rovira Kaltwasser, ‘Voices Of The Peoples: Populism In Europe And Latin America Compared’ Kellogg Institute Working Paper 378 /2011<<https://www.semanticscholar.org/paper/Voices-of-the-Peoples%3A-Populism-in-Europe-and-Latin-Kaltwasser-Mudde/8c637eeb5177c76c07a764f0cc53e3d4d34c8ef3>> accessed 12 May 2021.

<sup>88</sup> Alexandra Homolar, Georg Löfflmann, “Populism and the Affective Politics of Humiliation Narratives” (2021) 1. Global Studies Quarterly <<https://doi.org/10.1093/isagsq/ksab002>>accessed 15 May 2021.

the people.<sup>89</sup> The elites are considered corrupt and obsessed with self-interest. In the right-wing populist framework, the liberal elites are often seen to be linked with racial minorities and ethnic groups. They are blamed for working for themselves, and the minority groups instead of working for the authentic people.

Muller also emphasizes the charisma of the populist leader that convinces them to vote for him. He remarks, as per the expectations of the passive people, populists take the “caretaker-attitude” pretending to serve the people. Moreover, the anti-pluralistic nature of populism works so deep that the internal democracy is sacrificed to uphold the “one common good”. The populist regime claims total control over the people although might not be successful in implementation in its fullest sense. Therefore, populism does not imply the desire for more direct democracy, rather it is the embodiment of a totalitarian desire to exercise power disregarding people’s agency.

Similarly, Ferrera identified three constitutive aspects of all sorts of populism.<sup>90</sup> First, the merging of “the people” with the electorate and the electorate with the nation takes place. Secondly, the constituent power becomes attributed to the electorate, and finally a preference for so-called “justified intolerance” is set in the populist regime. Overall, xenophobic nationalism, imaginary class of authentic people, equating electorates with people, anti-pluralism, charismatic leader, and care-taker attitude are some of the common characteristics of populism.

Apart from populism, fascism is also considered a predominant trend of the twenty-first century. Umberto Eco enlists the traits of fascism in fear of its reoccurrence in disguised forms anywhere

---

<sup>89</sup> J-W Muller, “‘The people must be extracted from within the people’: Reflections on Populism” <<https://www.princeton.edu/~jmueller/Constellations-Populism-JWMueller-March2014-pdf>> accessed 15 May 2021.

<sup>90</sup> A Ferrara, “Can political liberalism help us rescue “the people” from populism?” (2018) 44 *Philosophy and Social Criticism* 464.

in the world.<sup>91</sup> In his view, traditionalism, as opposed to rationalism, forms the core of fascism. Fascists distrust the intellectual world. As a corollary, criticism, and disagreement are prohibited in the fascist regime. Moreover, fascist regimes are against diversity. Parliamentary representation of people and individual rights destroy the spell of fascism. Therefore, fascism survives on *selective populism*. To mute the voice of people it limits the vocabulary such as freedom, liberty, or dictatorship. In the discussion of censorship, therefore, fascism too is relevant. Overall, contradictory ideas and rhetoric, traditionalism, anti-pluralism, and nationalism are some of the common features of fascism.

Cas Mudde and Cristóbal Rovira Kaltwasser identify the connection between populism and fascism as a symbiotic relationship. In their view populism eventually gets attached to ideologies like fascism, liberalism, or socialism. It is because populism functions as a "thin-centered ideology" whereas fascism happens to be a "thick-centered" ideology. Therefore, populism can be present with other ideologies as a peripheral feature.<sup>92</sup>

Krämer investigated the relation between populism and media. Populism favors a homogenous authentic people group of majority as opposed to elite. The favor results in demands of people should be directly represented and their homogenous will which is generally anti-pluralist.<sup>93</sup> Not surprisingly, the purpose of censorship in populist and fascist regimes becomes upholding the populist or fascist narrative.

---

<sup>91</sup> Umberto Eco, "Ur-Fascism" The New York Review of Books (New York 22 June 1995) <<https://www.nybooks.com/articles/1995/06/22/ur-fascism/>>accessed 8 May 2021.

<sup>92</sup> Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (OUP 2017) 6.

<sup>93</sup> Benjamin Krämer, "Populism, Media, and the Form of Society" Communication Theory <10.1093/ct/qty017> accessed 8 May 2021.

## Rise of Illiberalism in India

The independence of India is noted as a transition from authoritarianism and colonial rule to constitutional democracy.<sup>94</sup> Since 1947, India was largely regarded as a liberal democracy despite its deviations from the standards of liberalism. For example, Anushka Singh considers India within liberal democratic countries but criticizes its sedition law which transgresses the liberal standard.<sup>95</sup> In 1997, Zakaria noted, “India's semi-liberal democracy has survived because of, not despite, its strong regions and varied languages, cultures, and even castes. The point is logical, even tautological: pluralism in the past helps ensure political pluralism in the present.”<sup>96</sup>

However, many started noticing a shift in India from liberal democracy to populist or fascist regime since 2014.<sup>97</sup> Kenny argues that patronage-based systems end up in populism because of the weakened relationship between patron and voters due to the broker autonomy.<sup>98</sup> He also regards the contemporary regime of India as a populist one.

The ruling party *Bharatiya Janata Party* (BJP) took the governmental power under the leadership of Narendra Modi in 2014. Since then, the pluralist and secular values of India got continuously attacked by the BJP promoted *Hindutva* ideology. Notably, the promotion of *Hindutva* is not limited to the political and cultural sector. The legal steps taken strongly indicate an inclination towards *Hindutva* ideology. For example, the verdict of the *Babri Mosque* case siding with the *Hindutva* narrative, withdrawal of the special status of Kashmir (a predominantly Muslim area), and enactment of the Citizenship (Amendment) Act, 2019 (CAA) show the exclusionary politics reflected by law. This religion-based discrimination further contributed in

---

<sup>94</sup> Michel Rosenfeld and András Sajó, “Spreading Liberal Constitutionalism: An Inquiry into the Fate of Free Speech Rights In New Democracies” (2005) 144 Benjamin N. Cardozo School of Law, Jacob Burns Institute for Advanced Legal Studies 45.

<sup>95</sup> Anushka Singh, *Sedition in Liberal Democracies* (OUP 2018).

<sup>96</sup> Zakaria (n 84) 22.

<sup>97</sup> Goldie Osuri, “Indian Nationalism and the Easy Turn to Fascist Populism” (1 June 2016) <<https://archive.discoverysociety.org/2016/06/01/indian-nationalism-and-the-easy-turn-to-fascist-populism/>> accessed 1 June 2021.

<sup>98</sup> Paul D. Kenny, *Populism and Patronage: Why Populists Win Elections in India, Asia, and Beyond* (OUP 2017).

the social status of the Muslim community of India. Moreover, the legal implication of the CAA can result in the forced deportation of Muslim people of India. Bangladesh, being a neighboring Muslim majority country will have to bear the responsibility if such situations occur. In response to the enactment of CAA, students from different universities protested in early 2020.<sup>99</sup> Such protests were violently controlled by the police. Moreover, students were arrested under sedition charges.<sup>100</sup>

In this regime, the Hindu majority is being regarded as the so-called authentic people. A nativist or tribal idea of nationalism excluding the Muslim community is being promoted by BJP. Moreover, Modi is portrayed as the strong leader who is going to save the Hindus from the imagined fear of disintegration of India.<sup>101</sup> This idea of strong leadership can be linked with the charismatic leadership tendency of populism.

A new term *Urban Naxal* has been coined by Vivek Agnihotri, an Indian filmmaker, which means “intellectual, influencer or activist who is an invisible enemy of India”.<sup>102</sup> In practice, the term targeted anyone critical of Prime Minister Modi or his government.<sup>103</sup> In 2018, Agnihotri, the self-claimed Modi supporter,<sup>104</sup> asked people through social media to make list of the Urban Naxals or their defenders. Although some people supported his call, it backfired when people started posting “#me\_too\_urban\_naxal”. Notably, this term is often used by the Prime Minister

<sup>99</sup> “JNU: Students across India protest against campus attack” *BBC* (London, 6 January 2020) <<https://www.bbc.com/news/world-asia-india-51004204>> accessed 8 May 2021.

