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**“Freedom of Expression vs Hate Speech: A Comparative Analysis
under ICCPR and Bangladesh constitution”**

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Consent Form

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Declaration

I, Md.Sarwar Jahan Joy ID: 2020-3-66-034, hereby declare that the dissertation titled “Freedom of Expression vs Hate Speech: A Comparative Analysis under ICCPR and Bangladesh constitution” was entirely prepared by me under the supervision of Shah Maruf Uddin Ahmed, Lecturer, Department of Law, East West University, for the fulfillment of the requirements of Course Law 406 (Supervised Dissertation) for the LL.B (Hons.) degree offered by the Department of Law, East West University. I further declare that the content of the dissertation has not been submitted to or published by any journal, newspaper, or article. The content and materials used for the dissertation are duly acknowledged and recognized in the references and properly cited.

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Signature

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Table of Contents

List of Abbreviations:	8
Abstract	9
Chapter 2: Legal and Theoretical Foundations.....	15
2.1 International Human Rights and Freedom of Expression	15
2.2 ICCPR Article 19: The Right to Expression and Its Limitations	16
(1) Freedom to hold opinions	16
(2) Freedom to express opinions.....	16
(3) Legitimate restrictions on expression	16
2.3 CCPR Article 20: The Prohibition of Hate Speech	17
(1) Prohibition of war propaganda	17
(2) Prohibition of hateful advocacy	17
2.4 Theoretical Perspectives on Speech Regulation	18
(1) Liberal Theory (Marketplace of Ideas)	18
(2) Communitarian or Social Harmony Theory	18
(3) Dangerous Speech Framework (Benesch)	18
(4) Dignitaries Theory	18
2.5 Balancing Competing Rights in International Law	19
(1) Legitimate Aim	19
(2) Necessity	19
(3) Proportionality	19
Conclusion	19
Chapter 3: Comparative Analysis between ICCPR and the Constitution of Bangladesh (Articles 12, 28 & 39).....	20
3.1 Introduction	20
3.2 Bangladesh Constitution Article 12: Secularism and Freedom from Communalism.....	20
ICCPR Relationship Articles	20
3.4 Article 39 of the Bangladesh Constitution and ICCPR.....	22
3.5 Case Study 1: Bangladesh- Shahidul Alam vs. Bangladesh (2018).....	23
3.6 Case study 2: Bangladesh- Mustaq Ahmed Case (2020-2021)	24

3.8 Case study 4 India- Hate speech and Political Rhetoric	25
Chapter 4: Key Challenges and Legal Tensions in Regulating Freedom of Expression and Hate Speech	27
4.1 Introduction	27
4.2 Definitional Problems: What Constitutes Hate Speech?	27
Bangladesh's Definitional Issues	27
4.3 Digital Platforms and the Rapid Spread of Hate	28
Government Response.....	28
Tension with ICCPR.....	28
4.4 Political Abuse and Selective Application of Hate Speech Laws	28
Patterns in Bangladesh.....	28
4.5 Social Impact: Censorship vs Protection	29
4.6 Public Order, National Security, and Human Dignity	30
Bangladesh's Approach	30
Human Dignity Argument	30
4.7 Summary of Key Tensions in Bangladesh.....	30
4.8 Conclusion	31
Chapter 5: Implementation and Monitoring of ICCPR in Light of the Constitution of Bangladesh	32
5.1 Introduction	32
5.2.1 Monitoring and Reporting	32
5.2.2 General Comments as Interpretative Guidance	32
5.2.3 Individual Complaints	33
5.3 State reports and UN observations.....	33
5.4 Trends in Legal Reform and International Best Practices.....	33
5.4.1 Clear Definitions of Hate Speech	34
5.4.2 Judicial Safeguards and Proportionality Tests.....	34
5.4.3 Civil Society Participation	34
5.4.4 Decriminalization of Legitimate Expression.....	34
5. 5 Civil Society and Free Speech Advocacy in Bangladesh	34
5.6 Ethical Dilemmas in Enforcement	35
5.6.2 Protection of Minorities.....	35

5.6.3 Digital Speech Challenges	35
5.6.4 State power and abuse	36
5.6.5 Cultural and Religious Sensitivities	36
5.7 Conclusion.....	36
Chapter 6: Conclusion.	37
6.1 Introduction.	37
6.2 Findings.	37
6.3 Recommendations.	37
6.4 Areas for Future Research.....	38
6.5 Conclusion.....	38
BIBLIOGRAPHY	39

List of Abbreviations:

ASK – Ain o Salish Kendra

BLAST – Bangladesh Legal Aid and Services Trust

CGS – Centre for Governance Studies

CPR / ICCPR – International Covenant on Civil and Political Rights

CSA – Cyber Security Act

CSCA – Cyber Security Act (Bangladesh)

DSA – Digital Security Act

ECtHR – European Court of Human Rights

HRC – Human Rights Committee

ICT Act – Information and Communication Technology Act

ICCPR – International Covenant on Civil and Political Rights

IPC – Indian Penal Code

IT Act – Information Technology Act (India)

NGO – Non-Governmental Organization

UN – United Nations

UNGA – United Nations General Assembly

UDHR – Universal Declaration of Human Rights

USA / US – United States of America

Abstract

This research investigates the intricate connection between freedom of expression and hate speech under the Bangladesh constitution and the International Covenant on Civil and Political Rights (ICCPR). It examines the ways in which the right to free speech may conflict with efforts to combat hate speech, as well as how various nations interpret and balance these rights within their legal frameworks. By applying concepts from international human rights law, comparative constitutional law, and legal theory, the research aims to clarify where the distinction should be drawn between safeguarding speech and forbidding incitement to hatred.

