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PUBLIC FIGURES' PRIVACY IN THE CONTEMPORARY ERA: AN ANALYSIS FROM THE PERSPECTIVE OF FREEDOM OF EXPRESSION AND RIGHT TO PRIVACY IN BANGLADESH.

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Abstract:

In the contemporary era privacy as a right has become one of the most essential parts of an individual to enjoy most of the other rights. On the other hand, in order to ensure the dignity and worth of a human being freedom of expression is inevitable. Freedom of expression and the right to privacy are both interlinked as one cannot be invoked without the other. Both these rights can be conflicting as well when different persons use these at the same time. Public figures are also no exception to such, they play a vital role nationally as well as internationally when it comes to representing themselves or their countries. That is why, they are often under the eyes of the general public and remain in a vulnerable position. Often times any news related to a public figure is considered to be a matter of public debate, however, if such news does not serve any kind of legitimate purpose, then such freedom of expression should be barred through lawful means. There should be a balance between freedom of expression and public figures' right to privacy to ensure one is not being used as a weapon to curtail the other. The current research attempts to discuss public figures' privacy in the contemporary era (its applicability, limitations, laws, and judicial pronouncements) in the context of Bangladesh and in comparison, to other countries. Further, how there could be a balance between the freedom of expression of the general public and the right to privacy of public figures.

Keywords: Public Figures', Right to Privacy, Freedom of Expression, Right to be Forgotten, Right to be Alone, Personality Rights.

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1. Introduction

The right to freely express oneself and the right to have privacy are recognized as qualified rights in almost all countries. International Law recognizes both these rights as fundamental human rights. Privacy and Freedom of expression are both interlinked. If there is an infringement even on one, both have to face the consequences.² On the other hand, often times these rights conflict with each other when different individuals exercise them at the same time. The concepts of the right to privacy and freedom of expression are intertwined and at the same time, they may conflict with each other.

Right to privacy: Privacy can be defined as a part of self-possession, including facts about one's personal life, health, finances, etc.³ In the words of Logan Roots, 'Privacy is the freedom to reveal one's self selectively.'⁴ The right to privacy can also be mentioned as a necessity for a human being to grow and keep his individuality to himself. Hence 'right to privacy' is ensured through various statutory laws and norms in society. In Bangladesh, Article 43 of the Constitution recognizes the right to privacy of home, correspondence, and communications. Furthermore, article 12 of UDHR, and Article 17 of ICCPR also recognize the right to privacy as a fundamental human right.⁵

Public Figure: Generally, public figures are those around us who are considered 'famous/well-known' among the public. However, as per the legal definition, public figures are those individuals or entities who has/have acquired stardom or notoriety or someone who has participated in a public controversy.⁶ Through various case decisions, the U.S. courts have defined the category of 'public figure.' According to the case of *Gertz v Robert*⁷, a public figure is an individual who has accepted the role of unique prominence in matters of society or has thrust themselves into the forefront of particular public controversies. Public sculptures

²Two sides of the same coin – the right to privacy and freedom of expression' (*Privacy International*, 2018) <<https://privacyinternational.org/blog/1111/two-sides-same-coin-right-privacy-and-freedom-expression?fbclid=IwAR34XyPnmZc3B2PboOFOrcd7VWxe-hdOO5ZHghZaWND-XRNWUkhh-hh4fw>> accessed 25 March 2023.

³Lew McCreary, 'What Was Privacy?' (*Harvard Business Review*, October 2008) <<https://hbr.org/2008/10/what-was-privacy>> accessed 25 March 2023.

⁴ Ibid

⁵ Universal Declaration of Human Rights, Article 12; International Convention on Civil and Political Rights, Article 17.

⁶Merriam Webster, 'Public Figure' (*Merriam Webster Dictionary*) <<https://www.merriam-webster.com/dictionary/public%20figure>> accessed 25 March 2023.

⁷(1974) 418 US 323.

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include those involved in past and contemporary events that might captivate society's general interest.⁸Public figures are well-known or famous and play a huge role in representing their countries on international platforms. Whether a party is, a public figure is a question for the court to determine. However, considering the earlier mentioned definitions and case laws, it is clear that even when a person is a public figure, that does not exclude him from fundamental rights. Therefore, their safety and privacy should be prioritized subject to limitations provided by the law.

