

MASS MEDIA RIGHTS UNDER AFGHANISTAN LAWS: CHALLENGES AND PROSPECTS

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In general, the paper examines the rights of the mass media under Afghanistan laws. Specifically, the main aims of the paper are to critically examine the rights of the mass media and to analyse the laws in Afghanistan that guarantee those rights. These are rights that have been provided under the Afghanistan Constitution and as such, they are not to be infringed upon. They are fundamental to the existence of every human being in Afghanistan. However, a number of the provisions in the constitution have guaranteed these rights and thus, have become a challenge to the citizens, agencies, journalists and other media outlets to exercise these rights. Afghanistan has a history of over 100 years of mass media events which have been extremely active. The mass media laws in Afghanistan are operative but face numerous challenges. The paper applies the doctrinal method, wherein it examines the laws of Afghanistan related to the rights of the mass media. The findings of the paper reveal that some of the provisions for the mass media under the constitution are problematic whereby some of them are unclear, causing misunderstanding and misuse of the provisions. Therefore, the paper recommends the harmonisation of these laws make the provisions clear and remove any contradiction and ambiguity.

INTRODUCTION

Mass media are the most inclusive source in producing and distributing knowledge to society. Mass media in the modern world have promoted leadership in global networks and have formed our thoughts and beliefs. In the community, mass media have ideological and political responsibilities. The necessity of creating laws for the mass media due to the regulating of their activities

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has always been a matter of interest for legislative bodies of countries in the world. Afghanistan has also included mass media in its constitution to freely promote their activities in the country. In order to regulate these activities, Afghanistan has approved a law entitled Afghanistan Mass Media Law (AMML). But there are still some challenges in the constitutional provisions of Afghanistan and the laws regarding mass media in the country. This paper thus concentrates on the legal challenges facing mass media in Afghanistan.

The aim of the paper is to examine mass media rights under Afghanistan laws. The paper looks at the Constitution of Afghanistan, specifically at the provisions related to mass media. Furthermore, the paper also looks at the 2009 AMML. Though there are a number of provisions based on the Afghanistan Constitution whereby the AMML has guaranteed the rights of the mass media, there are still challenges to some of these provisions. The paper also focuses on the challenges faced by the social media in Afghanistan. Although social media activities are regulated by the AMML, lack of proper provision regarding them has caused problems in Afghanistan. The absence of a manifest by the government could signify its reluctance to uphold the law.

Definition

The growth of social awareness is the underlying factor of all fundamental developments of a nation. Public opinion reflects the sense of responsibility of the citizens of a nation towards a public fate.¹ Mass media, as a reflection of public opinion, has stabilised their position in the world. They have a significant impact on the growth and prosperity of collective consciousness. They also have a fundamental responsibility in the society for political orientation and education.² Therefore, the strengthening of public opinion, the growth of democracy, the spread of civic values and exact information are among the fundamental goals of mass media. Upon realisation in society, mass media have full freedom in the direction of their social responsibility as their mission. Freedom of mass media is not achieved only through slogans; it is only achieved

if there are clear rules and procedures in this regard. In this case, mass media would have binding aspect and would strive for executive guarantee. The Afghanistan Constitution and AMML, as such, have given a decent platform for freedom of mass media in Afghanistan.³

The Position of Mass Media in Islam

Islam is the religion of nature and it takes into account all the inherent needs of humans.⁴ As a comprehensive religion it has guided people in all fields including the one aspect of modern life, journalism and mass media. But Islam from 1400 years ago has considered the human need for communication and mass media. And has introduced a positive and influential mass media to human society, and that is the mosque. Therefore, if we turn to the building of the Ka'bah, in the time of Nabi Adam (AS), there is a record of the existence of the media in history.⁵ This fact is confirmed by the Quran by stating in Surah Al-Imran, Verse 96: "Indeed, the first House of worship established for mankind was that at Makkah - blessed and a guidance for the world".⁶ Moreover, Afghanistan is an Islamic country and Article 3 of the Afghanistan Constitution states that no law in Afghanistan should conflict with Islam.⁷ Basically, the law regulating mass media in country is AMML. Thus, the AMML is set up based on three principles, which are principles of Islamic religion, the Afghanistan Constitution and the Universal Declaration of Human Rights (UDHR) that Afghanistan had signed.⁸ Although there is conflict between these three bases, they can regulate media activities within the framework of this law. Awareness and information about these threefold bases (*Shari'ah* law, Afghanistan Constitution and the UDHR) will help to protect journalists and the mass media from legal mistakes and legal slips; by observing AMML, journalists and independent mass media would have government support.⁹