The research focuses on how Article 19 and 20 of the ICCPR and Article 12, 22 and 39 of Bangladesh Constitution are applied in various national contexts, especially in countries with contrasting legal, cultural, and political traditions. The analysis includes case studies from democratic and developing nations to illustrate different legal approaches and the challenges in enforcing these rights without undermining social cohesion or human dignity.

Findings suggest that many governments struggle to define hate speech clearly while safeguarding legitimate expression. The study raises key ethical and legal questions such as whether banning hate speech restricts democratic dialogue or whether unrestricted speech fuels violence and discrimination. By comparing practices in selected countries, the research aims to provide insights into how international standards are localized.

Finally, the study offers practical recommendations for states, human rights bodies, and civil society on developing laws and policies that respect freedom of speech while effectively combating hate speech, using the ICCPR as a guiding framework.

Chapter 1: Introduction

Introduction

Freedom of expression has the power to change the world by influencing and sharing innovative ideas which is a fundamental human right that is safeguarded by international law. However, hate speech becomes more prevalent, especially online and this right becomes more and more in conflict. Additionally, the right to freedom of expression is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), whereas Article 20 requires nations to outlaw speech that incites violence, discrimination, or violence. In the Bangladesh constitution Article 39 guaranteed freedom of speech, but it allows for reasonable restrictions to protect public order, morality and national security, which can be used to address harmful speech like hate speech.

Moreover, a seemingly contradictory situation raises serious questions for lawmakers, courts and human rights advocates. It is essential that states protect open dialogue and democratic discourse, but this cannot be done by allowing harmful messages to spread unchecked. In what ways can we limit speech without violating human rights obligations?

Furthermore, in countries experiencing rising nationalism, religious tensions or ethnic divisions, governments often use national security or public order to restrict expression, sometimes suppressing dissent in the name of hate speech prevention. In contrast, when hate speech is ignored, it can quietly sow division, strengthen harmful stereotypes, and eventually, contribute to real harm, sometimes in a large scale.

A comparison of results of national approaches to implementing articles 19 and 20 of the ICCPR is vital given the current situation. This study adds to global conversation on the lines separating protected expression from illegal hate speech by examining legal standards, judicial reasoning and policy conflicts in balancing these rights.

Research Question:

1. To what extent can freedom of expression and the prohibition of hate speech be balanced under the ICCPR, and how do different states interpret this balance in practice?

Secondary Research Questions:

1. How do the Bangladesh constitution interpret and implement Articles 19 and 20 of the ICCPR in their domestic laws, conflicts and judicial systems?

2. Can legal limitations on hate speech be consistent with international standards for freedom of expression, and what are the comparative approaches that should be taken under Bangladesh constitution to achieve this balance?

Research Methodology:

This research adopts a qualitative doctrinal, and comparative approach which focuses on legal texts, international human rights frameworks, and case studies. The primary sources of this study are : the ICCPR, General Comments of the Human Rights Committee, and national constitutions . Then, the secondary sources include journal articles, legal commentaries, reports from human rights NGOs, and decisions from international and national courts.

The comparative dimension includes case studies of selected countries, such as Germany, the United States, Bangladesh, and India, representing different legal traditions and challenges in regulating hate speech while upholding free expression. As development relies on challenges.

This multi-source method will help identify both common principles and divergences, supporting a nuanced understanding of how ICCPR norms function in diverse legal environments.

Literature Review:

Benesch (2012) developed the concept of “dangerous speech” to assess when speech becomes likely to incite violence.

Gap: While useful, this framework does not analyze how ICCPR Articles 19 and 20 are interpreted in various legal systems.

Barendt (2005) offered a foundational analysis of freedom of speech, including its limits.

Gap: The work is largely Western-centric and does not deeply consider the ICCPR’s global application, especially in non-Western contexts.

Weinstein and Hare examined the philosophical basis for protecting offensive speech.

Gap: The study lacks a legal analysis of hate speech prohibitions in international law, particularly under Article 20 of the ICCPR.

Garton Ash explored free speech in a global age, including digital threats.

Gap: The study focuses on practical threats to expression but does not detail legal mechanisms under the ICCPR framework.

Sarat and Kearns studied law and violence, noting how speech can become a tool for harm.

Gap: Their work lacks a direct comparison of legal systems or focus on how courts draw the line between expression and incitement.

This thesis addresses these gaps by focusing specifically on the ICCPR, comparing how its key articles are applied across different countries, and evaluating legal and ethical implications in a global human rights context.

Scope of Research:

This study is limited to freedom of expression and hate speech regulation as interpreted under Articles 19 and 20 of the ICCPR and Bangladesh Constitution. It includes a comparative analysis of selected countries legal systems between ICCPR and Bangladesh focusing on Constitutional laws, major court rulings, and policy responses or restrictions unrelated to hate speech, nor does it examine all digital platforms in depth.

Limitation of the Research:

There are three key limitations in this study.

First, the research relies heavily on secondary sources and legal texts, which may not reflect recent ground-level realities or enforcement challenges.

Second, due to time and resource constraints, in-person fieldwork or interviews with legal practitioners, activists, or government officials could not be conducted.

Third, the comparative scope is selective and may not include all regional or religious perspectives on the topic. Additionally, definitions of hate speech vary across cultures, which complicates legal comparisons.