Freedom of Expression:Freedom of expression refers to the right of one individual to express his beliefs, ideas, thoughts, etc., freely without the interruption of anyone. Without free speech, self-fulfillment cannot be achieved.⁹ Freedom of expression is essential for enjoying not only one's individuality but also helping one to reach the truth.¹⁰ This right enables a person to open debate about political, social, and moral values. It also opens the door for artistic and scholarly endeavors free from hesitation.¹¹ For that reason, most of the countries have ensured freedom of expression as a constitutional right. However, this right is not absolute since having an open debate and personal space may conflict with others' values and rights.¹² Freedom of expression is a right limited by the other individual's fundamental rights in the community.¹³ Freedom of expression is ensured under the Constitution of Bangladesh as a fundamental right¹⁴ and other international laws, including ICCPR, UDHR, ACHR, and ECHR.¹⁵ Under all the rules above, freedom of expression is subject to some reasonable restrictions provided by law.

Freedom of expression and the Right to Privacy are the two sides of the same coin:Freedom of expression and privacy are both qualified rights in most countries and our country. The right to freedom of expression cannot be exercised without the right to privacy and vice versa. Recently High Court Division of Bangladesh held that journalists are not needed to

⁸*Sidis V F-R Publ'g Corp.*, 113 F.2d 806 (2d Cir.1940).

⁹ Lee C Bollinger, *The Tolerant Society* (Oxford University Press on Demand 1988) 45.

¹⁰ Ibid.

¹¹Rikke Frank jørgensen, 'Internet and Freedom of Expression' (*The Danish Institute for Human Rights*) <<https://cdn.ifla.org/wp-content/uploads/files/assets/faife/publications/ife03.pdf>> accessed 26 March 2023.

¹² Ibid.

¹³SJ Heyman, 'Righting the Balance: An Inquiry into the Foundations and Limits of Freedom of Expression [1998] Boston University Law Review 1279.

¹⁴ The Constitution of the People's Republic of Bangladesh, Article 39.

¹⁵ Universal Declaration of Human Rights, Article 19; International Convention on Civil and Political Rights, Article 19, American Convention on Human Rights Article 13, European Convention for the Protection of Human Rights and Fundamental Freedoms Article 10

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expose the names of their sources.¹⁶ One cannot freely express himself without the protection of his privacy. A person needs full autonomy to form and impart political and religious beliefs.¹⁷ Invasion of one's right to privacy is also done through physical or online surveillance or monitoring activities.¹⁸ Such kinds of intrusion by the state into a man's private affairs restrict one from freely exercising his freedom of expression.¹⁹ Thus, one is needed for another to exercise both these fundamental human rights. However, most often, states focus more on taking mechanisms for free speech where the need for promoting the right to privacy gets ignored. State parties knowingly support free speech in the modern scenario by disregarding the right to privacy, which has long supported freedom of expression.²⁰

Every individual has the right to enjoy autonomy within their private space. Information regarding public figures that do not carry any valuable influence over the persons looking for that publication of such shall not be justified. Allowing this invasion in the name of freedom of expression conflicts with one's autonomy and dignity.

2. Right to privacy under the Statutory and International Laws

Right to the confidentiality of the public figures under the Constitution of Bangladesh:

The Constitution of Bangladesh guarantees the right to privacy in the home, correspondence, and communication.²¹ As per Article 43, subject to the reasonable restrictions imposed by the law, every citizen shall have the right to be secured in their homes against any entry, search, and seizure. It also ensures the privacy of one's correspondence and other means of communication.²² The right to sanctuary in one's house is considered one of the most ancient concepts of individual liberty, perhaps one of the most profound.²³ Thus, there has to be a legitimate motive, even if it is a governmental action. If the restrictions imposed are not in nexus with the specified matters or are more than the requirement, those will be considered

¹⁶Self-correspondent, 'Journalists are not bound to disclose the sources (unofficial translation)' (*Dhaka Times*, accessed 26 March 2023. <<https://www.dhakatimes24.com/2022/10/23/284146>> accessed 26 March 2023.

¹⁷'Two sides of the same coin – the right to privacy and freedom of expression' (*Privacy International*, 2018) <https://privacyinternational.org/blog/1111/two-sides-same-coin-right-privacy-and-freedom-expression?fbclid=IwAR34XyPnmZc3B2PboOFOrcd7VWxe-hdQO5ZHghZaWND-XRNWUkhh_-hh4fw> accessed 26 March 2023.

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ The Constitution of the People's Republic of Bangladesh, Article 43.

²² Ibid.

²³ Alfred H. Knight-The Life of the Law, page 124.

