

Freedom of speech, cyber defamation and the Cyber Security Law in Bangladesh: A legal study

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Abstract

This study examines the interplay between freedom of expression, online defamation, and cybersecurity legislation in Bangladesh while evaluating the existing challenges affecting the implementation of the Cyber Security Act. The right to freedom of expression is a fundamental entitlement enshrined in Article 39 of the Constitution of the People's Republic of Bangladesh. It is recognised as an essential human right in numerous international human rights treaties. The rapid progression of information and communication technology has expanded opportunities for public discourse through digital media. However, the misuse of cyberspace has led to cyber defamation, misinformation, online harassment, and various other cyber offences.

Keywords: Freedom of speech, defamation, cyber defamation, political criticism, cyber security regulation

Introduction

The digital revolution has altered communication in Bangladesh similarly to other nations. Digital platforms, online news websites, blogs, and virtual forums have emerged as significant venues for articulating viewpoints and engaging in public discourse. While freedom of speech is essential for democracy, accountability, and effective governance, unregulated online expression can lead to defamatory remarks, hate speech, cyberbullying, and misinformation, which often proliferate on social media and pose a significant threat to law and order in Bangladesh. The Bangladeshi government introduced the Information and Communication Technology Act in 2006 to manage cyberspace, which was subsequently revised by the Digital Security Act of 2018. The 2018 legislation drew significant backlash for purportedly limiting freedom of speech. In reaction to these critiques, the government substituted it with the Cyber Security Act 2023. Following the July revolution, the provisional administration enacted the Cyber Security Ordinance, 2025, abrogating the Cyber Security Act, 2023. Bangladesh has recently enacted the Cyber Security (Amendment) Bill, 2026. This statute amends the Cyber Security Act of April 2026, which superseded the 2023 iteration. Significant modifications encompass:

- **Online Gambling Clauses:** Repealed Section 20, as online gambling is now addressed by the separate Gambling Prevention Bill.
- **AI and Social Media Regulation:** Empowers the BTRC to force platforms (like Meta) to remove harmful, defamatory, or AI-manipulated content within specified timeframes. ^[1]

Freedom of Speech and the Constitution of the People's Republic of Bangladesh

The right to freedom of speech allows every citizen to express thoughts and opinions without interference from the government. All democratic nations globally grant their citizens comparable rights for the unimpeded articulation of

thoughts and beliefs. The civil right to free expression is fundamental to every democratic society, and its absence will swiftly lead to the decline of democracy into authoritarianism. ^[2]

In Bangladesh, Article 39 ensures the liberty of thought, conscience, expression, and the press, albeit with permissible limitations. The right to free speech and expression has received global recognition and is regarded as essential for democratic frameworks. Article 19 of the Universal Declaration of Human Rights (UDHR) asserts that all individuals possess the right to freedom of opinion and expression. Furthermore, Article 19(2) of the International Covenant on Civil and Political Rights bestows upon all individuals the entitlement to freedom of speech and expression. India has ratified these international agreements and hence values this fundamental liberty of its populace. ^[3]

The entitlement to freedom of speech and expression is not unconditional and has been judiciously limited by the Constitution of Bangladesh as stipulated in Article 39(2). These encompass the protection of national security, the promotion of amicable relations with other nations, the preservation of public order, the maintenance of decency and morality standards, and the management of contempt of court, defamation, or incitement to criminal acts. In this context, it is essential to highlight that the liberties of speech, expression, and press enshrined in this provision are crucial not only for individual intellectual expression and social engagement among citizens but also for maintaining a sense of unity by fostering democratic and secular principles to enhance national productivity. ^[4]

The topic of restricting freedom of expression has attracted the attention of academics worldwide. The International Covenant on Civil and Political Rights (ICCPR), a prominent international human rights agreement, offers valuable insights for juxtaposing article 39 with international benchmarks. The ICCPR permits limitations to safeguard national security, public order, or the rights and

dignity of individuals. About a restriction on the right to freedom of expression as stipulated in article 19(3) of the ICCPR, a triadic evaluation is employed to determine the justification of such a limitation: (i) the restriction must be enshrined in law; (ii) it must seek a legitimate objective; and (iii) it must be essential for a lawful purpose.