Chapter Outline:

Chapter 1: Introduction

1.1 Background of the Study

1.2 Research Questions

1.3 Research Methodology

1.4 Literature Review

1.5 Scope and Limitations

Chapter 2: Legal and Theoretical Foundations

2.1 International Human Rights and Freedom of Expression

2.2 Article 19 ICCPR: Right to Expression and Its Limits

2.3 Article 20 ICCPR: Prohibition of Hate Speech

2.4 Theoretical Perspectives on Speech Regulation

2.5 Balancing Competing Rights in International Law

Chapter 3: Comparative Approaches to Hate Speech Regulation between ICCPR and Bangladesh constitution

3.1 Freedom of Expression in Western Democracies differs with Bangladesh(e.g., USA, Germany)

3.2 Hate Speech Laws in South Asia (e.g., India, Bangladesh)

3.3 Regional Approaches: African and European Human Rights Systems

3.4 Case Studies of Controversial Court Rulings

Chapter 4: Key Challenges and Legal Tensions

4.1 Definitional Problems: What Is Hate Speech?

4.2 Digital Platforms and the Spread of Hate

4.3 Political Abuse of Hate Speech Laws

4.4 Social Impact: Censorship vs Protection

4.5 Public Order, National Security, and Human Dignity

Chapter 5: ICCPR in Practice – Implementation and Monitoring in light of Bangladesh Constitution

5.1 Role of the UN Human Rights Committee

5.2 State Reports and General Comments

5.3 Legal Reform Trends and Best Practices

5.4 Civil Society and Free Speech Advocacy

5.5 Ethical Dilemmas in Enforcement

Chapter 6: Conclusion & Recommendations

6.1 Summary of the Study

6.2 Contribution to International Human Rights Discourse

6.3 Recommendations for Policy and Law Reform

6.4 Importance of Legal Clarity and Public Education

6.5 Future Research Directions and Limitations

Chapter 2: Legal and Theoretical Foundations

2.1 International Human Rights and Freedom of Expression

Freedom of expression is a key right in international human rights law. It allows people to generate and share ideas, engage in public discussion and contribute in political, cultural and social activities. The Universal Declaration of Human Rights (UDHR), Article 19¹, and the International Covenant on Civil and Political Rights (ICCPR), Article 19², both acknowledge this right as essential. Still, transnational law also recognizes that freedom of expression has limits. While people have the right to hold and express opinions, this right can discord with other rights and interests, such as human dignity, equality, and religious beliefs. National security and social harmony are important. As a result, international legal frameworks set boundaries that allow countries to put certain restrictions to protect legitimate societal interests³⁴⁵.

The interpretation of these boundaries varies significantly between countries due to their unique social, cultural, political, and historical surroundings. This variation provides a base for relative analysis, which explains how states balance free expression with the need to prevent harm from hate speech.

¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 19.

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 19.

³ UN Human Rights Committee, 'General Comment No 34: Article 19: Freedoms of Opinion and Expression' (12 September 2011) CCPR/C/GC/34.

⁴ UN Human Rights Committee, 'General Comment No 34: Article 19: Freedoms of Opinion and Expression' (12 September 2011) CCPR/C/GC/34.

⁵ Dominic McGoldrick, 'The Limits of Freedom of Expression' (2006) 6(1) *Human Rights Law Review* 125.

2.2 ICCPR Article 19: The Right to Expression and Its Limitations

Article 19 of the ICCPR establishes a three-tiered structure for protecting freedom of expression:

(1) Freedom to hold opinions

This part is absolute. No restrictions of any kind may be placed on a person's internal thoughts, beliefs, or viewpoints.

(2) Freedom to express opinions

Individuals can share their ideas through speech, writing, art, or digital communication. This includes the right to receive and share information.

(3) Legitimate restrictions on expression

Article 19(3) allows states to limit expression, but only if those limitations are:

- Provided by law⁶
- Necessary and proportionate⁷
- Aimed at a legitimate goal, such as:
 - Protecting rights or reputations of others
 - Protecting national security
 - Maintaining public order
 - Safeguarding public health or morals

This structure shows the two sides of freedom of expression. It is strongly protected, but limits may apply to uphold other important values.

The Bangladesh Constitution, Article 39⁸, reflects this concept. It upholds freedom of speech and expression. Nonetheless, it allows “reasonable restrictions” for state security, public order, morality, and good relations with other countries⁹.

⁶ ICCPR (n 2) art 19(3).

⁷ General Comment No 34 (n 3) para 22.

⁸ Constitution of the People's Republic of Bangladesh 1972, art 39.

⁹ Laurence Boisson de Chazournes and Lori F Damrosch (eds), *The Balance Between Freedom of Expression and Social Harmony* (Oxford University Press 2016).

2.3 CCPR Article 20: The Prohibition of Hate Speech

Article 20 imposes explicit and stricter duties on States by requiring the proscription of certain harmful forms of expression¹⁰¹¹. It has two major parts:

(1) Prohibition of war propaganda

Any support or promotion of war must be banned by law¹².

(2) Prohibition of hateful advocacy

States have a duty to outlaw any expression that promotes national, racial, or religious hatred and that stimulates discrimination, hostility, or violence¹³.

This article addresses the dangers of speech that may incite violence or lead to widespread discrimination. In contrast to Article 19, which permits certain restrictions, Article 20 mandates that states criminalize particular harmful expressions. This results in tension between Articles 19 and 20. One focuses on protection, while the other enforces prohibition.

Different legal systems approach this tension differently. For instance, the United States offers broad protections for even hateful speech under the First Amendment, except when it directly incites imminent lawless action¹⁴. European nations enforce significantly stricter regulations on hate speech due to historical experiences of genocide and discrimination¹⁵.

In Bangladesh, legislation such as the Digital Security Act (DSA)¹⁶ and Penal Code provisions prohibit incitement and harmful speech, although concerns exist about misuse to stifle dissent¹⁷.

¹⁰ ICCPR (n 2) art 20(1).

¹¹ ICCPR (n 2) art 20(2).

¹² UN Human Rights Committee, 'General Comment No 11: Prohibition of Propaganda for War and Inciting Hatred' (1983).

¹³ Jacob Kiska, 'Hate Speech Laws: A Global Perspective' (2014) 12(4) *International Journal of Constitutional Law* 154.

¹⁴ *Brandenburg v Ohio* 395 US 444 (1969).

¹⁵ *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994).

¹⁶ Digital Security Act 2018 (Bangladesh) ss 25, 28, 29, 31.