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invalid.²⁴ In Bangladesh, telephone tapping will be regarded as unconstitutional unless a law permits it on any of the grounds of restrictions mentioned in Article 43.²⁵ The Indian Supreme Court held that the telephone-tapping is a severe invasion of an individual's privacy.²⁶ Article 43 does not directly include privacy of private life: The Article 43 of the Constitution of Bangladesh does not directly include the confidentiality of personal life. There might be an argument regarding this viewpoint that the privacy of the home also has the privacy of private life. However, if international laws are considered, *i.e.*, Article 12 of UDHR, Article 17 of ICCPR, and Article 8 of the ECHR, these instruments consider the privacy of private life separately. Now the question arises as to whether the citizens of Bangladesh have the right to privacy in private life. Most importantly, what about the privacy of the private lives of public figures? Private or personal information includes those facts, communications, and opinions regarded as intimate or sensitive and, therefore, to want to restrict their collection, use, or circulation.²⁷ Bangladesh's Public figures are always vulnerable regarding their private life. This modern era, where everything has become digitalized, has made the personal life of public statistics a matter of constant stalking and trolling. In this regard, in the landmark judgment of *Justice K.S. Puttaswamy v Union of India*,²⁸ the Supreme Court underscored that information, another facet of the right to privacy, must be confidential and personal. A concurrent application of these two words will have a similar application of the word private. Thus, Article 43 of the Constitution of Bangladesh does not directly include the privacy of personal life in such a sense. For that reason, the private lives of public figures are often made a matter of public concern, and it gets away with such a loophole.

Privacy of the public figures and The Personal Data Protection Bill of 2022: To protect the citizens of Bangladesh against violating their privacy and personal data, a draft named The Personal Data Protection Bill of 2022 was prepared. Now the question arises as to whether, in the case of public figures, the data collected by the data controller is always consensual by the public figures or not. As per section 7 of the draft, data can only be processed once the data subject gives his consent freely, precisely, and clearly, having the capability of withdrawing such, which makes it clear that when public figures, after posting something online, wish to withdraw their consent can do so. The data controller will have to stop

²⁴Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd ed, Mullick Brothers 2012) 381.

²⁵ *Ibid.*

²⁶*People's Union of Civil Liberties V India, AIR 1997 SC 568.*

²⁷Raymond Wacks, *Privacy A Very Short Introduction* (1st ed, Oxford University Press 2010) 47.

²⁸(2017) 10 SCC 1, AIR 2017 SC 4161

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processing such data.²⁹ However, in cases of public figures, the data, once processed, are kept against them even after the withdrawal of the concerned person without any legitimate interest, which is a clear violation of the law.³⁰ Individuals should have the autonomy to control their data and seek legal recourse or judicial intervention if such privilege gets jeopardized.³¹ Here, personal data protection includes web or internet protection.

Right to privacy under the UDHR: Privacy helps an individual to define his relationship with the outside world. It allows a person to have a space free from judgment and to think freely without restrictions. Article 12 of the UDHR also ensures privacy in the family, home, correspondence, honor, and reputation. It also includes that such right is protected by law against any interference or attacks.³² Public figures also have their right to privacy protected under UDHR. Thus, the honor and reputation of public figures are supposed to be covered under all circumstances subject to the other provisions of law. However, there are many instances when the honor and reputation of public figures are damaged in the name of freedom of expression by anyone who wishes to, especially the press. The personal information of a public figure cannot become news the very next day in the name of freedom of expression. To understand the definition of 'personal information,' it must include the quality of the information and the reasonable expectations of an individual regarding its use.³³ Therefore, personal information about the public is also protected under the UDHR. As per the Charter of Human Rights and Principles for the Internet adopted by the Internet Rights and Coalition under the UN Internet Governance Forum, the right to privacy is predicated on protecting virtual personality, freedom from surveillance and defamation, etc.³⁴

Right to privacy under the ICCPR: Article 17 of the ICCPR ensures that no person shall be subjected to any arbitrary or unlawful interference with his family, home, or correspondence, including illegal attacks on that person's honor and reputation.³⁵ It also states that everyone has the right to get protection from the law against such interference or attacks.³⁶ Here,

²⁹ Ibid,

³⁰ Ibid, Section 7(5)(h)

³¹ Justice Dr Syed Refaat Ahmed Honourable Judge Supreme Court of Bangladesh, Digital Footprints: A Rights-Based Perspective (Lex Oration 2020) 14

³² Universal Declaration of Human Rights, Article 12.

³³ Raymond Wacks, Privacy A Very Short Introduction (1st edn, Oxford University Press 2010) 47

³⁴ Justice Dr Syed Refaat Ahmed, Digital Footprints: A Rights-Based Perspective (Lex Oration 2020) 18

³⁵ International Covenant on Civil and Political Rights, Article 17(1).

³⁶ Ibid, Article 17(2).