The Position of Mass Media under the Afghanistan Constitution 2004

Regarding freedom of speech and mass media, the Constitution

of the Islamic Republic of Afghanistan, in the provision of Article 34 states that: "Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this constitution. Every Afghan shall have the right, according to provisions of law, to print and publish on subjects without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media shall be regulated by law".¹⁰ As clearly provided in the first sentence of Article 34 of the constitution, freedom of expression is respected as a human right and is protected from violation. The last sentence relates to the legal field, which explains, expresses and regulates affairs related to radio, television and other mediums.¹¹ Thus, Article 34 of the Afghanistan Constitution provides space for media activities; for the first time, Afghanistan media are able to conduct activities using modern and new technology. Based on this constitution, after a long interruption, private media are allowed to start activities again in the country.¹²

In addition, Article 34 of the Afghanistan Constitution is not the only provision which guarantees the right to freedom of expression for mass media; there are other articles in the constitution that also confirm this issue. The provision of Article 16 of the Afghanistan Constitution in relation to languages, decrees in Paragraph 4 that: "Usage of all current languages in the country shall be free in press publications and mass media".¹³ Similarly, the provision of Article 24 of the Afghanistan Constitution relates to freedom in the general sense. According to this provision, "Liberty is the natural right of human beings. This right has no limits unless affecting other freedoms as well as the public interest, which shall be regulated by law".¹⁴

Afghanistan Mass Media Law 2009

The current AMML was approved in 2009 in 11 Chapters and 54 Articles. This law clarifies in its first chapter general matters concerning mass media. The first chapter contains three articles and the first states that This Law has been enacted, taking into

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account the principles of the holy religion of Islam,¹⁵ pursuant of Article 34 of the Afghanistan Constitution¹⁶ and Article 19 of UDHR,¹⁷ to ensure the protection of freedom of thought and speech and regulate activities of mass media in the country. According to the provision of Article 34 of the Afghanistan Constitution, freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with the provision of this constitution. Every Afghan shall have the right, according to provisions of law, to print and publish on any subject without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media are regulated by law.¹⁸

Article 2 of AMML describes the objectives of the setup of the mass media law. In the first paragraph, the purpose of the law is to protect and guarantee the right to freedom of thought and speech. This means, that this law clearly protects the right to freedom of opinion and expression whereby every Afghan citizen has the right to think and express his/her thoughts and pass them to others. Paragraph 2 of this article clarifies the aims of the establishment of AMML, which are supporting the rights of journalists and providing conditions for free activities of mass media. This means the law protects the rights of journalists and the Afghan government must provide free conditions for media activities under this law. In the third paragraph of this law, the Afghan government is required to promote and develop free, independent and pluralistic mass media in Afghanistan.¹⁹

In paragraph 4 of the second article, the government is obligated to provide for the citizens of the country the appropriate context for expressing thoughts and feelings. Afghan citizens can present their thoughts and feelings truthfully and fairly through written form, drawn images, records on tapes, allegories, motions and other scientific phenomena, artistic and published literatures. There is no restriction in this field unless it is prohibited by media law.²⁰ In the fifth paragraph, the observance of the principle of freedom of speech and mass media, based on UDHR, is recognised.

But, observance of the principles and rules of the sacred religion of Islam has also been emphasised.²¹ This means that freedom of speech and mass media as stated in the UDHR which Afghanistan had signed, would apply but the principles of UDHR should not be in conflict with the principles of the Islamic religion; in other words, the principles of Islam must not be violated. There are some items in UDHR that are contradictory to the principles of Islam. Therefore, according to this mass media law, journalists and the media should not only act on the provisions of the UDHR and forget the principles and rules of Islam and the constitution of the country.²²

In paragraph 6 of Article 2 of the AMML, the provision states that the government of Afghanistan is required to ensure growth of the mass media and provide effective means of dissemination of correct news and information through education, science and politics. Similarly, mass media are required to convey the views of the people to audiences with honesty, balance and impartiality. The same paragraph also indicates the government's obligation towards the media and the media's obligation towards the people.²³