¹⁷ T I Rahman, 'Freedom of Expression in Bangladesh: Constitutional Promise and Political Realities' (2020) 7(2) *Bangladesh Legal Studies Journal* 45.

2.4 Theoretical Perspectives on Speech Regulation

Several key theoretical frameworks explain why and how states restrict speech, especially hate speech:

(1) Liberal Theory (Marketplace of Ideas)

This perspective, linked to John Stuart Mill¹⁸ holds that truth emerges from the clash of ideas. No thought, no matter how objectionable, should be censored unless it poses a direct threat. This approach is reflected in the American free-speech model¹⁹.

(2) Communitarian or Social Harmony Theory

This theory emphasizes the importance of social harmony, equality, and public order. Speech that threatens these values should be restricted²⁰. Many European and South Asian legal systems follow this approach.

(3) Dangerous Speech Framework (Benesch)

This framework identifies speech likely to lead to real-world violence, considering:

- Speaker influence
- Audience vulnerability
- Social tensions
- Medium of communication
- Historical patterns of violence²¹

(4) Dignitaries Theory

This approach sees hate speech as an attack on human dignity and equality, especially toward marginalized groups²². It justifies restricting speech to protect vulnerable communities.

In Bangladesh, where religious, ethnic, and political sensitivities run high, both social harmony and dignitarian theories influence legal responses to hate speech²³.

¹⁸ John Stuart Mill, *On Liberty* (1859).

¹⁹ Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge University Press 1982).

²⁰ Amitai Etzioni, 'Community and Censorship' (2006) 14(2) *Journal of Political Philosophy* 123.

²¹ Susan Benesch, 'The Dangerous Speech Framework' (World Policy Institute 2012).

²² Eric Heinze, *Hate Speech and Democratic Citizenship* (Oxford University Press 2016).

²³ Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press 2012).

2.5 Balancing Competing Rights in International Law

The main challenge in regulating hate speech is balancing:

- The right to freedom of expression and
- The protection of individuals and groups from violence, discrimination, and

humiliation²⁴²⁵ International human rights law depends on three main principles:

(1) Legitimate Aim

Restrictions must target a recognized protective purpose.

(2) Necessity

The measure must be essential to achieving the intended goal; no less intrusive option should work.

(3) Proportionality

Restrictions must not be excessive relative to the threat posed.

Bangladesh's constitutional and statutory frameworks adopt these principles²⁶. However, issues arise when restrictions are applied too broadly or used to silence criticism instead of preventing real harm²⁷.

Conclusion

This chapter elaborates on the key legal and theoretical frameworks that govern freedom of expression and hate speech regulation. The conflict between ICCPR Articles 19 and 20, along with differing philosophical and legal views, shows why balancing free expression and societal protection remains a global challenge. These foundations prepare the ground for the next chapter, which will compare national approaches—including Bangladesh—in applying ICCPR standards on free expression and hate speech.

²⁴ General Comment No 34 (n 3) paras 33–35.

²⁵ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976).

²⁶ Constitution of Bangladesh (n 8) art 39(2)

²⁷ Amnesty International, *Bangladesh: Muzzling Dissent Under the Digital Security Act* (2020).

Chapter 3: Comparative Analysis between ICCPR and the Constitution of Bangladesh (Articles 12, 28 & 39)

3.1 Introduction

In this chapter, it examines the relationship between the International Covenant on Civil and Political Rights (ICCPR) and the Constitution of the People's Republic of Bangladesh. ¹This chapter focuses specifically on Articles **12, 28** and **39**. These constitutional provisions regulate secularism, equality, and freedom of expression - three core principles that also lie at the heart of ICCPR Article **19** and **20**. ²The comparison highlights the similarities, differences and practical challenges Bangladesh faces in aligning its domestic laws with international human rights standards. Moreover, different case studies show various judicial interpretations and enforcement patterns.

3.2 Bangladesh Constitution Article 12: Secularism and Freedom from Communalism

Article 12 reinstates the principle of secularism, requiring the state to eliminate:

1. Communalism in all its forms
2. Granting political status to any religion
3. Abuse of religion for political purposes
4. Discrimination or persecution against persons practicing a particular religion ³

ICCPR Relationship Articles

ICCPR Article 18(1) : Everyone shall have the right to freedom of thought, conscience and religion.

¹ UN Human Rights Committee, *General Comment No 34: Article 19* (2011).

² Constitution of the People's Republic of Bangladesh 1972, art 12.

³ Constitution of the People's Republic of Bangladesh 1972, art 12.

ICCPR Article 20(2): Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.⁴

ICCPR Article 26: All people are equal before the law and are entitled without any discrimination to equal protection of the law⁵.

Alignment

Article 12 aligns with ICCPR by safeguarding religious equality, preventing communal hatred, prohibiting the use of religion to incite hostility and upholding equality before law.⁶ Then, implementation challenges arise when political actors exploit religious sentiments in ways inconsistent with ICCPR standards.⁷

3.3 Article 28: Equality and Non- discrimination

Article 28 (1) states

1. The State shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth.
2. Women shall have equal rights with men in all spheres of the State and of public life.⁸
3. No citizen shall, on grounds only of religion, race, cast, sex or place of birth be subjected to any disability, liability, restriction or condition⁹ regarding access to any place of public entertainment or resort, or admission to any educational institution.
4. Nothing in this article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward sections of citizens.

ICCPR Relationship

ICCPR Article 2(1) → Obligation to ensure rights without discrimination

⁴ International Covenant on Civil and Political Rights (ICCPR) 1966, art 18(1)

⁵ ICCPR, art 26.

⁶ Information and Communication Technology Act 2006 (Bangladesh), s 57 (repealed 2018).

⁷ Digital Security Act 2018 (Bangladesh); Case records and media reports (2020–2021).

⁸ constitution of Bangladesh, art 28(4).

⁹ Constitution of Bangladesh, art 28(1).