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‘unlawful’ means no interference except in law-approved cases.³⁷ The competent public authorities should only get the chance to call for such information relating to an individual’s private life as much as it is essential for the interest of society.³⁸ In cases of public figures, their privacy rights are often violated without any approval of the law and the intervention of public authorities in the name of freedom of expression. Journalists constantly do not keep any limitations while publishing personal information about a public figure. The state shall take adequate measures to ensure that information regarding an individual’s private life does not reach the hands of persons not under the authority of law to receive it.³⁹ However, many times it is seen that the call recording or even the inside house recording of a public figure gets leaked in the media or social platforms even though they are supposed to be confidential and used for necessary purposes by the lawful authority as per the international law. This type of irresponsibility of the concerned authorities shows their role in violating a public figure’s right to privacy. Through their legislation and reports, states should indicate to what extent the law protects an individual’s honor and reputation and how they will achieve such protection in their legal system—further, a special mention of the public figures who play a vital role in running the country.

The right to privacy has become a significant right in the contemporary era. That is why international laws have also mentioned it remarkably. There must be a balance between public figures’ privacy rights and the general public’s free expression.

3. Right to the privacy of the public figures as an individual Right

Protecting one’s privacy from the outside world is critical to explore himself and having individuality over some information. Generally, all citizens worldwide are very conscious about protecting their privacy. However, when it comes to public figures,’ there is a certain amount of hypocrisy involved in the ‘right to know.’ Public figures also deserve privacy, just like any other citizens in Bangladesh. They should also have the right to be alone, the right to erase data, and to have their information protected. The individual right to privacy of a public figure should get the opportunity to be covered, and why there shall be a line drawn between public figures’ privacy and general people’s freedom of expression.

³⁷UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, para 3.

³⁸ *Ibid.* para 7.

³⁹ *Ibid.*, para 10.

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Right to be alone: Every individual should get the opportunity to explore himself and lead the life he wishes to live. Beyond the right to physical modesty, human beings should have the right to live without a constant sense of being watched and judged. Public figures are also not excluded from such requests because they hold a different societal position than the commoner. In the case of *Olmstead V United States*,⁴⁰ Associate Justice Louis Brandies, in his dissenting opinion while addressing the right to privacy, stated ‘the right to be alone’⁴¹ as the most comprehensive of the requests, and all civilized men value it. In the case of *Katz V United States*⁴², it was held that it is reasonable to expect privacy even when using a cell phone. Therefore, even the famous have a right to be alone. It should not matter which mode of communication they use to interact with the audience. People do not close the doors and windows of their houses because they are doing something surprising; they do it because they have both a right and psychological need to spend their undignified moments without any viewers.⁴³ Recently famous cricketer Virat Kohli protested the invasion of his privacy in a hotel room where a fan made a video of his whole room.⁴⁴ This might be fun to some; however, this could have caused much harm to him, just like PNB Rock’s death. Therefore, an individual’s right to express themselves should not come in the way of another’s right to be alone, which is integral to every individual’s security.

There shall be a line drawn between the public figures’ right to privacy and the public’s free speech: David Brin used the proverb that “people who live in glass houses should not throw stones, which suggests that if all individuals are equally exposed to scrutiny than we may forgive each other’s failures. Similarly, digging deep into a public figure’s life will not serve any useful transparency or accountability. Rather, it may just expose them to some unwanted controversy and embarrassment. Public figures should not be required to prove they have nothing to conceal. In this modern era, societies should respect individual life choices.⁴⁵ The only place a person can be forced to prove his innocence is before the law, subject to a fair

⁴⁰(1928) 277 U.S. 438.

⁴¹ ‘Right to Privacy primarily known as the right to be alone.’ Samuel Warren and Louis Brandeis, ‘The Right to Privacy (1890) Vol. 4, No. 5 Harvard Law Review, pp. 193-220

⁴²389 U.S. 347, 88 S. Ct. 507 (1967)

⁴³ Ibid, page 72

⁴⁴Partha Bhaduri, 'Virat Kohli fumes over Australia hotel room video, staffer sacked' (*Times of India*, 1 November 2022) <<https://timesofindia.indiatimes.com/sports/cricket/icc-mens-t20-world-cup/indiat20-world-cup/virat-kohli-fumes-over-australia-hotel-room-video-staffer-sacked/articleshow/95215541.cms>> accessed 31 March 2023.

⁴⁵ Ibid,

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trial. Therefore, freedom of expression of the society, e.g., the right to know, shall not cross the line. There should be a parameter as to how much information about a public figure's life is a matter of public disclosure. Furthermore, not everything is a matter of publication. An angry former fan of singer Bob Dylan practiced "garbology" by rooting into Dylan's trash can so that he would find some unflattering material to publish.