<sup>100</sup> Murali Krishnan and Dhamini Ratnam, “CAA stir flares up sedition debate” *The Hindustan Times* (Delhi 16 February 2020) <<https://www.hindustantimes.com/india-news/caa-stir-flares-up-sedition-debate/story-spcuDzxb7gR8ysmaduHHzH.html>> accessed 8 May 2021.

<sup>101</sup> Soutik Biswas, “The secret behind success of India’s ruling party BJP” *BBC* (London, 2 December 2020).

<sup>102</sup> Vivek Agnihotri, *Urban Naxals: The Making of Buddha in a Traffic Jam* (Garuda Publications 2018).

<sup>103</sup> “Why India activist arrests have kicked up a storm” *BBC* (London, 31 August 2018).

<sup>104</sup> “‘भाजपाकानहीं, बल्किघोरमोदीसमर्थकहूँ: विवेकअग्निहोत्री’ (I’m not a supporter of the BJP, but a strong Modi supporter: Vivek Agnihotri) *Dainik Jagran* (Delhi, 8 June 2020) <<https://www.jagran.com/entertainment/bollywood-vivek-agnihotri-says-he-is-narendra-modi-supporter-not-bjp-supporter-19109033.html>> accessed 8 May 2021.

to promote exclusionary politics. For example, Modi blamed the opposition party and the *Urban Naxals* for the CAA related protests.<sup>105</sup>

In general, Hindus as the authentic people, tagging the civil society activist and free-thinkers as “Urban- Naxals” and exclusionary policies of the contemporary Indian government makes it a clear case of fascist populism. The *Hindutva* narrative being at the core of this regime, anything that goes against this narrative is being censored or at the stake of being censored in India.

### Rise of Illiberalism in Bangladesh

In 2013, Bangladesh experienced the revival of the protest claiming the death penalty to the war criminals of 1971. A blogger involved in the Shahbag protest was hacked to death by an Islamic extremist group.<sup>106</sup> Following that murder, the media supported by *Jamaat e Islami Bangladesh* reported on the writers, bloggers, artists, free-thinkers and civil society activists involved in leading the Shahbag protest referring them as “atheists” and “Islamophobic”.<sup>107</sup>

In response to this protest, a religion-based counter demonstration took place in mid-2013 led by *Hefazat-e-Islam*, a self-claimed apolitical group representing Islam in Bangladesh. They submitted a list of 84 bloggers, writers, and freethinkers for bringing them to justice under *sharia* law for commission of blasphemy.<sup>108</sup> They also placed 13 point demands many of which were in clear disregard of fundamental human rights. The government generally remaining silent about their demands arrested 4 bloggers and controlled the *Hefazat* demonstration with a coercive force

<sup>105</sup> Bedanti Saran, “Dirty Politics, Urban Naxals behind Violence, Says PM Modi on Protests against Citizenship Law” (*The Hindustan Times*, 18 December 2019) <<https://www.hindustantimes.com/assembly-elections/dirty-politics-urban-naxals-behind-violence-says-pm-modi/story-3MpczjiC54F2skFZgBYEiK.html>> accessed 8 May 2021.

<sup>106</sup> They were later convicted for the murder and punished with penalty. See “Two sentenced to death for Bangladesh blogger murder” (*The Guardian*, 31 December 2015) <<https://www.theguardian.com/world/2015/dec/31/two-sentenced-death-bangladesh-blogger-ahmed-rajib-haider>> accessed 8 May 2021.

<sup>107</sup> Moshikul Alam, “আমারদেশ-এর সাংবাদিকতা” (The Journalism of Amar Desh) *The Daily Prothom Alo* (Dhaka 10 June 2013).

<sup>108</sup> Ummay Habiba, Priyanka Kundu, Md. Golam Rahman & MofizurRhaman, “Freedom of Expression in Bangladesh in the Context of Bloggers’ Killings” in Elsebeth Frey, MofizurRhaman and Hamida El Bour (eds.) *Negotiating Journalism. Core Values and Cultural Diversities* (GöteborgNordicom 2017)137.

causing death of people. The Prime Minister Sheikh Hasina referred *Madinah* Charter, a historical treaty of Prophet Muhammad, to derive the concept of secularism in Bangladesh. Notably, secularism was brought back in the Constitution keeping Islam as the state religion giving rise to an “Islam secular” state. Since then the ruling party is running the country basing on a combination of Islam and pro-liberation war ideology. This may not fit with the conventional understanding of populism. However, tagging free-thinkers as “nastik” and “Islamophobic” has similarity with tagging people as “elites”. On the other hand, the classification of pro-liberation war and anti-liberation war remains as a feature of nationalist populism.

In terms of form of government, the Constitution of Bangladesh commits to democracy by declaring it as a fundamental principle. However, the democracy was not predominant in the politics until 1990.<sup>109</sup> Following a period of fragile democracy the ruling party held and won national election without opposition in 2014.<sup>110</sup> In 2018 it turned from a competitive authoritarian regime to a hegemonic authoritarian regime by creating climate of fear, disqualifying opposition candidates, controlling the media.<sup>111</sup>

Apart from the electoral crisis, the governance of Bangladesh has been dominated by neopatrimonialist practices.<sup>112</sup> As a neopatrimonial state, the government and certain interest groups create a patron client relation and serve each other’s interest. Some view the system of Bangladesh as authoritarian kleptocracy since late 2000.<sup>113</sup> However, others like Shamin and Hoque though emphasize on the constitutional framework of Bangladesh as a liberal democracy

---

<sup>109</sup> Ali Riaz & Saimum Parvez, “Anatomy of a Rigged Election in a Hybrid Regime: the Lessons from Bangladesh” <<https://doi.org/10.1080/13510347.2020.1867110>> accessed 22 April 2021.

<sup>110</sup> “Clashes and Boycott Mar Bangladesh Election” *BBC* (London, 5 January 2014) <<https://www.bbc.com/news/world-asia-25602436>> accessed 22 April 2021.

<sup>111</sup> Ali Riaz, “The pathway of democratic backsliding in Bangladesh” (2020) <<https://doi.org/10.1080/13510347.2020.1818069>> accessed 22 April 2021.

<sup>112</sup> Mohammad Mozahidul Islam, “The Toxic Politics of Bangladesh: A Bipolar Competitive Neopatrimonial State?” <<https://doi.org/10.1080/02185377.2013.823799>> accessed 22 April 2021.

<sup>113</sup> Md Nazrul Islam and Md Sadiul Islam, “Islam, Politics and Secularism in Bangladesh: Contesting the Dominant Narratives” (2018) Social Sciences.



with illiberal trends such as deteriorating freedom of expression, forgery in election and disregard of separation of power.<sup>114</sup>

Overall, Bangladesh is experiencing a mixture of neopatrimonialism and a special type of right-wing populism. As per the ground narrative of the ruling party, the “pro-liberation war people” are the real people of Bangladesh. At the same time, the client of this neopatrimonial state often becomes the Islamist groups who demands compromise of fundamental rights of individual for the sake of their religious views.

---

<sup>114</sup> Sharawat Shamin and Ridwanul Hoque, “Bangladesh: The State of Liberal Democracy” Richard Albert, David Landau, Pietro Faraguna and Simon Drugda (ed.) 2017 *Global Review of Constitutional Law* (I-CONnect-Clough Center).

## CHAPTER FIVE

### **Censorship in Illiberal Regimes: Bangladesh and India Contextualized**

This chapter analyzes the connection between the nature of censorship and the illiberal populist regimes of Bangladesh and India. Apart from the censorship by the judicial and executive decisions, social pressure exercise extra-legal censorship. It is also regarded as cultural regulation,<sup>115</sup> mob or public censorship.<sup>116</sup> The legal censorship in the given period is analyzed by evaluating the interpretations and justifications given by the censoring authority. In case of extra-legal censorship, the governmental response to the popular demands reflects the situation of freedom of expression.

I am primarily relying on Freemuse Report on Art under Attack 2015 and 2016, the State of Artistic Freedom 2018, 2020 and 2020-21, reports published by Pen International, and the Global Expression Report by Article 19 as sources of data. Apart from these, the Times of India, Article 14, the Times, the Daily Star, Prothom Alo, Dhaka Tribune, Bangla Tribune, BBC and Al Jazeera will be relied upon for detailed information on free speech regulations. The court judgments will be seen for evaluating the legal interpretation of censorship cases. Moreover, scholarly works shall be taken into account while analyzing the censorship in these two countries.