Article 3 of the AMML clarifies the terms used in this law. There are 21 terms in the AMML which are used in the field of mass media and each covers separate concepts. Journalists and the mass media should know that from the perspective of the law, who is the journalist? And which machinery is called the media? Otherwise, journalists and the media may make mistakes. It is possible that most people know the meaning of these terms, but the concepts that people present cannot completely be legal. Only certain persons can claim that they are journalists as defined by the law which is applied in the context of their work area. But anyone who reports news may not necessarily be called a journalist. The media are clearly defined by law; they cannot be called anything else beyond what the law has defined.²⁴

Chapter 2 of the AMML highlights the rights and obligations of the media on matters such as freedom of thought and expression, seeking information, legal protection, right to respond, non-publication of response and establishment of a union.²⁵ Chapter

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3 is about the establishment of print media which is the privilege of the owner and director, in addition to matters on how to create print media, address and other specifications.²⁶ Chapter 4 is about the establishment of electronic mass media covering topics such as electronic media, public electronic media, National Radio Television Afghanistan, duties and responsibilities, religious and national programmes, operation of RTA in cases of emergency, keeping of programmes, non-governmental electronic media, observation of principles, freedom of private radios and televisions, maintaining balance, maintaining recorded programmes, right to claim and obligations of the editor-in-chief of the electronic media.²⁷ Chapter 5 is on how financial sources of mass media are acquired²⁸ and chapter 6 is about establishing printing houses and cultural institutions, and covers issues such as right to establish and licensing.²⁹

Similarly, Chapter 7 under the title of “Proprietor, Qualifications and Obligations” covers issues such as proprietor, qualifications of proprietor, article of association, registration of private media and cultural organisations, provision of information for media registration and cultural organisations, address and logo, right to court referral, transfer of ownership and rights.³⁰ Chapter 8 is about the qualifications and obligations of editor-in-chief including issues such as having an editor-in-chief, responsibility for published materials, observing the right of the critic and the recipient of criticism.³¹ Chapter 9 is about high council of media and discusses issues such as composition of high council of media, mass media commission, duties of mass media commission and National Radio Television Afghanistan Commission.³² Chapter 10 considers the works and materials prohibited from being produced, printed and published/broadcast, Bakhtar News Agency and revocation of license.³³ Chapter 11 contains miscellaneous provisions in which the right of film production of foreign citizens, article of association amendment, obligation of foreign media and news agencies, registration of books and booklets, law’s enactment, payment of tax and date of entry in the enforcement of this law are included.³⁴

As for free and independent media, they only work in countries where the governments honour free speech and public opinion. In those countries, the government does not only rely on government-owned media but allows the general public and other institutions to publish publications and create private and personal media. The AMML allows free and non-government media to do their activities freely (free activity and broadcasting equipment).³⁵ The government supports, protects and guarantees this freedom. In the observation of this media law, no natural and legal persons, including government agencies, have the right to interfere, forbid, boycott, censor and restrict media functionality. The main purpose of mass media law is to protect and support independent media, ensuring conditions for independent media activities and development of independent media. In addition, the mass media law of Afghanistan mentions that the Ministry of Information and Culture has the duty to provide the necessary facilities for realisation of independent media activities.³⁶

LEGAL CHALLENGES

In the realm of regulation, law is a basic and fundamental guideline in a country.³⁷ In order to have a successful life, citizens of a nation have the moral and legal obligations to adjust their actions according to the law. Challenges to the provision of law, which regulates a particular issue in a country, will resonate on the good citizens of the country and as such, will put many activities at risk. The challenges facing the freedom of mass media in Afghanistan are multi-dimensional.³⁸ One of the major obstacles to freedom of mass media is the inherent contradictions, ambiguities and confusion in the provision of the Afghanistan Constitution and the AMML. These legal challenges would lead to barriers for mass media in conducting their activity in Afghanistan.³⁹

Constitutional Challenges

There is no doubt that the current Afghanistan Constitution is replete with contradictory provisions that would hamper free

speech. Historically, after the fall of the Taliban regime and the formation of an elected government in Afghanistan, there were attempts to draft of a new constitution and provide for the general application of the provisions in all government executive departments, ministries and parastatals.⁴⁰ Consequently, a new constitution was adopted in 2004. However, the 2004 Constitution of Afghanistan has many shortcomings and deficiencies including those that affect mass media practices. In addition, in recent years, new issues have emerged which need to be incorporated into the constitution.⁴¹