While both Article 39 and the ICCPR acknowledge the necessity for reasonable limitations, their scope and interpretation vary. The UN Human Rights Committee, responsible for overseeing the enforcement of the ICCPR, utilizes a three-step assessment to avert arbitrariness as outlined in General Comment No. 34. The Comment stipulates that the overarching method for enforcing appropriate limitations should rely on explicit and comprehensible legislation, aim for a valid objective, and ensure that the restriction is essential for attaining the desired outcome while being commensurate with the precise aim sought. Significantly, this examination is not directly included in our Constitution.^[5]

In addition to that, article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), articles 12 and 13 of the Convention on the Rights of the Child (CRC), and article 21 of the Convention on the Rights of Persons with Disabilities (CRPD) likewise safeguard the right to freedom of expression. Although global frameworks acknowledge the right to freedom of expression, they do not explicitly outline a particular criterion for justifiable limitations similar to that of the ICCPR.^[6]

The United States Constitution is recognised for its strong safeguarding of free speech, including hate speech, while enforcing stringent restrictions on governmental intrusion. Nonetheless, as determined in *Brandenburg v Ohio* (1969), it allows for limitations on speech that provoke immediate unlawful behaviour. Certain academics contend that Bangladesh, a democratic nation akin to the US, ought to refrain from implementing restrictions to protect freedom of expression. Nevertheless, accounts from American sources indicate that unrestricted freedom of speech has been linked to a rise in hate crimes. The proliferation of hate speech has led to a concerning 11.6% rise in hate crimes, targeting persons according to their colour, ethnicity, sexual orientation, and religion.^[7]

Europe presents an alternative universal benchmark for freedom of expression. The European Convention on Human Rights (ECHR) adopts a comprehensive perspective on freedom of expression, in contrast to the United States. The ECHR's article 10(2) constrains this right through a three-part evaluation. The assessment additionally determines if the limitation is essential and commensurate to attain the valid objective. In instances like *Sunday Times v The United Kingdom* (1979)^[8] In *Groppera Radio AG and Others v Switzerland* (1990), the court effectively reconciled the protection of freedom of expression with the preservation of other vital societal interests. Furthermore, it is important to highlight that European courts have developed a framework regarding the margin of appreciation for member states, which is crucial for protecting freedom of expression.^[9]

Defamation in General

According to Black's Law Dictionary, "Defamation refers to the act of damaging another's reputation by the dissemination of a false statement to a third party. A man's

esteem is his asset, surpassing the worth of any other possession. Reputation refers to the perception held by others of an individual and is shaped by collective opinion. Prof. Salmond asserts that defamation occurs when a false and damaging allegation about another individual is disseminated without legal reason or excuse.

1. Essential Elements of Defamation

1.1 Defamatory statement: A defamatory assertion must exist. A statement can encompass not just a written or spoken declaration but also a cartoon or nonverbal gestures. In *Ridge v. English Illustrated Magazine* (1913)^[10] It is observed that a poorly composed narrative authored by a grocer's aide was disseminated by the defendants, claiming to be the work of the plaintiff, a renowned author. Readers of the published narrative would deduce that the calibre of the plaintiff's work had declined. Determined that the claimant was entitled to compensation for defamation.

1.2 Statement must refer to the person: In any defamation lawsuit, the claimant is required to demonstrate that the comment pertains to an identifiable individual. It cannot be considered defamation to label an individual as a thief and liar if the dialogue is not witnessed by others. It is not essential to demonstrate that the defendant intended it to pertain to the plaintiff.