---

<sup>115</sup> Raminder Kaur & William Mazarella, *Thinking Censorship in South Asia: Cultural regulation from Sedition to Seduction* (Indiana University Press Bloomington and Indianapolis 2009).

<sup>116</sup> Mini Chandran, “The Democratisation of Censorship: Books and the Indian Public” (2010) 45 Economic and Political Weekly 27.

## Upsurge of Censorship

The Global Freedom of Expression Report 2019/20 shows a sharp decline of free speech protection in Bangladesh and India. The Report categorizes the free speech regulation under the head of open, less restricted, restricted, highly restricted, and in crisis. Both Bangladesh and India were categorized under the “highly restricted” group in 2014. With significant deterioration, they have been categorized under “in crisis” group in 2020.<sup>117</sup> This degradation of free speech standard is also found in the World Press Freedom Index produced by Reporters without Borders (RSF). As per this Index, Bangladesh ranked 144, 146, 146, 144, 146, 146, 150, 151, and 152 chronologically from 2013 to 2021 among 180 countries of the world. In the same timeline, India chronologically ranked from 140, 140, 136, 133, 136, 138, 140, 142 and 142. It is apparent that during the illiberal regime, both countries took increasingly suppressive measures to restrict freedom of expression. Free speech restrictions play role in making regimes illiberal. At the same time, illiberal regimes stringently censor freedom of speech. This symbiosis can be explained by the nature and function of power. Censorship being an instrument of power and control, it is not surprising why illiberal regimes would be interested to use this tool.

If compared, the free speech situation of Bangladesh may seem worse than India. However, India’s turn to illiberal populism and fascism, despite having a liberal democratic history, shows an unfortunate shift from its liberal commitments. The culture of intolerance that was rooted in India started blooming in 2014.<sup>118</sup> Therefore, the situation of censorship in both these countries, be it different in ranking, has worsened.

---

<sup>117</sup> Global Expression Report 2019/20, Report by Article 19.

<sup>118</sup> “India’s Crackdown on Dissent” *The New York Times* (New York, 22 February 2016) <http://www.nytimes.com/2016/02/23/opinion/indiascrackdown-on-dissent.html> accessed 11 May 2021.

In India, the rate of sedition cases has increased substantially after the Citizenship Amendment Act.<sup>119</sup> On the other hand, the number of cases under the amended Section 57 of the ICT Act and following its repeal, under the Digital Security Act, shows excessive regulation of free speech in Bangladesh.<sup>120</sup> While dealing with the Covid-19 crisis, neither country declared an emergency that would allow them to derogate from the freedom of expression standards. However, a *de-facto* emergency was going on resulting in limited functioning of the court. This caused the pre-trial detention of many writers for months without any reason.<sup>121</sup>

### Violence as a Censoring Tool

“Heckler’s veto” arises when an “offensive” speech is responded with violence, and such violence is used as a justification for further restrictions. In contemporary world, the heckler’s veto has been applied in its extreme form, which is known as “assassin’s veto”.<sup>122</sup> The chilling effect of assassin’s veto can be neutralized by states by performing their positive duty to create an environment for exercising freedom of expression.<sup>123</sup> This duty is discharged when the right to be protected from attack and the right to offend religious believers is guaranteed.<sup>124</sup> Timothy Garton proposed to take collective action and solidarity amongst news media through coordinated republication in this regard.<sup>125</sup> Parmar additionally suggests creating transnational mechanisms for speech protection.<sup>126</sup>

<sup>119</sup> Kunal Purohit, “Our New Database Reveals Rise in Sedition Cases in the Modi Era” (*Article 14*, 2 February 2020) <<https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era>> accessed 11 May 2021.

<sup>120</sup> Digital Security Act: Over 1000 cases filed in two years Prothom Alo 19 September 2020 <https://en.prothomalo.com/bangladesh/crime-and-law/digital-security-act-over-1000-cases-filed-in-two-years> accessed 11 May 2021. See also Arifur Rahman Rabbi, “Upsurge in Digital Security Act Cases during the Covid-19 Pandemic” (*Dhaka Tribune*, 28 June 2020) <<https://www.dhakatribune.com/bangladesh/2020/06/28/upsurge-in-digital-security-act-cases-during-the-covid-19-pandemic>> accessed 11 May 2021.

<sup>121</sup> The State of Artistic Freedom 2021.

<sup>122</sup> Timothy Garton Ash, “Defying the Assassin’s Veto” *The New York Review of Books* (New York 19 February 2015).

<sup>123</sup> Sejal Parmar, “Freedom of Expression Narratives after the Charlie Hebdo Attacks” (2018) 18 Human Rights Law Review.

<sup>124</sup> Ibid.

<sup>125</sup> Timothy (n 122).

<sup>126</sup> Parmar (n 123).

On the other hand, the state responses towards violent attacks or assassinations of writers, in general, create chilling effect and self-censorship. Parmar identifies three narratives that occurred after the *Charlie Hebdo* attack, categorizing them under freedom of expression as identity, freedom of expression as a human right, and freedom of expression as part of the problem. The first narrative focuses on the political declaration and identity-based division created after the attack. She refers to the speeches of the leaders and spokespersons of different states to evaluate state response towards assassin's veto. While some state responses showed strong support for freedom of expression, countries like Iran, Vatican or Turkey found humiliation of religion unacceptable even though they condemned terrorism.

In terms of commitment to freedom of expression, Garton considers India as the biggest and most important swing state where free speech can and should be respected.<sup>127</sup> Apart from having a long tradition of practicing free speech, tolerance and emphasis on listening, Garton remarks that the neighboring countries including Bangladesh look forward to India setting free speech standards. Unfortunately, neither India nor Bangladesh is setting a robust standard of free speech by performing their duty of ensuring a favorable environment for it. Rather, both take a compromised and lenient approach towards free speech protection, resembling - Turkey, Iran and Vatican.

While violent attacks or its threat to writers, journalists, artists, and free-thinkers is not new in India and Bangladesh, it has intensified in post-2013/14 era.<sup>128</sup> Since the independence of Bangladesh, writers like Daud Haider and Taslima Nasrin were compelled by the state to live in exile because of threats by religious fundamentalists.<sup>129</sup> Although some authors believe this state

---

<sup>127</sup> “The Vidhi Dialogues: Prof. Timothy Garton and Mr. Gautam Bhatia on Free Speech” (*Vidhi Centre for Legal Policy*, 14 February 2017) <<https://www.youtube.com/watch?v=cRPeRpgHwQA&t=1293s>> accessed 11 May 2021.

<sup>128</sup> Rokeya Chowdhury, “Mot Prokasher Swadhinota, Dhormotontro o Manobadhikar (Freedom of Expression, Theology, and Human Rights: Contemporary Bangladesh)”. The Essay was read in the Human Rights Day 2015 organized by National Human Rights Commission, Bangladesh.

<sup>129</sup> Karen Kennerly, Sharon Olds, Tillie Olsen, Susan Sontag, Kurt Vonnegut Jr., “The Case of Daud Haider” (*The New York Review*, 24 October 1985) <<https://www.nybooks.com/articles/1985/10/24/the-case-of-daud-haider/>> accessed 11 May 2021.

response should be understood as providing security to the authors,<sup>130</sup> this timid and lenient approach did not help in preventing violent extremism later. The bombing in *Chayanat Borsho Boron Utsab*, series-bombing in 63 districts of Bangladesh or the violent attack on writer Humayun Azad shows inefficient handling of religious extremism.<sup>131</sup> Since 2013, radical Islamist groups started the assassination of atheist bloggers, writers, publishers, teachers, and free thinkers.<sup>132</sup> Although few blogger-killing cases managed to reach the final stage of conviction and sentencing, the family of the victims shared dissatisfaction with the process. While blogger Rajib's father expressed his disappointment as to the proportionality of penalty,<sup>133</sup> Avijit's wife criticized the investigation process for ignoring the rise and root causes of extremism.<sup>134</sup>

The prime minister of Bangladesh, instead of taking a strong position for protecting free speech, initially remained silent on the issue.<sup>135</sup> At the same time, more bloggers were arrested for wounding religious sentiments.<sup>136</sup> Publishers of assassinated bloggers were threatened, attacked and murdered.<sup>137</sup> The newspaper coverage broadly took two approaches to describe the blogger killing incidents.<sup>138</sup> While one group of newspapers condemned the acts of killing and wrote in favor of free speech, another group sensationalized the killing incidents.<sup>139</sup> This overall

<sup>130</sup> "Talk with an exile poet Daud Haider in Berlin! Part-1" <<https://www.youtube.com/watch?v=LLqsiiPYIXA>> accessed 11 May 2021.