Requires states to respect and ensure rights without discrimination based on “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁰

ICCPR Article 26 → Equality before the law; equal protection

All people are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR Article 20(2) → Restricting hateful advocacy threatening equality

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Alignment

Bangladesh’s Equality clause matches ICCPR standards.

Both permits:

- Nondiscrimination
- Positive measures for disadvantaged groups

However, minorities often face practical discrimination.

3.4 Article 39 of the Bangladesh Constitution and ICCPR

Article 39(1): Freedom of thought and conscience is guaranteed. ¹¹

Article 39(2): Subject to any reasonable restrictions imposed by law... the right of every citizen to freedom of speech and expression; and freedom of the press, are guaranteed.

But subject to reasonable restrictions in the interests of:

¹⁰ ICCPR, art 2(1).

¹¹ Constitution of Bangladesh, art 39(1).

- Security of the State
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence¹²

ICCPR Article 19

Article 19(1): Everyone shall have the right to hold opinions without interference.¹³

Article 19(2): Everyone shall have the right to freedom of expression.¹⁴

Article 19(3): Restrictions must be provided by law, necessary, and for legitimate aims such as “respect of the rights or reputations of others,” “national security,” “public order,” “public health or morals.”¹⁵

So, the key difference is Bangladesh’s grounds of restriction are more extensive and have been criticized for enabling disproportionate limitations (especially under ICT Act, DSA and CSCA 2024). Moreover, ICCPR requires narrow necessary proportionate limitations, often stricter than Bangladesh’s practice.

3.5 Case Study 1: Bangladesh- Shahidul Alam vs. Bangladesh (2018)¹⁶

Background:

Photographer Shahidul Alam was arrested under the ICT Act 2006 (Section 57) after criticizing government actions during student protests.

Issues:

- Whether criticism of the government falls under protected political expression?

¹² Constitution of Bangladesh, art 39(2).

¹³ ICCPR, art 19(1).

¹⁴ ICCPR, art 19(2)

¹⁵ ICCPR, art 19(3).

¹⁶ Bangladesh- Shahidul Alam vs. Bangladesh DLR 41 (2018) 67 (AD)

- Whether state's claim of "public order" was proportionate under ICCPR Article 19(3)

ICCPR view:

- Political speech receives highest protection under

Article 19.

- His comments did not meet **Article 20(2)**'s threshold for incitement.
- The arrest was disproportionate and inconsistent with ICCPR obligations.

Bangladesh Constitutional view:

Authorities claimed **Article 39** restrictions justified the arrest. Right groups argued misuse of national security/ public order exceptions.

3.6 Case study 2: Bangladesh- Mustaq Ahmed Case (2020-2021)

Background:

Writer Mustaq Ahmed was detained under the **Digital Security Act (DSA)** for posts criticizing the government's COVID -19 response. He died in custody in 2021.

Legal questions:

- **Whether his criticism amounted to "incitement"**
- Whether DSA provisions complied with **ICCPR Articles 19 & 20**.

Outcome:

UN Human Rights bodies stated Bangladesh violated ICCPR obligations due to:

- Vague legal provisions
- Disproportionate detention
- **Failure to meet "necessity" and "proportionality" tests under Article 19(3)**

3.7 Case study 3: India - Shreya Shinghal vs. Union of India (2015)¹⁷

¹⁷ *Shreya Singhal v Union of India* (2015) 5 SCC 1 (Supreme Court of India).

Background:

Section 66A of India's IT Act criminalized “offensive” online messages. It leads to arrest for satire, criticism and political comments.

Judgement:

The Supreme Court of India struck down Section 66A as unconstitutional.

Key findings:

- Vague language chills free expression
- Only “incitement to violence” or “public disorder” can be criminalized
- Mere annoyance or insult is not hating speech

ICCPR Connection:

This judgement is aligned with **Article 19** principles requiring specificity and proportionality.¹⁸

3.8 Case study 4 India- Hate speech and Political Rhetoric

India faces increasing communal rhetoric during elections, but courts maintain a distinction between protected and punishable speech.

Illustrative case: Pravin Togadia (2014)

Supreme Court held that:

- Ideological or provocative speech is protected unless it directly incites violence²⁰
- Punishment under IPC Sections 153A and 295A requires real likelihood of harm

ICCPR Connection

- India's judgment closely aligned with ICCPR Article 19, demanding:
- Clear definitions
- Proportionate restrictions

¹⁸ ICCPR, art 19(3).

- Protection of democratic dialogue

This matches **ICCPR Article 20(2)**'s narrow test requiring advocacy and incitement.

3.9 Conclusion

The Bangladesh Constitution contains strong human rights commitments that often align with the ICCPR. Articles **12, 28 & 39** uphold principles of secularism, equality, and freedom of expression, all central to ICCPR provisions. However, gaps emerge in implementation, particularly when restrictions on expression become overly broad or politically motivated¹⁹. The case study clearly illustrates the challenges of balancing constitutional rights with international standards. This comparative analysis shows that Bangladesh is structurally aligned with ICCPR commitments but must refine enforcement practices to fully protect free expression while preventing discrimination and hate speech.

¹⁹ ICCPR, art 12–39

Chapter 4: Key Challenges and Legal Tensions in Regulating Freedom of Expression and Hate Speech

4.1 Introduction

Although both the International Covenant on Civil and Political Rights (ICCPR) and the Constitution of Bangladesh protect freedom of expression and prohibit incitement to hatred, achieving a practical balance between these rights remains difficult.²⁰ This chapter examines the major legal, social and political tensions that arise when implementing ICCPR Articles 19 and 20 alongside Articles 12, 28 and 39 of the Constitution of Bangladesh.²¹ It also highlights Bangladesh’s modern challenges—particularly online, political and social pressures—that complicate the regulation of harmful speech while preserving democratic participation.