1.3 Published by the defendant: In *Ruth vs. Huth* (1915)^[11] In this scenario, it is evident that if a defamatory remark is conveyed in a sealed envelope sent to the plaintiff, the defendant has no grounds to assume it will be accessed or perused by anyone other than the plaintiff. Therefore, if the letter is indeed opened and perused by an unauthorised individual, there is no dissemination, and the defendant bears no responsibility.

1.4 False: The defamatory statement must be false. No action lies for the publication of a defamatory statement which is true.

1.5 Statement must be defamatory in the estimation of a reasonable man: In *Sim v. Stretch* (1936)^[12] held that the expression reasonable man has been interpreted to mean the right-thinking members of society in general.

2. Defamation and The Penal Code

Four sections, namely 499, 500, 501 and 502 of Chapter 21 of the Penal Code, 1860, relate to Defamation.

Section 499: Any individual who, through spoken or written words, gestures, or visual depictions, conveys or disseminates any accusation about another individual with the intent to cause harm, or with knowledge or reasonable belief that such accusation will damage that individual's reputation, is deemed to have defamed that person, barring the exceptions outlined below. Punishment for defamation: S. 500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory: S. 501. Any individual who prints or engraves content, aware or reasonably believing that it is defamatory against another individual, shall face simple imprisonment for a duration of up to two years, or a monetary fine, or both.

Sale of printed or engraved substance containing defamatory matter: S. 502. Anyone who sells or proposes for sale any

printed or engraved material having defamatory content, while being aware of its nature, shall face a penalty of simple imprisonment for a duration that may reach two years, or a monetary fine, or both.

Cyber Defamation and The Cyber Cases in Bangladesh

Cyber defamation transpires when inaccurate and harmful assertions are disseminated over digital platforms including social media, websites, blogs, or electronic correspondence. The damage inflicted by cyber defamation is frequently exacerbated due to the swift dissemination of online material, which can engage a vast audience. In April 2017, Monirul Islam, an employee at a rubber plantation in Srimongol, was apprehended for expressing approval of a Facebook post that condemned the prime minister's official visit to India, following a complaint from a party supporter who claimed to be "deeply offended and disturbed."^[13]

In April 2018, during a student demonstration at Dhaka University, a police officer lodged a complaint citing 43 "incendiary" Facebook posts that had garnered numerous likes and comments, which allegedly fostered a scenario that might jeopardise societal stability and incite disorder.

Numerous journalists and editors have been detained for digital publications accusing corruption, mismanagement, or targeting specific individuals. In June 2017, law enforcement apprehended Golam Mostafa Rafiq, the editor of Habiganj Samachar, due to an article in the newspaper's online edition that conjectured a ruling party MP would be denied party nomination.^[14]

In July 2017, a multitude of journalists demonstrated against the detention of Abdul Latif Moral for purportedly "distributing" a Facebook article that reported the death of a goat sent under a relief program, apparently aimed at disparaging the minister.^[15]

In May 2020, Ahmed Kabir Kishore and Mushtaq Ahmed were arrested for their satirical portrayals on Facebook that provided a critical viewpoint on the government's management of the COVID-19 crisis. The accusation against Kishore and others under the Digital Security Act, 2018, for merely expressing their freedom of expression illustrates the repressive character of the legislation. The United Nations Human Rights Committee has observed that harassing or stigmatising individuals for their opinions constitutes a blatant violation of their fundamental rights.^[16]

In late May 2026, Anowar Hossain, a leader of the National Citizen Party (NCP) in Lakshmipur, was detained and imprisoned after being captured by locals for purportedly disseminating derogatory comments and slanderous Facebook posts aimed at Prime Minister Tarique Rahman and Home Minister Salahuddin Ahmed.^[17] The occurrence prompted broader governmental measures, as Home Minister Salahuddin Ahmed and ICT Minister Faqir Mahbub Anam later declared that the government is revising the Cyber Security Act. The revisions seek to mandate international platforms such as Meta to eliminate AI-generated deepfakes and slanderous material within designated deadlines.^[18]