The fundamental constitutional problem regarding mass media in Afghanistan is the contradiction between the articles of the Constitution. This has brought huge problems in various fields, particularly in the area of freedom of speech and mass media. In this area, the existing contradictions which are causes of concern are in Article 3, Article 7, Article 34 and Article 24 of the Afghanistan Constitution.⁴²

Article 3 of the Afghanistan Constitution provides that no law can be contrary to the beliefs and provisions of the sacred religion of Islam⁴³ while Article 7 states that the state shall abide by the United Nation charter,⁴⁴ international treaties and international conventions that Afghanistan had signed, including the UDHR.⁴⁵ On the other hand, Article 34 of the constitution states that freedom of expression is inviolable; that every Afghan has the right to express his thought through speech, writing or illustration or other means while still observing the provisions stated in this Constitution. It is on point that every Afghan has the right to print or publish topics without prior submission to the state authorities in accordance with the law.⁴⁶

Article 3 of the Afghanistan Constitution also states that no law should be in conflict with Islam. This means that Afghan citizens are not allowed to express non-Islamic ideas, thoughts and beliefs, and the mass media are also not allowed to operate freely and publish their activities outside the Islamic framework. Article 3 represents censorship in freedom of speech and mass media. But according to Article 7 of the Constitution, Afghanistan

is obliged to abide by the UN charter, international treaties and international conventions that Afghanistan had signed, including the UDHR.⁴⁷ Article 19 states that, everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers.⁴⁸ Afghanistan, however, is obligated to abide by the UDHR. Because of this, Afghan citizens are not limited to expressing Islamic ideas, thoughts and views solely. In other words, citizens of Afghanistan can express their views and thoughts that may be non-Islamic without any form of restriction or censorship.⁴⁹

Similarly, Article 34 of the Afghanistan Constitution reveals an obvious contradiction with the provision in Article 3. According to Article 34, freedom of expression is inviolable, and every Afghan citizen can express thoughts and views without any censorship. The same article also provides that no law should be in conflict with Islam.⁵⁰ The question is how can such contradictory provisions exist in harmony on the same subject matter? And who decides what should be censored and what should be disseminated? And if someone expresses a non-Islamic idea, what will be the consequence? The constitution should be clear with no contradictions on censorship and state clearly what happens to a citizen who expresses non-Islamic thoughts and views. The contradiction must be clarified. This will give a clear road map on the provisions of law on mass media, which is a right to be practised without ambiguity.

The provision of Article 24 of the Afghanistan Constitution states that “Liberty is the natural right of human beings. This right has no limits unless affecting others’ freedoms as well as the public interest, which shall be regulated by law. Liberty and human dignity are inviolable. The state shall respect and protect liberty as well as human dignity”.⁵¹ It should be noted that the concept of freedom is generally mentioned in Article 24 of the Constitution, which includes freedom of speech and freedom of the mass media. The limitations of freedom mentioned in the provision of Article 24 are rights and freedoms of others and public interest, which

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include freedom of mass media, in addition to other constitutional freedoms.⁵²

The rights and freedoms of others are a set of rights and freedoms that all citizens of the country are entitled to, under domestic laws and international human rights instruments. The Afghanistan constitution's chapter on citizens defines the rights and duties of Afghan citizens;⁵³ Their rights and duties are also reflected in other domestic laws.⁵⁴ According to the provision of Article 7 of the Afghanistan Constitution, all rights enshrined in the UDHR, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) are also considered in Afghanistan.⁵⁵ Therefore, no one can infringe upon others' right by misusing freedom of speech and the mass media. When we say freedom of speech, we must know that this right does not include freedom to slander, defame, insult, damage and other acts and behaviours of criminals, as these would violate the rights of others.⁵⁶

The legal challenges in the provision of Article 24 of the Afghanistan Constitution are the second limitation of freedom, which is public interest.⁵⁷ Public interest is generally defined in the Constitution but in ordinary law there is no clear definition of it and it is characterised as such. In addition, there are many general and unclear concepts, the examples of which are found in the domestic laws of Afghanistan, which can be the enemy of freedom of speech and mass media under the name of public interest. This category of unclear concept can give the government the power to limit the mass media in their activities.⁵⁸