Some Information shall always be protected: Invasion of privacy can push public figures towards victimization. Not everything about a public figure's life serves the excellent interest of the public. Although there are times it becomes necessary to decide what information needs transparency to determine whether they are private information or not in the case of *Sipple v Chronicle Publishing Inc.*⁴⁶ Sipple sued several newspapers unsuccessfully for publishing his sexual orientation in public. The California court denied his claims that those were not private facts as he openly participated in gay political and cultural events. Now, the question arises as to if a person involuntarily becomes a public figure, his private life becomes a matter for the general public to know. As in the present time, anyone becomes viral in a blink of an eye, and people start considering them as public figures or tag them as 'influencers' too. In the landmark case of Princess Caroline Europe, the top human rights court ruled that the German press had violated the princess's right to privacy by publishing photographs of her and her family on vacation.⁴⁷ The court's ruling was based on the fact that the general public had no legitimate interest in knowing the princess's whereabouts and how she behaved in her private life.⁴⁸ The photos taken were also considered to be taken in a climate of continual harassment which made the person involved a powerful sense of intrusion into their private life and even of persecution. Further, the princess's bid for injunction to prevent future publication was rejected, arguing that she has to face this as a prominent figure. However, the European Court held this judgment to violate ECHR, ensuring the right to respect for private life.⁴⁹ This leads us to conclude that even public figures have the right to privacy, even in a public place. That is why some information about a public figure shall not always be a matter of public interest when it does not serve any legitimate purpose.

⁴⁶ 154 Cal.App.3d.1040,1049(Cal.1st Dist.,1984)

⁴⁷ Chris Tryhorn, 'Princess wins landmark privacy ruling' (*The Guardian*, 24 June 2004) <<https://www.theguardian.com/media/2004/jun/24/royalsandthemediaprivacy>> accessed 18 April 2023.

⁴⁸ Ibid.

⁴⁹ *Von Hannover v Germany (No. 2) (2012) 55 E.H.R.R. 15*

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Right to be forgotten: The right to be forgotten derives from the famous case of *Google Spain V AEPD, Mario Costeja González*.⁵⁰ The patient stated that an internet search engine operator would have to take responsibility for processing personal data, and a data subject may request such a service provider to remove such data.⁵¹ For the first time, the GDPR codified the right to be forgotten and the right to erasure.⁵² Most often, when any information goes out to the general public, it takes a few minutes to spread worldwide. In the present era of digital platforms, all the data collected and, once processed, are straightforward to get as it is all over the internet. In Bangladesh, there is yet to be any such law that provides an individual to erase such data. However, section 18 of the Draft of Personal Data Protection recognizes the right to be forgotten. It says the data subject shall have the right to erase the data. The data controller shall be obligated to erase personal data without undue delay per the conditions mentioned in the provision.⁵³ It also states that the data controller shall take all reasonable steps, including technical measures, to ensure all the links, copies, and replication of those personal data are erased.⁵⁴ However, the main problem arises when the earlier-mentioned sub-sections do not apply to the extent of exercising the right to freedom of expression and information.⁵⁵ This means it leaves a giant loophole to processing an individual's data, including a public figure. There should have been some specific definition of how far these rights could be exercised to make sure the targeted public figures could prevent the processing of their data. Therefore, a fair balance between fundamental rights and interests must be balanced.

Right to information privacy of the public figures: The privacy of public figures can have different perspectives from various people. However, having information privacy is an individual's legal right when it consists of information about them being circulated throughout society.⁵⁶ Section 122, 124, 126, 127, and 129 of the Evidence Act 1872 deals with and recognizes the right to privacy regarding the disclosure of information without the owner's authorization. The importance of information privacy has been increasing due to the advent of the digital age. As individuals, all human beings have an intuitive sense of territory which everyone tries to protect against intruders. However, these protection boundaries are often

⁵⁰Case C-131/12 *Google Spain V AEPD, Mario Costeja González* [2014] ECLI:EU:C:2014:317.

⁵¹ *Ibid.*

⁵² General Data Protection Regulation, Article 17.

⁵³ The Data Protection Bill, Section 18(1).

⁵⁴ *Ibid.*, Section 18(2).

⁵⁵ *Ibid.*, Section 18(3)(a).

⁵⁶ Evan Hendricks and others, *Your Right to Privacy* (2nd ed, Southern Illinois University Press) 11

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violated in a public figure's case. Furthermore, one of the essential aspects of privacy is the right to take some steps to 'control over the information about oneself.'⁵⁷ In some American jurisdictions, intrusion into privacy is considered a civil wrong-tort. Disseminating information that reflects one's undesirable and erroneous public image is also recognized as a tort.⁵⁸ However, as the Constitution of Bangladesh does not implicitly recognize or acknowledge the right to privacy of private life, the legislation does not cover protecting personal data. In Bangladesh, public figures face numerous difficulties due to the lack of legislation protecting their private lives. Although there are a few enactments under e-privacy, e-communication is not sufficient enough to save the personal lives of a citizen/public figure. In the case of *X V Iceland*,⁵⁹ the European Court on Human Rights stated that the right to respect for 'private life' is a part of the right to privacy; the right to live as far as one wishes is protected from any publicity. The notion of 'private life' contains personal affairs and includes 'any kind of information,' even an individual's gender identification, medical records, etc.⁶⁰ The Right to Information is considered an inalienable part of freedom of expression. The Right to Information Act 2009 does not acknowledge the right to privacy; however, sections 7(h) and (i) it has ensured the right to privacy of private life.⁶¹