A defamation lawsuit has been initiated against four journalists for purportedly disseminating "false, misleading and defamatory information" against State Minister for Local Government, Rural Development and Co-operatives, Mir Shahe Alam. The case statement asserts that the defendant purportedly colluded to disseminate and propagate false, contrived, and deceptive information aimed

at tarnishing the personal, social, and political standing of the state minister. The assertion claims that on June 12, a social media post entitled "Now the contentious State Minister Mir Shahe Alam counsels journalists regarding the road incident" was disseminated, misrepresenting the minister's comments from a news conference at the Bogura News Club. It was stated that on June 13, inflammatory, deceptive, and slanderous remarks on the minister were disseminated on social media before the prime minister's visit, during which the state minister accompanied the premier.^[19]

Political Criticism and Defamation

The evolution of the digital age and the requirements of democracy have created a broader platform for the populace to express dissent towards government officials and other people across diverse social media. In this perspective, criticism constitutes a valid form of public engagement and is essential in a democratic governance framework. Consequently, constructive criticism ought to be regarded as a component of social regulation intended to enhance circumstances, rather than being classified as a defamatory criminal offence. Issues emerge when the distinctions between critique and slander become indistinct. Society possesses the entitlement to articulate viewpoints, including critiques; conversely, individuals are entitled to safeguard their dignity.^[20]

In the Italian legal framework, the intricate equilibrium between freedom of speech and the safeguarding of reputation remains a persistent topic of discussion and judicial action. The Court of Cassation, in its recent decision no. 27853 dated 02/07/2025 (submitted on 29/07/2025), led by Dr P. R. and with Dr G. R. serving as rapporteur, has delivered a significant interpretation concerning defamation in the media, specifically addressing political critique and informational diversity. The entitlement to political critique exemplifies one of the most profound expressions of free speech, a fundamental tenet of contemporary democracy. Nonetheless, this liberty is not boundless. It should be harmonised with other essential rights, including the right to reputation and dignity in relation to defamation. Jurisprudence is tasked with delineating the line between the rightful practice of criticism, which serves as a justification (or "exemption"), and defamatory behaviour. In this framework, Regulation No. 27853 of 2025 decisively intervenes:

In defamation cases involving the impact of political entities or other influences on the media, it is crucial to assess the necessity of a democratic society to foster public discourse on informational diversity, as long as the language employed does not constitute an unwarranted assault on the aggrieved party, lacking any basis in the overarching political critique aimed at the populace. The Court upheld the validity of the exemption related to statements in an article from an online newspaper about the distribution of high-level RAI appointments, noting that a typical reader could discern the essence of political critique from a thorough reading of the text, even in the allegedly defamatory remarks.

This maxim encapsulates the fundamental principle expressed by the Court. When criticism concerns the influence of politics on the media – a topic of crucial importance for democratic health – the defamation judgment must consider the need to promote public debate on

informational pluralism. This means that statements, even harsh ones, can be legitimate if they fall within a broader context of political criticism and aim to convey a message to citizens, without degenerating into an "aggressive attack" on the person, devoid of any justification. The Court emphasises the importance of analysing the overall context and the impact on the "average reader" to discern the nature of the criticism.^[21]

To assess the legitimacy of criticism, established legal doctrines require particular standards:

- Formal etiquette: the vocabulary utilised must be appropriate and avoid devolving into unnecessarily offensive or vulgar expressions, irrespective of the critique's intensity.
- The evaluation must hold substantial relevance to the public interest and pertain to the political or social issue at hand.
- Precision (in journalism, less stringent for critique): although the objective truth of facts is crucial for news reporting, it is not as demanding for political commentary; nonetheless, critics should begin with a factual basis, even if interpreted subjectively, rather than from completely unfounded or pretextual claims. The edict emphasises that criticism must not be devoid of justification.

A defamation lawsuit initiated in Dhaka has underscored the escalating importance of digital platforms in Bangladesh's political dialogue, emphasising the rising convergence of online expression, political competition, and legal responsibility.