<sup>131</sup> Chowdhury (n 128).

<sup>132</sup> Art under Attack 2015, report by Freemuse.

<sup>133</sup> "Blogger Rajib's Father Dissatisfied at HC Verdict" *The Daily Star* (Dhaka, 2 April 2017) <<https://www.thedailystar.net/city/blogger-rajibs-father-disappointed-hc-verdict-1385125>> accessed 11 May 2021.

<sup>134</sup> "Bangladesh Avijit Roy murder: Five sentenced to die for machete attack on blogger" *BBC* (London, 16 February 2021) <<https://www.bbc.com/news/world-asia-56082108>> accessed 11 May 2021.

<sup>135</sup> Kritivas Mukherjee, "Hasina's silence on bloggers' murders strengthening hand of Salafists in Bangladesh" (*Hindustan Times* 14 May 2015) <<https://www.hindustantimes.com/world/hasina-s-silence-on-bloggers-murders-strengthening-hand-of-salafists-in-bangladesh/story-6g9tKfZjawJNznQQ8PXJtK.html>> accessed 11 May 2021.

<sup>136</sup> "Hurting Religious Sentiment": 3 held for 'derogatory write-ups'" *The Daily Star* (Dhaka, 2 April 2013) <<https://www.thedailystar.net/news/3-held-for-writing-against-islam>> accessed 11 May 2021.

<sup>137</sup> "Bangladeshi Secular Publisher Hacked to Death" *BBC* (London, 31 October 2015) <<https://www.bbc.com/news/world-asia-34688245>> accessed 11 May 2021.

<sup>138</sup> Ummay Habiba, Priyanka Kundu, Md. Golam Rahman & MofizurRhaman, "Freedom of Expression in Bangladesh in the Context of Bloggers' Killings" in Elsebeth Frey, MofizurRhaman and Hamida El Bour (eds.) *Negotiating Journalism. Core Values and Cultural Diversities* (Göteborg: Nordicom: 2017).

<sup>139</sup> Ibid.

environment created a culture of self-censorship in Bangladesh. On the other hand, to derive legitimacy and popular support, the Prime Minister remarked that the country will run as per the *Madinah* Charter and the last sermon and directives of Prophet Hazrat Muhammad (PBUH), which provides a secular understanding of Islam.<sup>140</sup> Explaining the situation, political analyst M M Akash commented, “Awami League is trying to please both groups”.<sup>141</sup> Later, the Prime Minister clearly expressed her disapproval for offending Islam as *"I don't consider such writings as freethinking but filthy words. Why would anyone write such words? It's not at all acceptable if anyone writes against our prophet or other religions."*<sup>142</sup> Such state response towards assassin's veto is resulting in self-censorship.

India too has a history of the assassination of journalists. Although there is disagreement about the number of the murdered journalists, the agreed lowest number of 52 is also alarming.<sup>143</sup> However, during the current regime, the rate of killing rationalist or left-wing writers and journalists has rocketed. In 2015, nine journalists have been killed as reported by Reporters without Forum.<sup>144</sup> Most victims share a common characteristic of criticizing extreme right-wing ideologies, values and politics. The list includes Narendra Dhabalkar, an anti-black-magician activist,<sup>145</sup> M M Kalburgi, an award-winning rationalist writer,<sup>146</sup> and Gauri Lankesh another

<sup>140</sup> “Country to be run as per Madinah Charter: PM” *The Daily Star* (Dhaka 8 March 2015) <<https://www.thedailystar.net/country-to-be-run-as-per-madinah-charter-pm-16759>> accessed 11 May 2021.

<sup>141</sup> Kadir Kollol, “ব্লগার হত্যাকাণ্ড নিয়ে অস্পষ্ট অবস্থানে আওয়ামীলীগ” (Awami League’s Ambiguous Stance on Blogger Killing) (*BBC Bangla* 11 August 2015) <[https://www.bbc.com/bengali/news/2015/08/150811\\_pg\\_bd\\_blogger\\_killing\\_al](https://www.bbc.com/bengali/news/2015/08/150811_pg_bd_blogger_killing_al)> accessed 11 May 2021.

<sup>142</sup> Who is behind the Bangladesh killings? BBC 2 May 2016 <https://www.bbc.com/news/world-asia-34517434> accessed 11 May 2021.

<sup>143</sup> “116 journalists killed in India since 1990” <<https://www.nationalheraldindia.com/national/116-journalists-killed-in-india-since-1990>> accessed 11 May 2021. See also, the report of Committee to Protect Journalist.

<sup>144</sup> “110 Journalists Killed in 2015, India Deadliest Asian Nation for Reporters: Study” (*NDTV*, 29 December 2015) <<https://www.ndtv.com/world-news/110-journalists-killed-in-2015-most-in-peaceful-countries-reporters-without-borders-1260240>> accessed 11 May 2021.

<sup>145</sup> “Anti-black Magic Activist Dabholkar Killing: Two Held” *BBC* (London, 7 December 2013) <<https://www.bbc.com/news/world-asia-india-25278729>> accessed 11 May 2021.

<sup>146</sup> Fearful Silence: The Chill on India’s Public Sphere, report by Pen International. See also Soutik Biswas, Who killed Dr Malleshappa Kalburgi?” *BBC* (London 31 August 2015) <<https://www.bbc.com/news/world-asia-india-34105187>> accessed 11 May 2021.

award-winning prominent journalist.<sup>147</sup> Notably, the accused of the *Gauri Lankesh* murder confessed before police that "*Gauri Lankesh Was Anti-Hindu, Had To Be Killed*."<sup>148</sup> Like the post *Charlie Hebdo* narratives mentioned by Parmar, the assassination of writers resulted in victim-blaming in many cases. The Prime Minister was criticized in social media for continuing to follow people who were blaming and abusing Lankesh following her murder.<sup>149</sup> While Modi himself kept silence on the matter, the BJP leaders justified his "tolerance" by noting him a true believer of freedom of expression. This selective approach to freedom of expression, the extremely low conviction rate,<sup>150</sup> continuing abuse and rape threats to female journalists<sup>151</sup> is creating a chilling effect and an atmosphere of self-censorship among the journalists, writers, artists and free thinkers of India. In 2015, Perumal Murugan, a prominent novelist in Tamil language, was threatened, humiliated and forced to sign an undertaking by the right wing Hindu groups for not continuing his writing. He, however, came back to writing after a long self-imposed censorship with his new novel which is heavily rhetorical due to the terrifying atmosphere.<sup>152</sup>

<sup>147</sup> India Pursuing Truth in the Face of Intolerance, report by Pen International. See also Gauri Lankesh: Indian journalist shot dead in Bangalore" *BBC* (London, 6 September 2017) <<https://www.bbc.com/news/world-asia-india-41169817>> accessed 11 May 2021.

<sup>148</sup> ""Gauri Lankesh was Anti-Hindu, Had to Be Killed," Confesses Arrested Man" *The Hindu* (Delhi, 1 June 2018)<<https://www.thehindu.com/news/cities/bangalore/gauri-lankesh-killed-for-anti-hindu-views/article24061141.ece>> accessed 11 May 2021.

<sup>149</sup> "Narendra Modi criticised over Twitter links to abuse of shot journalist" *The Guardian* (London, 8 September 2017) <<https://www.theguardian.com/world/2017/sep/08/narendra-modi-criticised-over-twitter-links-to-abuse-of-shot-journalist>> accessed 11 May 2021.