Mass Media Law Challenges

The AMML guarantees freedom of speech and right to information and provides ease in the creation and establishment of the mass media. The law cannot be regarded as complete and adequate to suitably guide journalists in their smooth operations of practice even though the AMML seems to be superior compared to other mass media laws in neighbouring countries.⁵⁹ Yet, some shortcomings and difficulties are recorded in the law, leading to

misunderstanding, contradiction, confusion and ambiguity. In some cases, this leads to tension in professional journalism because of lack of clarity in the provisions of the law. Multiple approaches of journalism and citizens' practice of free speech will surface. Equally, this will lead to conflicting court decisions in cases of dispute relating to mass media.⁶⁰ The contradiction, confusion and ambiguity are in different chapters of AMML which the paper would discuss below.

The AMML's major problems can be seen in Chapter 2 from the provision of Article 4. In the second paragraph of this Article 4 of the AMML, the Afghanistan government is required to recognise the freedom of mass media and pay attention to supporting and strengthening the mass media. The second paragraph of this article prohibits the rights of censorship and interference from the government, real and legal persons, and states that no one, including the government, has the right to ban, prohibit, distort and limit the freedom of the mass media. In this paragraph, only the right to intervene in accordance with this mass media law is allowed. But this article and other provisions of the law are silent on the rights and practices of censorship, ban and prohibition, and in limiting the actions of journalists. It is not clear what should be censored and in what circumstances should censorship be invoked.⁶¹

Right to freedom of thought and speech is one of the inherent rights of humans;⁶² thus, Afghan citizens have the right to express what they think and transfer those ideas to others through mass media. Mass media must also be free to work in the process whereby thoughts, views and information are transferred properly and are accessible to all. Because the media act as the eyes and ears of a civil society, if these instruments do not work properly, citizens cannot make the necessary decisions about their own affairs and that of the community in relation to the valuable role of the media and free speech in socio-economic and political life.⁶³

Despite the technical and legal problems, the AMML has internationally accepted media standards. The law allows citizens to set up electronic media, including radio and television. Holders

of private media have a dynasty of rights and privileges and as such also given a range of responsibilities. Chapter 4's provision of Article 20 of the AMML mention these responsibilities to include electronic media that should observe a range of principles in their publications and programmes such as the principles of the holy religion of Islam, national values, spiritual and moral values and the psychological security of the Afghan nation.⁶⁴

The problem in Article 20 of the AMML is that some terms such as national values, spiritual/moral values and psychological security are used in a very general sense. Various interpretations can be given to these issues thereby creating opportunity for misuse and misinterpretations. The issue of psychological security for countries such as Afghanistan, which has experienced over three decades of war with most of her citizens already experiencing psychological problems, should be clearly defined for the benefit of the people. But the problem currently is that "psychological security" provided by Article 20 is a new concept which is not explicitly defined in Afghanistan's legislative documents.⁶⁵

However, there is nothing mentioned as a guide or example for the purpose of proper usage by journalists in their practice. Potential abuse and misunderstanding of this article are possible, since recently the Afghanistan security sector misused this article by not allowing the media to cover the lives of suicide attacks, which is contrary to the principle of accessing information.⁶⁶

The provision of Article 22 of the AMML provides that private radios and televisions should maintain balance related to the adversary positions taken by political groups and personalities against each other, and impartially broadcast the views of the parties involved.⁶⁷ The issue concerning the media comprises of social phenomenon with a duty to deliver information to the public. The media has an important role in shaping public opinion, supplying information to people and government, consolidating the relations of the nation and government and reflecting the national conscience of the country. With such responsibilities, the media have enormous legal obligation of maintaining balance and impartiality in their practice. The responsibilities of the media

are important both locally and internationally as they influence the decision of a nation in various fields. Most countries at least provide for the obligations of the media fairly or unfairly in their legal system. The challenge of the provision in Article 22 of the AMML is which it only regulates and obligates private mass media to observe the principle of impartially and maintaining balance in political programmes with no provision explicitly and clearly regulating public media to observe this principle. Furthermore, Article 22 obligates the private mass media to observe the principle of impartiality in a very general and ambiguous manner without defining the principle of balance and impartially.⁶⁸