The criminal charge, submitted on June 16 to the Chief Metropolitan Magistrate's Court in Dhaka, identifies Kawsar Ahmad as the defendant. The plaintiff, Yusup Kaosar, noted in the complaint as an advocate of the Bangladesh Nationalist Party (BNP), claims that the defendant propagated derogatory, misleading, and slanderous remarks about Prime Minister Tarique Rahman, former President and Proclaimer of Independence Shaheed Ziaur Rahman, and former Prime Minister Begum Khaleda Zia, who are the progenitors of the incumbent Prime Minister. Judicial sources reveal that the issue was brought before Metropolitan Magistrate Md. Ehsanul Islam in Court No. 08 and subsequently documented under reference number CR.-630/2026. The grievance was lodged pursuant to Sections 500, 501, 504, 505, and 505(A) of the Penal Code of Bangladesh, 1860.^[22]

Critical Analysis

There has been a continuous attempt to balance constitutional rights with the increasing necessity to control digital communication in Bangladesh's legal framework regarding cyber defamation and freedom of expression. While the right to free speech, thought, and conscience is guaranteed by Article 39 of the Constitution,^[23] several laws have imposed restrictions to combat cybercrime, disinformation, and online defamation, such as the Information and Communication Technology Act of 2006, the Digital Security Act of 2018, and the Cyber Security Act of 2023. Issues of legal certainty, proportionality, and conformity with constitutional and international human rights norms are raised by the far-reaching provisions of these legislative measures, even though they seek legitimate purposes.

An analysis of the current system shows that law enforcement authorities have a lot of leeway because there aren't any clear legal boundaries between harmful cyber defamation and lawful political criticism, investigative journalism, satire, and public interest reporting. The potential for inconsistent enforcement and a dampening of constitutionally free expression are both caused by legislative vagueness. As stated in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and General Comment No. 34 of the United Nations Human Rights Committee, comparative constitutional jurisprudence shows that limitations on freedom of expression should adhere to the principles of legality, necessity, and proportionality. Even though many of these principles are known to Bangladesh, their incorporation into the country's cyber regulatory framework is still in its early stages.^[24]

Because of the ever-present nature, immutability, and worldwide accessibility of digital communication—as well as new technologies like algorithmic disinformation, deepfakes, and artificial intelligence—the study concludes that cyber defamation poses problems outside the purview of conventional criminal law. Criminal penalties, when used excessively, have the potential to discourage journalists, academics, political opponents, and members of civil society from speaking out, which in turn could reduce public engagement and democratic accountability. As a result, the government of Bangladesh should implement a rights-based regulatory framework that includes measures to increase the role of the judiciary, define statutes more precisely, provide access to civil remedies, and ensure that laws are both necessary and proportional. Ensuring that cyber governance remains consistent with constitutional guarantees and Bangladesh's international human rights obligations, these reforms would better protect freedom of expression while safeguarding individual reputation.^[25]

Challenges to Prevent Cyber Defamation

1. Balancing Security and Freedom

One of the greatest challenges is maintaining a balance between cybersecurity and constitutional freedoms. Excessive regulation may suppress legitimate criticism, while inadequate regulation may encourage harmful online behaviour.

2. Social Media and Misinformation

The widespread use of social media has increased the dissemination of misinformation, fake news, and defamatory content. Authorities face difficulties in controlling harmful content without restricting lawful expression.

3. Chilling Effect on Journalists and Activists

Legal uncertainty and fear of prosecution may discourage journalists, academics, and activists from expressing opinions on matters of public interest.

4. Protection of Reputation

Cyber defamation has the potential to significantly harm both personal and professional reputations. Adequate legal measures are essential to safeguard individuals against online harassment while maintaining the right to free speech.

5. International Human Rights Standards

Bangladesh is a signatory to the United Nations human rights framework, encompassing the International Covenant on Civil and Political Rights, which acknowledges freedom of expression with permissible limitations. National cybersecurity legislation ought to conform to these global benchmarks.