4.2 Definitional Problems: What Constitutes Hate Speech?

One of Bangladesh’s core difficulties is the absence of a clear and consistent definition of hate speech. ICCPR Article 20(2) prohibits “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, but it does not define how much hostility counts as hatred, nor specify the threshold of incitement.²²

Bangladesh’s Definitional Issues

Bangladesh does not have a standalone hate speech statute. Instead, hate speech is addressed through various laws such as:

- Penal Code sections 153A and 295A,²³
- Digital Security Act (now replaced by the Cyber Security Act 2024),²⁴
- Public order and religious sentiment provisions.

Many of these laws use broad terms like “hurting religious sentiment” or “creating enmity”,²⁵ enabling authorities to classify criticism of government, satire or political commentary as hate speech even when no incitement is present.

²⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) arts 19–20.

²¹ Constitution of the People’s Republic of Bangladesh, arts 12, 28, 39.

²² ICCPR, art 20(2).

²³ Penal Code 1860 (Bangladesh), ss 153A, 295A.

²⁴ Cyber Security Act 2024 (Bangladesh); formerly Digital Security Act 2018.

²⁵ Ibid

ICCPR Perspective

The UN Human Rights Committee (HRC) clarifies that incitement requires both intent and a real likelihood of harm²⁶. Overbroad or vague definitions violate Article 19 because they blur the line between offensive speech and genuine incitement. This gap between ICCPR clarity and Bangladesh's ambiguous framework creates a major regulatory challenge.

4.3 Digital Platforms and the Rapid Spread of Hate

The rapid expansion of social media in Bangladesh has intensified the spread of religious intolerance, political misinformation, character assassination, communal rumors and gender-based harassment²⁷. Some incidents have triggered mob attacks, communal violence and targeted harassment of minorities and activists.

Government Response

The Digital Security Act 2018 and its successor, the Cyber Security Act 2024 were introduced to regulate online content.²⁸ However, arrests often involve journalists, students and government critics rather than individuals engaged in genuine incitement.²⁹ Enforcement is frequently pre-emptive and does not meet the ICCPR threshold of imminent harm.

Tension with ICCPR

ICCPR Article 19 requires restrictions on expression to be necessary, proportionate and the least intrusive means of achieving a legitimate aim.³⁰ The broad enforcement of digital laws in Bangladesh therefore creates significant tension between preventing harm and upholding freedom of expression.

4.4 Political Abuse and Selective Application of Hate Speech Laws

Political misuse of speech-related laws is one of the most serious challenges.

Patterns in Bangladesh

Hate speech laws are sometimes weaponized to:

²⁶ UN Human Rights Committee, 'General Comment No 34: Article 19: Freedoms of Opinion and Expression' (2011) CCPR/C/GC/34

²⁷ Human Rights Watch, *Bangladesh: Repression of Online Speech* (2022).

²⁸ Cyber Security Act 2024 (Bangladesh).

²⁹ Amnesty International, *Protesting Human Rights: Misuse of the Digital Security Act* (2021).

³⁰ ICCPR, art 19(3).

- silence government critics,
- restrict opposition activity,
- intimidate journalists and activists,
- criminalize dissent under the pretext of “public order” or “religious sentiment.”³¹

Criticism of government policy is often labelled as “spreading rumors” or “hurting sentiments,” while supporters of ruling parties rarely face consequences for similar acts.³²

ICCPR Warning

The ICCPR prohibits discriminatory enforcement of expression laws and warns against using hate speech restrictions to suppress political dissent.³³ Criminal penalties cannot be imposed on speech that does not pose a real, demonstrable threat. Selective enforcement therefore violates Articles 2, 19 and 26.

4.5 Social Impact: Censorship vs Protection

Bangladesh faces a central dilemma:

- Insufficient regulation risks fueling violence, intolerance and discrimination.
- Excessive regulation creates censorship, fear among journalists and shrinking civic space.³⁴

Real Social Context

Bangladesh’s sociopolitical environment includes strong religious sensitivities, deep political polarization, frequent misinformation and varying levels of digital literacy. These factors complicate the understanding of harmful speech and public order.

ICCPR’s Balanced Framework

³¹ Transparency International Bangladesh, *State of Governance Report* (2023).

³² Human Rights Watch (n 8).

³³ ICCPR, arts 2, 19, 26.

³⁴ Reporters Without Borders, *World Press Freedom Index: Bangladesh* (2024).

ICCPR standards emphasize protecting vulnerable groups while ensuring open political criticism.³⁵ Restrictions are permitted only when necessary. Education, awareness and counter-speech are encouraged over criminalization.

4.6 Public Order, National Security, and Human Dignity

Bangladesh often justifies speech restrictions under “national security,” “public order,” “religious harmony,” “morality” and “human dignity.”³⁶ While these grounds exist in both constitutional and ICCPR frameworks, Bangladesh typically interprets them more broadly.

Bangladesh’s Approach

Authorities often claim that criticism of government threatens public order or national security.³⁷ Sensitive religious issues are also heavily regulated. However, ICCPR Article 19(3) requires restrictions to be based on real, specific threats—not hypothetical, political or overly broad concerns.³⁸

Human Dignity Argument

Bangladesh frequently invokes religious or national dignity as justification for limiting expression.³⁹

However, the Human Rights Committee affirms that human dignity cannot become a tool to suppress legitimate criticism.⁴⁰ Only expressions causing actual harm or genuine incitement can be restricted.

4.7 Summary of Key Tensions in Bangladesh

Challenge	Bangladesh Situation	ICCPR Standard
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³⁵ UNHRC General Comment No 34 (n 7).

³⁶ Constitution of Bangladesh, art 39(2).

³⁷ Ibid.

³⁸ ICCPR, art 19(3).

³⁹ Penal Code 1860, ss 295–298.