The provision of Article 24 of the AMML provides that if a real or legal person claims in writing that his rights have been affected by a mass media programme, the person may take a copy from the archive of that media at his own expense and use it.⁶⁹ It is a clear fact that one of the major ethical duties of the media is to reveal and reflect the state of those who are deprived of their basic rights. It is far from possibility that the mass media, in the course of publishing programmes, would infringe on the rights of a number of people. These persons can be real persons or can be legal persons such as corporations, institutions and other organs. It should be noted that in the above article, the law has provided this right to protection of the financial and non-financial rights of citizens, including real and legal persons, to use it as a means of proof for the exercise of their right. Such real or legal persons are expected, by this provision, to pay money to the media for the republication of what had been published earlier.⁷⁰

The legal gap in the provision of Article 24 of AMML which is economic implication on the Afghan citizens, especially the poor citizens,⁷¹ is not taken into account. It is possible that in broadcasting, in television programmes, radio or print media a poor citizen's right may be violated as according to this article, it must be republished at his expense. It is possible that if a person cannot afford to pay for republication, the person will abandon such right resulting in injustice. Thus, it should be the responsibility of the media to either republish such programme

in favour of the person whose right is violated free of charge or they should pay themselves, if necessary. It will be a double jeopardy on the part of a citizen whose right is violated by the media to be made to pay again to the same media to republish a programme in favour of the citizens.⁷²

Chapter 8 of Article 39 of the AMML discusses the responsibility of legal actions of the mass media. In the world, there are three comments relating to the responsibility of the media, especially with regard to legal action. According to the first comment, the author of a programme is responsible. Secondly, the editor-in-chief and author of a programme are responsible and according to the third comment, only the editor-in-chief is responsible. Thirdly, the comment in which only the editor-in-chief is responsible for subjects, contents and programme is common in some countries, such as England. The AMML in the provision of Article 39 accepts the third comment.⁷³ The serious criticism on the provision of Article 39 of the AMML is that the editor-in-chief is wholly responsible while the author who is the main actor is exempted from liability. It is the submission of research that there is no justice in this scenario because the main culprit has no responsibility. On the other hand, the editor-in-chief, despite less participation, is made entirely responsible.⁷⁴

According to the provision of Article 44 of the AMML, a special commission under the name of the National Radio Television Commission is envisaged for the national radio and television.⁷⁵ Among the duties and competencies of this commission is to maintain the independence, impartiality and professional prestige of the national television administration. It means this commission should prevent the governmental or non-governmental organisations from interfering in the broadcasting affairs of the national television, that they should not dictate the national television and radio according to their will.⁷⁶

The legal problem in Article 44 of the AMML is that the National Television and Radio Commission have the authority to monitor the implementation of the budget of the national radio and television. But this competence is the competence of the mass

media commission in paragraph 7 of Article 43 which is totally in friction and interference.⁷⁷ Therefore, this problem should be resolved. Administrative friction is opposed to administrative law. In addition, this commission has the authority to monitor the implementation of a publication policy determined by the High Council of the Media. But this competence raises concerns because, on the pretext of implementing publication policies, it would take the opportunity to influence the government, particularly in its show of executive power. Furthermore, the commission has a duty to submit its annual report to the High Council of the Media. Another competency of the commission is the attraction of domestic and foreign assistance for the strengthening of the National Radio and Television Administration.⁷⁸

The provision of Chapter 10 of Article 46 of the AMML clarifies the position of Bakhtar News Agency.⁷⁹ This mass media law defines Bakhtar News Agency as a legal person who has activities in the field of communication by collecting and disseminating information. Bakhtar News Agency is considered a government agency, working under the Ministry of Information and Culture, and its budget is also provided through this ministry. This paper suggests that Bakhtar Agency be transformed into a national agency under the executive powers of the government. It is submitted that the agency's operations should be free, independent and monitored by a supervisory body. In addition, there should be compliance to the regulations and also possibly creating a legal entity for Bakhtar Agency, so that it can be independent from the Ministry of Information and Culture.⁸⁰

In the provision of Chapter 11 of Article 52 of the AMML, five rules of the law are foreseen, such as the copyright law, laws for establishment of unions, laws related to punitive rules for media violations, advertisements and seeking information.⁸¹ If the government can support the objectives of the above article, definitely the law on mass media becomes effective. Unfortunately, only the law on seeking information has been approved in 2014 while the copyright law has been drafted but is yet to be passed by legislature. Since then, there has not been any other law drafted.