Findings

1. This research reveals that Bangladesh encounters considerable difficulty in reconciling the constitutional assurance of freedom of expression with the necessity to govern cyber defamation and other digital offences. Article 39 of the Constitution safeguards the right to free speech and expression; however, the progression of cyber legislation—from the Information and Communication Technology Act 2006 to the Digital Security Act 2018 and the Cyber Security Act 2023, along with later amendments—illustrates the government's heightened emphasis on digital governance. Nevertheless, the examination indicates that these statutes persist in eliciting apprehensions about proportionality, legal clarity, and the possible limitation of valid political dissent and press liberty.
2. The research additionally indicates that cyber defamation is fundamentally distinct from conventional defamation because of the rapidity, permanence, and worldwide scope of digital communication. Current legal frameworks frequently fall short in tackling issues stemming from social media, anonymous individuals, artificial intelligence, and the transnational spread of defamatory material. Comparative examination reveals that democratic regions are progressively dependent on proportionality, judicial scrutiny, and public interest factors in reconciling freedom of expression with reputation safeguarding.
3. The results further emphasise that excessively expansive criminal statutes could instil a chilling effect on journalists, scholars, human rights advocates, and political activists, thus constraining democratic engagement and public accountability. The research suggests that Bangladesh ought to implement a rights-oriented cyber governance framework that conforms to international human rights norms, especially the tenets of legality, necessity, and proportionality. Prospective adjustments ought to enhance judicial supervision, delineate the difference between valid political critique and slanderous discourse, elevate digital literacy, and provide transparent frameworks for the regulation of online information. These reforms will enhance the safeguarding of personal reputation and constitutional liberties, while fostering a secure, responsible, and democratic digital landscape.

Recommendations

1. The Government's Cyber Security Cell should undertake awareness programs in educational institutions at all levels to promote digital literacy, cyber awareness, and responsible online behavior among students.
2. Any restriction on freedom of expression should strictly comply with the principles of necessity and

proportionality, ensuring a fair balance between individual rights and public interests.

3. Judicial oversight in cybercrime investigations should be strengthened to prevent abuse of power and to safeguard fundamental rights and due process.
4. Effective civil remedies should be established for victims of cyber defamation, enabling them to seek timely compensation and legal redress.
5. Transparency and accountability in law enforcement practices should be enhanced to ensure public trust and the proper enforcement of cyber laws.
6. Domestic cyber laws should be harmonized with international human rights standards to ensure the protection of freedom of expression, privacy, and other fundamental rights.
7. Political parties should provide regular training to their members and activists to help them distinguish between legitimate political criticism and defamatory statements in both online and offline communications.
8. Newspaper agencies and media organizations should recruit and train journalists with adequate knowledge of cyber laws and regulations to ensure responsible reporting and compliance with legal and ethical standards in the digital environment.

Conclusion

The right to free speech and expression is the paramount human right recognised worldwide in democratic societies. In contemporary society, cyberspace is utilised to its fullest extent to practise freedom of expression. Although international law safeguards free expression, there are circumstances in which such expression may be justifiably curtailed under the same legal framework—specifically where it infringes upon the rights of others or promotes hatred and incites discrimination or violence. However, the liberty of expression frequently hinges on affluence, status, and one's societal position. Individuals of wealth and influence are rarely constrained in articulating their opinions. In a like manner, individuals possessing personal computers with broadband enjoy much enhanced access to information compared to those who must traverse considerable distances to reach an internet café. The liberty of expression and cybersecurity are both vital in a contemporary democratic society. Although cyber defamation and digital harms necessitate judicial oversight, such regulation should not infringe upon constitutional liberties. The Cyber Security Act 2023 signifies Bangladesh's initiative to tackle new digital obstacles, yet uncertainties persist about its implications for freedom of expression. A harmonious strategy that safeguards both digital security and fundamental rights is essential for maintaining democratic governance and responsible cyberspace utilisation in Bangladesh.

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