<sup>150</sup> Siddhartha Deb "The killing of Gauri Lankesh" [https://www.cjr.org/special\\_report/gauri-lankesh-killing.php](https://www.cjr.org/special_report/gauri-lankesh-killing.php) accessed 11 May 2021.

<sup>151</sup> "The perils of being a journalist in Modi's India" *Al Jazeera* (Doha, 14 June 2018) <<https://www.aljazeera.com/features/2018/6/14/the-perils-of-being-a-journalist-in-modis-india>> accessed 11 May 2021.

<sup>152</sup> "Perumal Murugan: India's 'Dead' Writer Returns with Searing Novel *BBC* (London, 15 March 2018)<https://www.bbc.com/news/world-asia-india-43194547>



## Growing Intolerance towards Political Satire

Ronald Dworkin defended the right to ridicule as he believed it to be a distinct kind of expression which needs special protection.<sup>153</sup> He argued for allowing of ridicule as it provides democratic legitimacy to law making. While some argue that ridicule involves offence against people or ideas and therefore should be regulated, Dworkin rejects the idea of replacing it with a “less offensive rhetorical form.” He believes ridicule cannot be done in this way without changing its meaning and defeating its purpose.

Cartoons, satires, comics, graphic novels and stand-up comedy shows are the common art-forms where ridicule is exercised. In illiberal regimes, political satire is often used to express views when direct political speeches and dissent are forbidden. To find the relation between the regime and political satire, Leonard Freedman categorized different countries of the world into the broad division of authoritarian and democratic regimes.<sup>154</sup> Analyzing incidents of resistance and tolerance towards political satire, he concluded that the degree of openness and censorship varies in democracies and authoritarian regimes. Despite that variation, political satire is generally more threatened in authoritarian regimes than democracies.

That is why contemporary Bangladesh and India tend to have a rigid stance on political comedy. Although both Bangladesh and India share a history of appreciation of humor in its literature, the history of tolerance towards political and religious satire was particularly shaky.<sup>155</sup> However, in recent years the rate of publication of political cartoons has decreased substantially in

---

<sup>153</sup> Ronald Dworkin, “Right to Ridicule” *New York Review of Books* on March 23, 2006.

<sup>154</sup> Leonard Freedman, “Wit as a Political Weapon: Satirists and Censors” (2012) 79 *Social Research: Politics and Comedy* 87.

<sup>155</sup> “Cartoonist Arif Jailed” *The Daily Star* (Dhaka, 12 November 2009) <<https://www.thedailystar.net/news-detail-113872>> accessed 11 May 2021. See also Krishna Kumar, Charge was dropped later. See Maharashtra government drops sedition charge against cartoonist Aseem Trivedi *India Today* (Delhi, 12 October 2012) <<https://www.indiatoday.in/india/story/maharashtra-government-drops-sedition-charge-against-cartoonist-aseem-trivedi-118473-2012-10-12>> accessed 11 May 2021.

Bangladesh.<sup>156</sup> Cartoonists mentioned different reasons for such decline including intolerance towards political satire. Some, however, contended that drawing cartoons is still possible with some amount of self-restraints. This embracement of self-censorship can be explained by the Foucauldian idea of normalized power. When power is normalized, people tend to act in a way they are expected to act without coercion.

The comedy artists in India, too, have been facing legal and extra-legal challenges in recent years which resulted in increased self-censorship.<sup>157</sup> However, like power does not function in a linear way, the degree of censorship often varies depending on the context or deciding authority. For instance, the High Court of Madras in 2018 held the right to ridicule to be a basic right in a case where religious sentiment was alleged to be hurt by cartoons.<sup>158</sup> This does not, however, show the entire picture of censorship of political satire in India as comedians continues to get threats for their contents.<sup>159</sup>

One of the most widely discussed cases on censorship of political satire was the arrest of cartoonist Ahmed Kabir Kishore in Bangladesh.<sup>160</sup> On the other hand, the arrest of standup comedian Munawar Faruque along with his colleagues can be regarded as an unfortunate turn of Indian censorship towards rigidity of artistic freedom.<sup>161</sup> Kishore was arrested for his cartoon series named “Life in the Time of Corona”. Munawar was jailed for his standup comedy show which allegedly caused hurt to religious sentiments. In an interview, Kishore shared his

<sup>156</sup> Amanur Rahman Rony, “Why is the Number of Political Cartoon Decreasing?” (কেন কমছে রাজনৈতিক কার্টুনের সংখ্যা?) *Bangla Tribune* (Dhaka, 7 March 2021).

<sup>157</sup> “Indian Cartoonist Talks about the Increase in Self-Censorship” <<http://cblldf.org/2015/02/indian-cartoonist-talks-about-the-increase-in-self-censorship/>> accessed 17 May 2021.

<sup>158</sup> “The Right to Ridicule a Basic Right: Madras High Court” (*ICF Team*, 01 Jun 2018) <<https://sabrangindia.in/article/right-ridicule-basic-right-madras-high-court>> accessed 17 May 2021.

<sup>159</sup> “Comedian Agrima Joshua Sent Rape Threats over Joke on Shivaji Statue, Twitter says #ArrestShubhamMishra” *India Today* (Delhi, 12 July 2020) <<https://www.indiatoday.in/india/story/comedian-agrima-joshua-stand-up-comedy-chhatrapati-shivaji-statue-shubhammishra-1699784-2020-07-12>> accessed 17 May 2021.

<sup>160</sup> Zyma Islam, “Scars of Torture All over Him” <<https://www.thedailystar.net/frontpage/news/scars-torture-all-over-him-2055265>> accessed 17 May 2021.

<sup>161</sup> “How an Indian Stand Up Comic Found Himself Arrested for a Joke He Didn't Tell” <<https://time.com/5938047/munawar-igbal-faruqui-comedian-india/>> accessed 17 May 2021.

traumatizing experience of being tortured to explain the content of his cartoons in police custody. In particular, he was interrogated to answer whether the female characters of his cartoons represent the prime minister or not. Munawar's charge was about wounding religious sentiments by insulting Hindu deities. None of the cases involve any issue of incitement to violence or any offences. Rather both of them solely focus on content-based restriction. This can also be regarded as violation of viewpoint neutrality since in both cases the narrative of the ruling regime was thought to be threatened by the contents.

The arrest of Faruque adds another layer of self-censorship as he clarified his absence of intention to hurt anyone's religious belief.<sup>162</sup> This apologetic explanation reflects his self-censorship as to certain ideological content. In the same way, Kishore could not choose to reply that drawing prime minister's cartoon cannot be an offence in a democratic country. Instead he explained his alleged cartoon character to be the Mother Nature healing the world from Corona virus. This shows that even the courageous artists have accepted the normalized censorship in these countries.

## Religious Disapproval

As already discussed, religion plays a major role in censoring artistic freedom in Bangladesh and India. The degree of censorship goes beyond blasphemy or defamation of religion, and often extends towards censoring art in general. This stretch is particularly noticeable in populist regimes where the dominant narrative is motivated by religion.

Bangladesh's Muslim majority in combination with *Awami League* has been reported to cause systematic suppression of pluralistic creative works that go against the government policies and

---

<sup>162</sup> Barkha Dutt, "Munawar Faruqui: Prison, Comedy & Self-Censorship" <<https://www.youtube.com/watch?v=k7FqswitVrM>> accessed 20 May 2021.

conservative Islamic philosophy.<sup>163</sup> Since populism in the politics of Bangladesh is heavily influenced by Islamic fundamentalism, artworks having connotations conflicting with Islamic values are seen as condemnable. In 2013, *Hefajat e Islam Bangladesh* presented their 13 Point Charter where they expressed their disapproval of certain art forms.<sup>164</sup> One of their demands was about putting an end to the sculpture culture of Bangladesh.<sup>165</sup> Although *Hefajat* did not succeed to put an end to sculptures, they succeeded to influence the government's decision in another sculpture-related incident. In 2017, they protested against the erection of a sculpture in front Supreme Court of Bangladesh. The sculpture resembled Greek goddess Themis but was wearing Sari, a traditional female attire of Bangladesh. In response to the demonstration of *Hefazat-e-Islam*, the Prime Minister expressed her dislike of the sculpture. She said, “*Why would the statue of Greek Themis be set up in Bangladesh? The Greeks had a certain type of costume, but here a statue has been built and it is wearing a sari. It's a funny incident. I don't know why such an incident happened.*”<sup>166</sup> The prime minister further assured the Islamic leaders of taking a measure by discussing the matter with the chief justice. In her words, “*Keep faith in me, I'll do whatever necessary.*”<sup>167</sup> Later, the sculpture was resituated in a less conspicuous area of the Supreme Court.<sup>168</sup> Incidents like these show a compromising approach from the government's side.