⁴⁰ UNHRC General Comment No 34 (n 7)

Definition of hate speech	Broad, vague terms	“Incitement” must be narrowly defined ²²
Digital regulation	Often used against critics	Restrictions must be proportionate
Political misuse	Frequent selective enforcement	Must not discriminate ²³
Censorship vs protection	Over-regulation common	Must balance rights and safety
Public order claims	Interpreted too broadly	Must be necessary and evidence-based

4.8 Conclusion

Bangladesh faces significant legal and policy challenges in balancing freedom of expression with regulating hate speech. Ambiguous definitions, overuse of digital laws, political misuse, growing online extremism and broad public-order interpretations remain major obstacles. While Bangladesh’s Constitution and the ICCPR share similar values, practical implementation often diverges from international standards. Effective reform requires clearer definitions, stronger judicial oversight and greater emphasis on human-rights-based education.

Chapter 5: Implementation and Monitoring of ICCPR in Light of the Constitution of Bangladesh

5.1 Introduction

The ongoing monitoring by international bodies, domestic courts and governments is required for implementing Articles 19 and 20 of ICCPR⁴¹. In Bangladesh, Article 39 of the Constitution guarantees free expression. Nonetheless, free expression is subject to restrictions aimed at upholding public order and morality, as well as the country's security. This chapter examines how the standards of the ICCPR work in practice, how these standards are being monitored by the UN Human Rights Committee (HRC), and how Bangladesh is (not) doing this with its domestic laws.

Function of the UN Counter Treaty on Human Rights

5.2.1 Monitoring and Reporting

Countries that agree to the ICCPR must send periodic reports on how they implement freedom of expression and regulate hate speech.⁴² The HRC will assess whether the restriction on speech was lawful, necessary, and proportionate.⁴³ Lastly, it will assess whether the hate speech laws comply with Article 20's requirement to prohibit incitement to hostility or violence.⁴⁴

5.2.2 General Comments as Interpretative Guidance

General comments can help citizens interpret law.

Pursuant to General Comment No. 34 of the Committee, any restrictions on expression should be strictly justified, must not be aimed at political dissent and must protect the space for democratic debate⁴⁵. Similarly, General Comment No. 11 explains the obligation to prohibit advocacy of hatred under Article 20⁴⁶. These Comments influence significantly the way in which domestic

⁴¹ ICCPR (1966) 999 UNTS 17

⁴² UN Human Rights Committee, 'Rules of Procedure' (2019) CCPR/C/3/Rev.12

⁴³ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights* (3rd edn, OUP 2013).

⁴⁴ Manfred Nowak, *CCPR Commentary* (2nd edn, NP Engel 2005).

⁴⁵ Human Rights Committee, 'General Comment No. 34' (2011) CCPR/C/GC/34.

⁴⁶ Human Rights Committee, 'General Comment No. 11' (1983).

courts interpret speech-related rights in circumstances where international mechanisms cannot be invoked.⁴⁷

5.2.3 Individual Complaints

Bangladesh has not agreed to the Optional Protocol which would allow individuals to lodge complaints to the Committee. However, HRC jurisprudence does, nevertheless, inform activist advocacy, judicial reasoning and law-reform debates.⁴⁸

5.3 State reports and UN observations

National Report Templates for the UN CPD Bangladesh's Implementation.

In 2000, Bangladesh ratified the ICCPR and shortly after submitted its first state report. In its concluding observations, the HRC noted with concern the nature of laws on speech which have a restricting nature, particularly the Digital Security Act (DSA) 2018.⁴⁹ As per the rights group, there have been constant reports of the misuse of these laws to silence journalists, academia and social-media users.⁵⁰

The Cyber Security Act (CSA) 2023 replaced the DSA in Bangladesh, but several vague terms such as "deterioration of law and order" and "hurting religious sentiment" remained.⁵¹ Such provisions make it not easy to match ICCPR standards requiring clarity and narrow tailoring.⁵²

In General Comment No 34 it is stated that a public figure must endure greater scrutiny or criticism. However, Bangladeshi provisions on criminal defamation and the cyber law often protect political actors from scrutiny⁵³. As such, Bangladesh has an incomplete alignment with ICCPR and faces major challenges with compliance.⁵⁴

5.4 Trends in Legal Reform and International Best Practices

⁴⁷ Optional Protocol to the ICCPR (1966).

⁴⁸ Bangladesh, 'Initial Report' (2001) CCPR/C/BGD/2001/1

⁴⁹ Human Rights Committee, 'Concluding Observations: Bangladesh' (2017) CCPR/C/BGD/CO/1

⁵⁰ Ain o Salish Kendra, *Human Rights Report* (2023).

⁵¹ Cyber Security Act 2023 (Bangladesh).

⁵² Human Rights Committee (n 5).

⁵³ UN Special Rapporteur, 'Report on Hate Speech' (2019) A/74/486.

⁵⁴ N Special Rapporteur, 'Freedom of Expression' (2012) A/HRC/20/17.

5.4.1 Clear Definitions of Hate Speech

Bangladesh does not yet use this standard, resulting in legal uncertainty. This allows for selective enforcement, with some laws enforced more than others, as designated by authorities.

5.4.2 Judicial Safeguards and Proportionality Tests

In several countries, courts are relied upon to test the proportionality and necessity of the restrictions on speech.⁵⁵ The European Court of Human Rights' (ECtHR) ruling in *Handyside* has been deployed to argue that speakers in democratic societies must tolerate some level of offensiveness. Courts in Bangladesh use similar reasoning occasionally, but almost always show deference to government justifications toward public order.

5.4.3 Civil Society Participation

NGOs and independent legal bodies call for clarity in law, provide legal aid for the wrongfully arrested, and raise public awareness on hate speech.⁵⁶ Bangladesh is experiencing political pressure against such organizations and very limited institutional support, but they still play an essential role.