Right to the privacy of public figures in the era of social media: Social media has been obtaining popularity at the fastest speed around the world. At the same time, it is creating an information revolution that makes it more challenging to track how information has been gathered and shared.⁶² As a result, public figures are constantly in a position of being stalked and published at any time. In other words, every move made by a user online through any digital device are in a part of being accessible. In simple terms, in the 21st century,

⁵⁷ Ibid Page xii

⁵⁸ *Meyer V Nebraska* 262 U.S. 390 (1923)

⁵⁹ 1976 ECHR 7, 1976 5 DR 86

⁶⁰ See, *Z vs. Finland (1997)* 1 Eur. Ct. H.R. 323; *Martin vs. United Kingdom (1996)* App. No. 27533/95, 21 Eur. H.R. Rep. CD112 (Commission Decision); *Gaskin V. United Kingdom (1989)*; 160 Eur. Ct. H.R. (ser. A); *B vs. France (1992)* 232-C Eur. Ct. H.R. (ser. A)

⁶¹ The Right to Information Act, 2009, Section 2, sub-section (iv) Notwithstanding anything contained in any other provisions of this Act, no authority shall be bound to provide the following information, namely- [...] (h) Any such information that may, if disclosed, offend the privacy of the personal life of an individual; (i) any such information that may, if disclosed, endanger the life or physical safety of any person. Although, nowhere in the Act it includes the 'right to privacy of private life', the Act can still be used to protect personal data if disclosed by any authority, including 'any organization, statutory body or institution, and any private organization or institution run by the government or foreign aid.

⁶² Sadia S Silvee and Sabrina Hasan, 'The Right to Privacy in Bangladesh in the Context of Technological Advancement' [2019] 1(2) SSRN Electronic Journal 13

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information breeds information.⁶³ All the information about a public figure cannot be considered information for the general public. There may be an argument when a private activity is done in a public place that can be deemed a waiver; however, these arguments cannot stand still. There needs to be a consideration of the incident which took place and the outcome of.⁶⁴ Recently, famous Rapper PNB Rock, on 12th September 2022, was robbed and shot while he was in a restaurant in Los Angeles after his girlfriend posted their location on her social media.⁶⁵ This incident shows how disproportionate the outcome was compared to how much risk PNB Rock and his girlfriend undertook and the consequences they faced.

Personality/Publicity Rights of the public figures: The right to privacy is not defined anywhere in the statutory laws of Bangladesh. However, it can be discussed through the judicial decisions of other countries. To enjoy privacy having the publicity right is also an essential element. The publicity right is such a right that pertains to one's commercial use of image, voice, or other indicia of personality. Even this right is argued to be a branch of intellectual property right. A public figure's authorization has to be there to ensure that privacy right is not being infringed. Delhi High Court held that 'the use of a celebrity's persona without permission would entitle the celebrity to claim for damages.'⁶⁶ In *D.M. Entertainment Pvt. Ltd. vs. Baby Gift House*,⁶⁷ the court believed that every individual should have the right to decide where and when their personality can be used. Even the fame and popularity of Sourav Ganguly were ruled to be his intellectual property by the court.⁶⁸ Jennifer Lawrence became a victim of hacking when her private images were released all across the internet; she said 'it just makes me feel like a piece of meat that's being passed around for profit.' It shows the horrifying impact that comes out of the invasion of privacy of a public figure.

To enjoy the right to privacy, public figures shall have the right to enjoy such in all digital platforms, including the right to erase data, publicity rights, etc. Freedom of expression

⁶³Daniel J. Solove, *The Digital Person Technology and Privacy in the Information Age* (New York University Press, 2004) p. 44

⁶⁴Muhammad Omar faruque and SkMd Habibullah, 'Privacy as a Human Right in the Digital Age: In Quest of a Safer Protection Regime in Bangladesh' [2018] ELCOP Yearbook of Human Rights 102

⁶⁵Victoria Bekiempis, 'Everything We Know About PnB Rock's Murder So Far' (*Vulture*, 30 September 2022) <<https://www.vulture.com/2022/09/pnb-rock-murder-case-details.html>> accessed 1 November 2022

⁶⁶*I.C.C Development (International) vs. Arvee Enterprises And Another*, 2003 VIIAD Delhi 405, 2003 (26) PTC 245 Del, 2004 (1) Raj 10

⁶⁷CS (OS) No. 893 of 2002.