A similar approach can be found in India, in the verdict of the *Babri* mosque case of 2019.<sup>169</sup> In this case, the Court did not find any conclusive proof regarding the planning of demolition of the

<sup>163</sup> The State of Artistic Freedom 2021.

<sup>164</sup> “Hefajat Demands” *The Daily Star* (Dhaka, 6 April 2013) <<https://www.thedailystar.net/news/hefajat-demands>> accessed 17 May 2021.

<sup>165</sup> Ibid.

<sup>166</sup> UnB Dhaka, “Sculpture at SC: Such statue shouldn't be here: PM” *The Daily Star* (Dhaka, 12 April 2017) <<https://www.thedailystar.net/frontpage/sculpture-sc-such-statue-shouldnt-be-here-pm-1390102>> accessed 17 May 2021.

<sup>167</sup> Ibid.

<sup>168</sup> The State of Artistic Freedom 2018.

<sup>169</sup> “Ayodhya Dispute: The Complex Legal History of India's Holy Site” *BBC* (London, 9 November 2019) <<https://www.bbc.com/news/world-asia-india-50065277>> accessed 15 June 2021.

mosque despite the presence of photographs and video cassettes.<sup>170</sup> Though the mosque was a valuable piece of architecture of Mughal era, the Court ordered the government to build up a temple, as demanded by Hindu right-wing activists. The right-wing activists stormed the Annual Jaipur Art Summit by damaging paintings, attacking artists, and stealing a painting of semi-nude women.<sup>171</sup> Overall, the incidents show that religious approval has a significant impact in deciding the fate of art in both Bangladesh and India.

### Film Censorship and Viewpoint Neutrality

The dominant narratives of regimes determine the acceptability of different art contents. Expressions that challenge this narrative are generally not tolerated. Film being an art form regulated by prior censorship is especially vulnerable. Since, the film industry of Bangladesh is less flourished than India, instead of basing the comparison on the number of films banned I am comparing the reasons for banning the films.<sup>172</sup>

In Bangladesh, *Rana Plaza*, a film made on the collapse of a garments building in 2013 causing death of more than 1000 people, was initially censored for ongoing case and showing political involvement of the garments workers.<sup>173</sup> *Shonibarar Bikel*, a film portraying terrorist attack in 2016 in Dhaka, was censored under the ground that it would damage country's reputation.<sup>174</sup> The directors of the film *Nabab LLB* were arrested under creating pornographic content while relevant content was about a rape and treatment of victim in a courtroom and by police.<sup>175</sup>

In India, the grounds for censorship have also been viewpoint based. In 2014, the Supreme Court rejected the application to ban *PK*, a film that questioned traditional religions, and advised to

<sup>170</sup> “Babri mosque: India court acquits BJP leaders in demolition case” *BBC* (London, 30 September 2020) <<https://www.bbc.com/news/world-asia-india-54318515>> accessed 12 June 2021.

<sup>171</sup> Art under Attack 2016 by Freemuse.

<sup>172</sup> The amount of films produced per year for India is 1500-2000 whereas in Bangladesh the amount is reduced to only 30 in 2013.

<sup>173</sup> The State of Artistic Freedom 2018.

<sup>174</sup> Ibid,

<sup>175</sup> The State of Artistic Freedom 2021.

avoid the content if one finds it offensive.<sup>176</sup> However, this did not stop the violent protest against *PK* and vandalism of theatres later that year.<sup>177</sup> Films like *Sexy Durga* or *Lipstick under My Burkha* did not receive initial permission for screening due to sexual content.<sup>178</sup> *Padmavati*, a historical film based on a story of a Hindu Queen and Muslim King, became a matter of controversy in 2017. Both BJP and Congress agreed to ban the film *Padmavati* as it contains elements that alter history.<sup>179</sup> Later, *Padmavati* had to change its name into *Padmavat* to ensure it does not carry reference to history. It also cut multiple scenes so that it does not wound religious sentiments.<sup>180</sup>

## Cultural Regulation, Patriarchy and Regime

In the global context of ongoing deterioration of freedom of artistic expression, the trend of labeling female artists as “loose” or “prostitutes” has been mentioned in the report of Farida Shaheed.<sup>181</sup> Both Bangladesh and India, predominantly patriarchal societies, tend to suffer from similar tendencies. Since the populist narratives of these countries heavily rely on religions, the regimes are also functioning through patriarchal roots of stigmatization and exclusion. The generalized labeling of elites as “nastik” or “urban naxal” changes dimension when it comes to female artists. They are labeled with derogatory adjectives like prostitutes and so on.<sup>182</sup> In India, female journalists are often labeled as ISIS sex slave, prostitute, Islamist, Jihadi Jane and so on

<sup>176</sup> “No Ban on PK, SC says ‘If You Don’t Like then Don’t Watch It’” *The India Times* (Delhi, 15 August 2014) <<https://indianexpress.com/article/entertainment/bollywood/supreme-court-dismisses-plea-filed-against-aamir-khan-over-pk-poster/>> accessed 7 June 2021.

<sup>177</sup> “Protest against PK escalates, theatres in Gujarat vandalized” *The India Times* (Delhi, 30 December 2014) <<https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/protest-against-pk-escalates-theatres-in-gujarat-vandalised/articleshow/45685893.cms>> accessed 7 June 2021.

<sup>178</sup> Later the Film Certification Appellate Tribunal (FCAT) overturned the decision relating to *Lipstick under my Burkha*.

<sup>179</sup> “Aman Sharma BJP & Congress on the same page on *Padmavati*” (*The Economic Times*, 20 November 2017) <[https://economictimes.indiatimes.com/news/politics-and-nation/bjp-congress-on-the-same-page-on-padmavati/articleshow/61716928.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/bjp-congress-on-the-same-page-on-padmavati/articleshow/61716928.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)> accessed 7 June 2021.

<sup>180</sup> The State of Artistic Freedom 2018.

<sup>181</sup> Farida shaheed, Report of the Special Rapporteur in the Field of Cultural Rights: the Right to Freedom of Artistic Expression and Creativity.

<sup>182</sup> Prostitution per se may not be demeaning. However, labeling someone as prostitute to degrade, stigmatize and ostracize should be counted as demeaning.

when they happen to come from a Muslim origin.<sup>183</sup> Rana Ayyub shared her experience of being verbally abused for reporting on the Hindu nationalist government.<sup>184</sup>

Rape threat to female writers is common in both Bangladesh and India. The frequency of receiving rape threats by the female bloggers of Bangladesh is so high that many of them have stopped checking the messages of social media.<sup>185</sup> An Indian female writer shared her grievance when nothing was done against the rape threats she received after criticizing the government.<sup>186</sup>

The contents of art that challenge patriarchal norms are also targeted for censorship. *No Dorai*, a film on the first female Bangladeshi surfer, faced the charge of wounding religious sentiments for showing a Muslim girl breaking norms.<sup>187</sup> On the other hand, *India's Daughter*, a film made on a brutal true rape incident of India, was banned for harming image of the country among other reasons.<sup>188</sup>

Female artists are often accused and threatened for violating the religious norms. For example, female singer Suhana Syed received threats from radical Islamists for “[tarnishing] the Muslim Community by singing in front of men” and “showing [her] beauty to other men”.<sup>189</sup> Another singer Nahid Afrin was also threatened for her singing in public which is an anti-Shariah act.<sup>190</sup> Rita Dewan, Bangladeshi folk singer, was prosecuted for wounding religious

<sup>183</sup> Richard Rego, “Changing Forms and Platforms of Misogyny: Sexual Harassment of Women Journalists on Twitter” <10.15655/mw/2018/v9i3/49480> accessed 16 June 2021.