5.4.4 Decriminalization of Legitimate Expression

Best practices recommend that imprisonment not be a penalty for defamation or criticism of public officials.⁵⁷ Bangladesh keeps several provisions that criminalize expression, reflecting the tension between ICCPR and domestic politics.

5. 5 Civil Society and Free Speech Advocacy in Bangladesh

Civil society groups such as BLAST, ASK, and CGS monitor violations against free expression and also take court action to challenge the application of laws that impose unreasonable restrictions on free expression. They also publish data on arrests made under cyber laws.

⁵⁵ N Special Rapporteur, 'Freedom of Expression' (2012) A/HRC/20/17.

⁵⁶ *Handyside v UK* (1976) 1 EHRR 737.

⁵⁷ ARTICLE 19, *Hate Speech Explained: A Toolkit* (2015)

⁵⁸Professional journalistic organizations have also been keeping track of censorship and threats to media freedom.⁵⁹

Advocacy campaigns often have barriers like.

- Political retaliation.
- Weak institutional protection.
- Fear of surveillance.

Even with these limitations, civil society is essential to help achieve ICCPR compliance.

5.6 Ethical Dilemmas in Enforcement

5.6.1 Over-Regulation vs Under-Regulation

Regulating too much quashes dissent and limits academic and journalistic freedom while not regulating at all let's hate speech spiral. And that type of speech overwhelmingly harms vulnerable groups.⁶⁰

5.6.2 Protection of Minorities

Governments must protect minorities from incitement, but this should not be used as a pretext for silencing real debate or criticism of the state.⁶¹

5.6.3 Digital Speech Challenges

Because of the growth of social media, the tension between regulation of harmful content and freedom of expression is pronounced. Bangladesh's cyber laws exemplify this tension.⁶²

⁵⁸ European Court of Human Rights jurisprudence on defamation.

⁵⁹ BLAST, 'Freedom of Expression Case Records' (2022).

⁶⁰ Reporters Without Borders, *Press Freedom Index: Bangladesh* (2023).

⁶¹ David Kretzmer, 'Freedom of Speech and Incitement' (2007) 12 *Israel Law Review* 1.

⁶² Susan Benesch, 'Dangerous Speech' (2012).

5.6.4 State power and abuse

Laws on hate speech can be used to stop opponents or to protect political elites. To ⁶³govern ethically, restrictions must be equally applied and not used for political power.

5.6.5 Cultural and Religious Sensitivities

In a country with diverse social groups like Bangladesh, there is a challenge to strike a balance between respecting their religion and not curtailing free speech. ⁶⁴As per ICCPR standards, we can recognize the cultural sensitivities of Bangladesh, but we cannot have a blanket ban on dissenting criticism.⁶⁵

5.7 Conclusion

Bangladesh's implementation of ICCPR illustrates a challenging balancing act between international human rights standards and domestic priorities relating to national security, religion and public order. Bangladesh constitutional provisions for free expression are fine. However, the general cyber laws and associated criminal penalties impede the full compatibility with Articles 19 and 20. Legal clarity, stronger judicial protections, and civil society engagement must be enhanced by Bangladesh. Otherwise, it cannot adhere to global best practices while ensuring social cohesion.

⁶³ UNHRC, 'Rabat Plan of Action' (2012).

⁶⁴ Andrew Neal, *Exceptionalism and Counter-Terrorism* (Routledge 2009).

⁶⁵ Eric Barendt, *Freedom of Speech* (2nd edn, OUP 2007).

Chapter 6: Conclusion.

6.1 Introduction.

The study of hate speech regulation and the freedom of expression with reference to the ICCPR, especially Articles 19 and 20 and the Bangladesh Constitution (Articles 12, 28 & 39). In five chapters, the study examines the law, the international framework, the definition, the challenges in the digital era, and the tensions in practice. Bangladesh's situation reflects the recognition of the right to hold opinions, as well as the challenges posed by vague laws, arbitrary enforcement, and rising online threats.

6.2 Findings.

1. Clear legal protections exist, but Bangladesh's definitions of hate speech remain broad and unclear, unlike ICCPR standards which demand narrow, harm-based definitions.
2. Digital platforms amplify harmful speech, yet the Cyber Security Act is often used against journalists, students, or critics creating a gap between intention and practice.
3. Political abuse has caused this major tension; the speeches laws silence dissent, and not incitement.
4. Social sensitivities, religious identity, and misinformation make regulation necessary, but overregulation limits democratic discussion.
5. Bangladesh's application of "public order" and "national security" is broader than ICCPR allows, leading to disproportionate restrictions.

There is an apparent gap between international human rights standards and domestic enforcement.

6.3 Recommendations.

1. Legal & Policy Reforms.

- Use the ICCPR a clear and precise, a narrow definition of hate speech that is concerned with harm and incitement.

- Change the digital laws so that restrictions are necessary, proportionate and not used against peaceful criticism.
- Make sure judicial reviews are done openly to reduce selective enforcement.

2. Clarity and Public Education.

- Spread significant awareness about ensuring digital literacy, appreciating it and questioning it by the public.
- Educate law enforcement, journalists, and public officials on the differences between criticism, offense and incitement.
- Community outreach can be encouraged on tolerance, religious harmony and responsible speech.

6.4 Areas for Future Research.

- Studies on hate speeches on the internet in Bangladesh.
- Comparison study with other South Asian countries.
- Interviews with victims of hate speech, politicians, activists and journalists.
- How marginalized groups experience harm related to speech.

6.5 Conclusion.

Bangladesh continues to juggle free speech and hate speech which is a delicate act. The Constitution and ICCPR both have the same goal of protecting human dignity and making room for democratic debate, but real-life enforcement is often cautionary, controlling or politicized. As society goes digital and become polarized, there is an urgent need to regulate transparently, fairly and proportionately. It is essential that courts, policymakers, media actors, and citizens help in striking this balance as a legal and democratic task.

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