⁶⁸*Sourav Ganguly vs. Tata Tea Ltd*, Civil Suit No. 361 of 1997.

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cannot be justified when it crosses the limits and creates life-threatening situations for the public figure.

4. Right to the privacy of public figures in other countries

As per the definition of the Oxford Dictionary, privacy is a state where one is not observed or free from public attention. In the digital age, public figures and personal lives are constantly under observation. The general statistics pay the price for being in the limelight by not getting the same level of privacy as other citizens.⁶⁹ Now public figures worldwide are also concerned about how they are being noticed, how their appearance should be, and all. Image management has become a full-time job for them.

Right to the privacy of public figures in India: The right to privacy has been enumerated as a fundamental right under Article 21 of the Constitution of India.⁷⁰ The Indian courts have implied the right to privacy from Article 21 by interpreting it in conformity with Article 17 of the ICCPR and Article 12 of the UDHR, and the case of *Kharak Singh Jeevan Reddy J.* held that surveillance on privacy must be done only to prevent crime and as per the provisions of law.⁷¹ After that, in the case of *Maneka Gandhi*,⁷² it was held that there has to be a triple test for any law interfering with personal liberty 1) it must prescribe a procedure; 2) the procedure prescribed shall withstand the test of one or more of the fundamental rights which are conferred under article 19 which may be applicable in a given situation; 3) it must also pass the test of Article 14. The public figures' right to such privacy is often seen to be infringed. However, most often, the people violating such rights get away in the name of freedom of expression. In a landmark judgment, the Delhi HCD held that a person's private space is something where one can become and remain himself.⁷³ Individuals need a place to be free from societal control and drop masks.⁷⁴ Which and includes when a person, even if they hold a different place in society, deserves to be free of any power in their private life. Only on the ground that they have a unique position in society, so everything about them cannot be marked as a right of everyone to know. They also should get the protection of the law as ensured by the constitution of India. Whenever there is a wedding or private event, public

⁶⁹Kalyani Shankar , 'Privacy debate around public figure' (*The Statesman*, 8 May 2022) <<https://www.thestatesman.com/opinion/privacy-debate-around-public-figures-1503069415.html>> accessed 18 May 2023.

⁷⁰ The Constitution of India, Article 21.

⁷¹*Kharak Singh vs The State of U. P. & Others* (1963) AIR 1295, 1964 SCR (1) 332.

⁷²*Maneka Gandhi vs Union of India*, 1978 AIR 597, 1978 SCR (2) 621

⁷³*Naz Foundation v Government of NCT of New Delhi and Others*, WP(C) No. 7455/2001.

⁷⁴ *Ibid.*

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figures, even if they do not want any interruption, the media leaves no chance to broadcast without permission. The family, marriage, and sexual orientation are all integral parts of maintaining the dignity of an individual. Most importantly, an individual's privacy recognizes an inviolable right to decide how freedom should be exercised.⁷⁵ The right to publicity gives an individual the right to protect, control, and profit from one's name. Therefore, it is considered a facet of the right to privacy. In the name of freedom of speech or press, no one should be allowed to hamper the reputation or life of public figures. Sometimes, pictures or voice mimicry is done for an individual's business promotion, which has created a mess for general statistics. Very recently, the New Delhi High Court, in the case of *Amitabh Bachchan vs. Rajat Nagi & Ors*, has ruled that no one can use pictures, voice, or even reality traits to promote their business.⁷⁶ A proposed data protection bill may be a starting point for India's long, view-changing journey.

Right to privacy of public figures in the United States (US): There was no implicit right to privacy in the US. However, through various court decisions, the U.S. courts have interpreted the right to have privacy. The U.S. Supreme Court in *Time v Hill*⁷⁷ said, 'the constitutional guarantee of freedom of speech in the press is not for the benefit of the press but for the entire nation. Justice Kennedy reaffirmed in broad terms the protection of privacy under the constitution, saying: 'matters involving personal and most intimate choices of a person, choices which are central to the dignity are central to the liberty protected under the Fourteenth Amendment.'⁷⁸ He added that the Constitution promises personal liberty that the government may not cross.⁷⁹ Since 1865 in the US, there have been attempts to assassinate one of every four presidents. Even though there were successful assassinations of the presidents, one reason for such was the massive broadcast of the press during sensitive times, which gave the perpetrators a good chance. Unlike other countries, the US federal level has no data protection regulation. However, each of the states in the US has the freedom to enact rules according to their own. One of the most talked about town incidents of 2022 has to be undoubtedly the Johnny Depp-Amber Heard defamation trial. During the pendency of the

⁷⁵*X Vs. The Principal Secretary, Health and Family Welfare Department & Another, Special Leave Petition (Civil) No. 12612 of 2022*

⁷⁶External, 'Amitabh Bachchan's voice, image can't be used without permission, says court' (*The Economic Times*, 25 November 2022) <<https://economictimes.indiatimes.com/news/new-updates/amitabh-bachchans-voice-image-cant-be-used-without-permission-says-court/articleshow/95762504.cms>> accessed 1 June 2023.