<sup>184</sup> Ibid.

<sup>185</sup> Snigdhendu Bhattacharya, “How Bangladeshi Bloggers Paid the Price for Protesting Religious Fanaticism” (*Huffington Post*, 8 January 2020) <<https://www.huffpost.com/archive/in/entry/bangaldeshi-bloggers-religious-fanaticism-in-5f25a760c5b6a34284bb8177>> accessed 7 June 2021.

<sup>186</sup> Tora Agarwala, “Assam writer held for sedition for questioning ‘martyrs’ on Facebook post” (*The Indian Express* 7 April 2021) <<https://indianexpress.com/article/north-east-india/assam/assam-writer-held-for-sedition-for-questioning-martyrs-on-facebook-post-7261901/>> accessed 7 June 2021.

<sup>187</sup> Reuters, “No Dorai faces calls to be banned” *Dhaka Tribune* (Dhaka, 12 December 2019) <<https://www.dhakatribune.com/showtime/2019/12/12/bangladesh-film-about-girl-surfer-faces-calls-to-be-banned>> accessed 12 June 2021.

<sup>188</sup> Andrea DenHoed, “Silencing “India’s Daughter” *The New Yorker* (New York, 6 March 2015) <<https://www.newyorker.com/news/news-desk/sons-and-daughters>> accessed 15 June 2021.

<sup>189</sup> The State of Artistic Freedom 2018.

<sup>190</sup> The State of Artistic Freedom 2018.

sentiments.<sup>191</sup> Extreme right-wing activists also threatened to chop off the nose of Deepika Padukone, actress of the film *Padmavat*.<sup>192</sup>

---

<sup>191</sup> The State of Artistic Freedom 2020.

<sup>192</sup> “Padmaavat: Why a Bollywood Epic has Sparked Fierce Protests” *BBC* (London, 25 January 2018) <<https://www.bbc.com/news/world-asia-india-42048512>> accessed 15 June 2021.



## CHAPTER SIX

### Conclusion

Traveling through different levels of democracy, Bangladesh and India have ended up in a similar type of illiberal regimes with contrasting pre-dominant narratives. This contrast is not surprising due to the ripple effect relationship between these two countries regarding the communal conflict. Why these two countries ended up in these specific types of illiberal regimes with specific narratives can be the subject matter of another research. However, the shared history of censorship and identity politics can be regarded at least as one reason for the current situation.

The contemporary regimes of Bangladesh and India need to be understood in the historical context of identity politics in these countries. While identity politics is fueling right-wing populism, the neo-patrimonial authoritarianism in Bangladesh is accommodating it for its sustainability. In the case of India, the ruling party itself is the advocate of *Hindutva*-based populism. Both of these regimes have developed their justifications on a specific narrative where they equate themselves as the victim of so-called liberalist state-making, but supreme due to their ideological position. On the other hand, the writers, artists, human rights activists, and free thinkers are regarded as corrupt elites. Artistic expressions that challenge this narrative are mostly censored through the deterrent effect of arrest, or mob censorship.

As found in the analysis, the deterioration of freedom of expression is predominant in both of the contemporary illiberal regimes of Bangladesh and India. The chilling effect of legal and extra-legal censorship is prevailing. In particular, the use of violence as a tool for censorship is deeply connected with the narratives of the respective regimes. While in Bangladesh assassination is generally targeting those, who challenge the narrative of political Islam, in India challenging the

traditional *Hindutva* narrative is the predominant reason for violent attacks. One of the important reasons why these regimes are less committed to stand for freedom of expression is their dependency on these narratives for deriving legitimacy.

The legal structure of freedom of artistic expression in Bangladesh and India happen to suffer from viewpoint-based censorship mechanisms since its very beginning. Cases like *Shreya Singhal* or *Sadia Chowdhury Parag* are better to be considered exceptions to the pre-dominant jurisprudence. This viewpoint-based censorship structure is a fertile ground where illiberal regimes can grow. Both Bangladesh and India are successfully developing their respective populist narratives with the help of this legal and extra-legal structure.

The relation between these regimes and censorship can be explained by twofold reciprocities. The intra-state reciprocity of censorship works as the robust growth of legal and extra-legal censorship and the illiberal regime fuel each other. On the other hand, inter-state reciprocity exists as the communal conflict that plays role in shaping the populist narrative functions as a source of a ripple effect.

Against this backdrop, the general philosophical pattern of censorship is not compatible with the idea of individual autonomy. As a result, the autonomy of art has hardly any priority. Moreover, the excessive paternalistic structure is not helpful for the Dworkinian legitimacy of laws that prohibits discrimination. The censorship though started in the form of coercive power, is soon resulting in self-censorship. Silence on matters challenging the dominant narrative of the regimes is becoming normalized.

## Bibliography

### Books

- Bhatia G, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* (Oxford University Press: 2015).
- Chandrachud A, *Republic of Rhetoric: Free Speech and the Constitution of India* (Penguin Random House 2017).
- Chakravarty D, *Provincializing Europe* (PUP 2000).
- Dworkin A, *Pornography: Men Possessing Women* (G. P. Putnam's Sons 1981).
- Foucault M, *Discipline and Punish* (Pantheon Books 1977).
- Frey E, Rhaman M and Bour H E (eds.) *Negotiating Journalism. Core Values and Cultural Diversities*. (Göteborg: Nordicom: 2017).
- Hart H L A, *Law, Liberty, and Morality*(Stanford University Press: 1963).
- Islam M, *The Constitutional Law of Bangladesh* (Mullick Brothers: 2012).
- Kaur R and Mazzarella W, *Censorship in South Asia: Cultural Regulation from Sedition to Seduction* (Indiana University Press 2009).
- Khan S H, *The Freedom of Intellect Movement (Buddhir Mukti Andolan) in Bengali Muslim thought, 1926-1938*(Edwin Mellen Press 2007).
- MacKinnon C, *Only Words* (HUP 1993).
- Meiklejohn A, *Free speech and its relation to self-government* (Harper Brothers 1948).
- Mill J S, *On Liberty* (HUP 1859).
- Mudde C and Kaltwasser C R , *Populism in Europe and the Americas: threat or corrective for democracy?* (CUP 2012).
- Mudde C and Kaltwasser C R, *Populism: A Very Short Introduction* (OUP 2017).
- Rathore A S & Goswamy G, *Rethinking Indian Jurisprudence: An Introduction to the Philosophy of Law* (Routledge 2020).
- Riaz A, (ed), *(Re) Reading Taslima Nasrin: Contexts, Contents and Constructions* (Shrabon Prokashoni 2009).
- Shahabuddin M (ed.), *Bangladesh and International Law* (Routledge 2020).
- Sen A, *The Idea of Justice* (HUP 2009).

- Sen A, *Identity and Violence: The Illusion of Destiny* (Penguin Books India 2007).
- Singh A, *Sedition in Liberal Democracies* (Oxford University Press: 2018).
- Tharoor S, *Inglorious Empire: What the British Did to India* (Aleph Book Company 2017).
- Thiruvengadam A K, *The Constitution of India: A Contextual Analysis* (Hart Publishing 2017).
- Waldron J, *Harm in Hate Speech* (HUP 2012).

### Articles & Working Papers

- Ash T G, “Defying the Assassin’s Veto” *The New York Review of Books* (New York 19 February 2015).
- Bhatia G, “The Conservative Constitution: Freedom of Speech and the Constituent Assembly Debates” (2015) *Yale University Law School* <<https://ssrn.com/abstract=2679215>> accessed 20 June 2021.
- Bhuiyan M N, “Development of the Western Concept of Press Freedom in South Asia under the British Raj and Aftermath: A Comparative Contextualisation with Special Reference to Bangladesh” (2015) *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 48(2) 124-143
- Chakravorty P, *The Rushdie Incident as Law-and-Literature Parable*, *The Yale Law Journal* 104 (2213)
- Chandran M, “The Democratisation of Censorship: Books and the Indian Public” (2010) 45 *Economic and Political Weekly* 27.
- Chowdhury R, “Mot Prokasher Swadhinota, Dhormotontro o Manobadhikar (Freedom of Expression, Theology, and Human Rights: Contemporary Bangladesh)”. The Essay was read in the Human Rights Day 2015 organized by National Human Rights Commission, Bangladesh.
- Dworkin R, “A New Map of Censorship” (1994) 1(2) *Index on Censorship*.
- Eco U, “Ur-Fascism” *The New York Review of Books* (New York 22 June 1995) <<https://www.nybooks.com/articles/1995/06/22/ur-fascism/>>accessed 8 May 2021.
- Ferrara A, “Can political liberalism help us rescue “the people” from populism?” (2018) 44 *Philosophy and Social Criticism* 464.
- Freedman L, “Wit as a Political Weapon: Satirists and Censors” (2012) 79 *Social Research: Politics and Comedy* 87.
- Gafaïti H, ‘Power, Censorship, and the Press: The Case of Postcolonial Algeria’, *Research in African Literatures* (1999) 30 (3) *Dissident Algeria* 51.