For the copyright law, no other rules have been drafted. The paper submits that the government should enact laws on the establishment of unions, laws related to punitive rules for media violations and advertisements so as to strengthen the mass media activities. It is only the copyright law that is fully operational.

Social Media Challenges

In recent years, Afghanistan has experienced a significant expansion of social media.⁸² Enhancing the availability of Internet access across the country provides a new environment and new ways to connect Afghan citizens with each other and with people from other countries in the world, allowing them to express their views on a wide range of social, political and security issues. The nature of being private and the urgency of Internet communication in general and the social media, are likely to have broad implications on the future of political, social and security affairs in the country. From the control point of view, some scholars consider modern communication and technology as a liberating potential that “can expand political, social and economic freedoms”.⁸³ Social media like Facebook and Twitter can empower marginalised social and political groups, such as young people and women, and expose society to powerful forces of globalisation. The development of the social media can also have significant social, political and security implications.⁸⁴

Social media have set up a revolution in most countries and have played significant role in all developments. Afghanistan is also one of the countries experiencing the positive and negative consequences of using social media. The positive impacts of social media in most countries, especially in Afghanistan, can be seen in issues such as building public opinion, increasing men’s world view and women’s self-awareness of their rights, communicating with politicians and the authorities, preventing corruption and oppression, making changes to societal culture, mobilising people and communities on important issues like public gatherings and demonstrations, preventing any form of dictatorship, raising the sense of responsibility of authorities for fear that they will not be

criticised by social media users, motivating young people in the field of literacy, communicating with friends and family, pursuing entertainment, recreation, sports and the desired movies, and developing friendship and communication.⁸⁵

Despite the positive effects of the social media, increasing its use without proper knowledge has caused serious concerns for Afghan citizens. The most important social media challenges that have hit Afghan society and Afghan citizens in recent years include being threatened through social media, fake use of the names of others, stimulating ethnic, regional and religious prejudices, publishing unethical movies and photos, attacking privacy and creating hatred among families through the publishing of private photos and movies, preventing the younger generation from the principle of profession, insulting women, publishing fake news in order to worry citizens, while opposition groups to the Afghanistan government use social media in their war propaganda in a massive way.⁸⁶ Unfortunately, there is no specific law in Afghanistan to prevent the negative influence of social media in the country.

Thus, in order to prevent the negative impacts and misuse of social media in Afghanistan, their activities should become lawful. The paper would suggest two methods in order to make social media activities lawful. Firstly, the Afghanistan Ministry of Information and Culture should place social media under the mass media law in a separate chapter and should consider all issues related to social media and make them lawful. Secondly, to legalise the activities of the social media, the Afghanistan Ministry of Information and Culture, in coordination with the Ministry of Communications and Information Technology, should create a separate law regulating social media affairs. This action would be the only way to prevent the negative impacts from the social media and prevent misusing them. If the social media activities are not according to law, in the near future the negative impacts would cause various challenges to the Afghan society.

CONCLUSION

The legal gap of mass media rights in the Afghanistan Constitution

has been examined. The paper finds that there is no clarity in the provisions of Afghanistan Constitution regarding mass media. There is a contradiction in the provisions regarding the activities of the mass media in broadcasting non-Islamic programmes. In reality, most television channels are publishing some programmes such as Western series which are contrary to the Islamic culture and the government does not take any action against them. There should be no contradiction in the provision of the constitution and laws should state clearly what would happens to any medium that publishes a non-Islamic programme. This will give a clear indication of the provisions of the law on mass media, which is the right to practise without ambiguity. Furthermore, the paper examined the AMML and found ambiguities, contradictions, confusion and undefined terms in some of the provisions of the law. In order to prevent the illegal activities of mass media, the existing challenges in the provisions of the mass media law must be resolved. Overcoming the existing challenges in the mass media law on one hand, would prevent the negative impacts of mass media on society and citizens, and on the other, it would improve the enforcement of the mass media law. In addition, it is extremely necessary to create laws for social media activities in Afghanistan. Although the daily increasing usage of social media has benefited the people, at the same time it has had serious negative impacts on the Afghan society. Creating specific laws to regulate social media activities is the only means to stop or lessen the negative impacts of social media. Otherwise, the negative impact would cause many problems.

Notes

- 1 Harry Jones, *Equity in Development: Why it is Important and how to Achieve*, (Overseas Development Institute, 2009), pp. 7-10.
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