⁷⁷*Time, Inc. v. Hill*, 385 U.S. 374 (1967)

⁷⁸*Lawrence v. Texas*, 539 U.S. 558 (2003).

⁷⁹ *Ibid.*

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trial, both celebrities had to go through media trials alongside the court trial. Amber Heard even claimed to receive regular harassment and death threats since she accused her ex-husband.⁸⁰ Here the question remains as to what extent the privacy of public figures should be ensured when the trial itself is on camera. There may be different perspectives. However, nothing should be allowed to such an extent that the safety of the public figures' lives becomes a question. In the case of *Katz v United States*, the court laid down a test of 'reasonable expectation of privacy.' This two-part test was interpreted as 1. A person has to show an actual expectation of privacy, and 2. The expectation is such that society recognizes it as reasonable. Therefore, an inference can be drawn; if a public figure passes such a test, there should be enough privacy protection for such public figures.

Right to the privacy of public figures in the United Kingdom (UK): The Human Rights Act of 1998 protects human rights in the UK. This Act gives effect to the human rights as provided under the ECHR. Article 8 of the ECHR ensures the right to privacy.⁸¹ Celebrities in the UK have been seen to file defamation cases against the newspaper. Hence the number of American public figures fighting cases in the British courts is increasing. Even Hollywood star Kate Hudson also chose to file a suit in the British Court as the libel laws in the UK are more favorable to the claimants.⁸² There are many successful defamation cases in the UK against public figures, e.g. footballer Ashley Cole received compensation of £100,000 from the World and the Sun for publishing stories about an unnamed footballer involved in gay activities.⁸³ After that, English television presenter Noel Edmonds also received an apology and damages from the Daily Mail after he was claimed to behave unprofessionally during his career.⁸⁴ Very recently, in *Bloomberg V ZXC*,^{the UK Supreme Court} confirmed in the judgment that a subject of a criminal investigation, as a general rule, has the reasonable expectation of privacy relating to the ongoing investigation until they are charged. It should be widely accepted that if a person is a public figure or not during an ongoing investigation or trial, there is a substantive negative reputational effect on the subject of such investigation or trial. The innocent until proven guilty remains a phrase only when a person, due to societal expectations, has to receive hatred based on allegations made. In the UK, The Regulation of

⁸⁰Lisa Richwine, 'Amber Heard details death threats as testimony ends in Johnny Depp defamation case' (REUTERS, 27 May 2022) <<https://www.reuters.com/business/media-telecom/amber-heard-says-she-receives-death-threats-every-day-over-depp-claims-2022-05-26/>> accessed 11 June 2023.

⁸¹ European Convention on Human Rights Article 8.

⁸²Stephen Brook, 'More celebrities suing papers in UK' (*The Guardian*, 4 August 2006) <<https://www.theguardian.com/media/2006/aug/04/pressandpublishing.law>> accessed 11 June 2023

⁸³ Ibid.

⁸⁴ Ibid.

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Investigatory Powers Act (RIPA) was brought to ensure that the general public's human rights are not violated, including limitations of surveillance too.⁸⁵ Therefore, it is pretty evident that in the UK, even after not having any specific constitutional right, they have come up with various solutions to overcome privacy protection with successful judicial decisions.

In comparison to Bangladesh, other countries have more defined laws regarding privacy. There have been more discussions on public figures' privacy rights and invasion-related cases. There are some landmark judgments relating to public figures' privacy which have shown some newest viewpoints to the world on how the rights of public figures should be treated with. Moreover, there have been many successful defamation cases by public figures where the court favored the general statistics and provided them with damages.

5. Conclusion:

The right to privacy has been debated worldwide regarding public figures. Even though there are mentionable laws and judgments concerning public figures' privacy worldwide, in Bangladesh, it is yet to be implemented and recognized by the statutory regulations. Privacy should not be subject to a person's position in society; rather, everyone shall have the right to live with dignity. Therefore, without any lawful justification, a person, even a public figure, should not be a victim of privacy invasion. Infringement of privacy of public figures' which does not serve any legitimate purpose in society then it should be prohibited. The news about a public figure should also have some positive outcome for the community or nation; otherwise, in the name of a free press or freedom of expression, a public figure may be deprived of the right to live a dignified life free from interference. Thus, the findings above of the research and recommendations in this chapter may help the public figures' right to privacy to stay in a more secure position in the eyes of the law and the general public.

⁸⁵ Regulation of Investigatory Powers Act 2000.

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