- Ghosh S, “Identity, Politics, and Nation-building in History Textbooks in Bangladesh” (2014) *Journal of Educational Media, Memory & Society* 6 (2) 25.
- Green M C & Toft M D, “Freedom of Religion or Belief Across the Commonwealth: Hard Cases, Diverse Approaches” (2018) *The Review of Faith & International Affairs*, 16(4) 19-33, DOI: 10.1080/15570274.2018.1535043
- Homolar A and Löfflmann G, “Populism and the Affective Politics of Humiliation Narratives” (2021) 1.
- Hossain S, “Apostates’, Ahmadis and Advocates: Use and Abuse of Offences Against Religion in Bangladesh” WLUM-WSF-1h-final.indd Sec12:83
- Islam M M, “The Toxic Politics of Bangladesh: A Bipolar Competitive Neopatrimonial State?” <<https://doi.org/10.1080/02185377.2013.823799>> accessed 22 April 2021.
- Islam Z, “Film Censorship Regulators in Malaysia and Bangladesh” (2019) 7 IJRTE.
- Jackson E, “Catharine MacKinnon and Feminist Jurisprudence: A Critical Appraisal” (1992) 19 (2) JLS 200.
- Kapur R, “Who Draws the Line?” (1996) EPW 31.
- Kenny P D, *Populism and Patronage: Why Populists Win Elections in India, Asia, and Beyond* (OUP 2017).
- Khosla M and Vaishnav M, “The Three Faces of the Indian State” (2021) 32 *Journal of Democracy* 111.
- Krämer B, “Populism, Media, and the Form of Society” *Communication Theory* <10.1093/ct/qty017> accessed 8 May 2021.
- Matsuda M J, “Public Response to Racist Speech: Considering the Victim's Story” (1989) 87(8) MLR 2320.
- Michel Rosenfeld and AndrásSajó, ‘Spreading Liberal Constitutionalism: An Inquiry into the Fate of Free Speech Rights In New Democracies’ (2005) Benjamin N. Cardozo School of Law, Jacob Burns Institute for Advanced Legal Studies 144 p 45.
- Mohammad M “Asian Values Debate.” Speech at the 29th International General Meeting of the Pacific Basin Economic Council in Washington, 21 May 1996.
- Momen M N, “Myth and Reality of Freedom of Expression on the Internet” (2019) *International Journal of Public Administration*, DOI: 10.1080/01900692.2019.1628055
- Parmar S, “Freedom of Expression Narratives after the Charlie Hebdo Attacks” (2018) 18 *Human Rights Law Review*.
- Post R C, *Censorship and Silencing*, *Bulletin of the American Academy of Arts and Sciences* , May - Jun., 1998, Vol. 51, No. 5 (May - Jun., 1998).

- Rego R, “Changing Forms and Platforms of Misogyny: Sexual Harassment of Women Journalists on Twitter” <10.15655/mw/2018/v9i3/49480> accessed 16 June 2021.
- Riaz A, “The pathway of democratic backsliding in Bangladesh” (2020) <https://doi.org/10.1080/13510347.2020.1818069>
- Riaz A & Parvez S, “Anatomy of a Rigged Election in a Hybrid Regime: the Lessons from Bangladesh” <<https://doi.org/10.1080/13510347.2020.1867110>>accessed 22 April 2021
- Scanlon T, “A Theory of Freedom of Expression” (1972) 1 *Philosophy & Public Affairs* 204.
- Sen A, “Human Rights and Asian Values” (2003) Carnegie Council on Ethics and International Affairs. ISBN 978-0-87641-049-3.
- Sen A, “Human rights and Asian values: what Kee Kuan Yew and Le Peng don’t understand about Asia.” (1997) 217 *The New Republic* 33.
- Shah S P, “Sedition, Sexuality , Gender , and Gender Identity in South Asia”<https://doi.org/10.4000/samaj.5163>
- Shen F and Tsui L, “Revisiting the Asian Values Thesis: An Empirical Study of Asian Values, Internet Use, and Support for Freedom of Expression” (2018) 58 *Societies Asian Survey* 535.
- Tagore R, “At the Mercy of Authority” in Bengali “KortarIcchayKormo” available at <<https://rabindra-rachanabali.nltr.org/node/14763>> accessed on 23 January 2021.
- Thiruvengadam A K, “The Evolution of the Constitutional Right to Free Speech in India (1800-1950): The Interplay of Universal and Particular Rationales” (2013) University of Washington Trans-Pacific Comparative Constitutional Roundtable on Dec 06, 2013, Centre for Asian Legal Studies, National University of Singapore, Working Paper Series, <https://ssrn.com/abstract=2470905> accessed 20 February 2021.
- Upadhyaya M L, ‘The Law of Press Censorship in India by Soli J. Sorabjee’ (1978) *Journal of the Indian Law Institute* 20 (2) 315-320
- Venkateswaran K S, “Towards Common Minimum Standards on Freedom of Expression in South Asia” (2016) *Media Asia* 24(2) 63-71, <http://dx.doi.org/10.1080/01296612.1997.11726523>
- Ypi L, “What’s Wrong with Colonialism” (2013) 41(2) *Philosophy & Public Affairs* 158.
- Zakaria F, “The Rise of Illiberal Democracy” (1997) 76 (6) *Foreign Affairs* 22.

## Cases

- Brandenburg v Ohio, 395 U.S. 444 (1969).
- Chaplinsky v. New Hampshire, 315 U.S. 568.

Kedar Nath Singh v State of Bihar, AIR 1962 SC 955.

Miller v. California, 413 U.S. 15 (1973).

N Radhakrishnan v Union of India, Writ Petition (Civil) No 904 of 2018.

R.A.V. v City of St Paul, 505 U.S. 377 (1992).

Sadia Chowdhury Parag v Chairman, Film Censor Board & Others, Writ Petition NO 7677 of 2002 (Decided on 2003).

Schenck v US 249 U.S. 47 (1919).

Shreya Singhal v Union of India, AIR 2015 SC 1523.

Sristi School of Art, Design and Technology v. The Chairperson, Central Board of Film Certification, 178 (2011) 337.

Subramaninan Swamy v Union of India, Writ Petition No. 184 of 2014.

United States v. Washington Post Co. (1971).

## **Reports**

Art under Attack 2015, report by Freemuse.

Chronology for Hindus in Bangladesh (2004) by Minorities at Risk Project

Global Expression Report 2019/20, Report by Article 19.

Pen International.

Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed.

The State of Artistic Freedom 2018.

The State of Artistic Freedom 2020.

## **Statutes**

The Digital Security Act 2018.

The Code of Criminal Procedure 1898.

The Indian Press (Emergency Powers) Act 1931.

The Information Technology Act 2000.

The Information Communication Technology Act 2006.

The Newspaper (Incitement of Offences) Act 1908.

The Official Secrets Act 1923.

The Press Act 1799.

The Press and Registration of Books Act 1867.

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

### **Convention**

American Convention of Human Right

International Covenant on Civil and Political Rights.

International Covenant on Economic, Social and Cultural Rights.

Universal Declaration of Human Rights.

### **Newspapers**

Al Jazeera

Bangla Tribune

BBC

Dainik Jagran

Dhaka Tribune

Mainonline India

The Daily Prothom Alo

The Daily Star

The Hindustan Times

The Guardian

The Huffington Post

The India Times



The New Yorker