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Department of Law

Research Monograph

On

"Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA: A preliminary Comparative analysis."

Research Paper submitted in partial fulfillment of the requirements

of the degree of LL.M (1 year) under Sonargaon University

Supervised By

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To,

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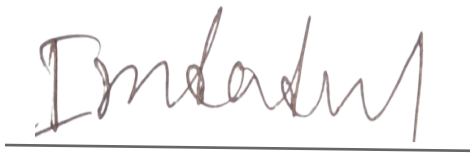
Subject: **Submission of research monograph.**

Dear Sir,

It is a great pleasure to submit my research paper on "***Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA: A preliminary Comparative analysis***". I have given my best efforts to finish the research with relevant information that I have collected from various source.

I have concentrated my best effort to achieve the objectives of the work and hope that my endeavor will serve the purpose. I shall be highly grateful and obliged if you kindly accept my research and evaluate it with your sagacious judgment.

Sincerely yours,



Md. Imdadul Khandaker.

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Acknowledgement

I am deeply gratitude to Almighty Allah for providing me everything that required for completing my research work.

I am thankful to **Md. Abdul Alim** to allow me and support to prepare this research.

I also want to thank my friends as well as well wishers to me for their motivation from the beginning of my research work.



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Declaration

I do hereby declare that the research monograph entitled "***Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA: A preliminary Comparative analysis***" Submitted to the Department of Law in Sonargaon University in the fulfillment of the requirements for the decree of LL.M (1 year), is carried out by me under the guidance and supervision of Md. Abdul Alim, Department of Law. Research method and approaches strictly have been followed during undertaking the work. The work I have presented does not breach any copyright. I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.



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Certificate of the thesis supervisor

The undersigned certify that the research paper entitled "***Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA: A preliminary Comparative analysis***", a study has been carried out by **Md. Imdadul Khandaker (Student ID No. LLM2103024004)**, under my constant supervision as per the rules regulations stipulated by the Sonargaon University in the partial fulfillment of the requirements for the degree of LL.M.

Signature of supervisor:

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Abbreviations

SCJN- Suprema Corte de Justicia de la Nación de México

UN- United Nations

UDHR-Universal Declaration of Human Rights

ICCPR- International convenant Civil and Political Rights

CEDAW- Convention on the Elimination of All Forms of Discrimination Against Woman

BLD- Bangladesh Legal Decision

ELCOP- Empowerment through Law of the Common People

CNDH- Comison Naclonal de Derechos Humanos

BBC- The British Broadcasting Corporation

IACHR- Inter-American Commission on Human Rights

BTV- Bangladesh Television

ICT- Information and Communications Technology

CCB- Bangladesh Competition Commission

US- United States

List of Cases

- Dewan Abdul Kader v. Bangladesh
- Thomas v. Collins 323 US 516
- Douglas v. Jeanette 319 US 157
- Strombrog v. California, 283 US 359
- Attorney General v. Leveller Magazine Ltd. , (1979) AC 440
- PUCL v. India AIR 2004 SC 1442
- Herndon v. Lowry, (1937) 301 US 242
- Santokh Singh v. Delhi Administration, AIR 1973 SC 1091
- Bihar v. Sailabala AIR 1952 SC 329
- Madhu Limaye v. S.D.M Monghyr, AIR 1971 SC 2486, 2495
- Virendra v. Punjab AIR 1958 SC 896
- Kovacs v. Cooper, (1949) 336 US 77
- Saia v. New York (1948) US 334 558
- Schneider v. New Hampshire, (1942) 315 US 568
- Ranjit v. Maharastra, AIR 1965 SC 881
- Ranjit v. Secker & Warburg, (1954) 1WLR 1138
- Ajay Goswami v. India, AIR 2007 SC 493
- Kartar Singh v. Punjab AIR 1956 SC 541
- Santosh Singh v. Delhi Administration, AIR 1973 SC 1091
- Maharastra v. Probhakar. AIR 1966 SC 424
- Narayana v. Kerala, AIR 1973 Ker 97

- Shuttlesworth v. Birmingham, (1969) 394 US 147
- Beauharnais v. Illinois, 1952
- Matal v. Tam, 2017
- Buckley v. Valeo, 1976
- Brandenburg v. Ohio

Abstract

Freedom of speech is a fundamental right in modern societies, and it has particular significance in relation to the well functioning of the constitutional democratic process. This freedom of speech is essential to the development of human personality and every person should be free in his thought and conscience. On the other hand, it is also essential for the development and functioning of democracy. Bangladesh and USA is a democratic country and its constitution contains the right to free speech. In this paper, first I have discussed the concept and perspective of freedom of speech and of democracy and their place in the Constitution. Then I have tried to sort out the grounds on which restriction can be imposed upon freedom of speech and also discussed their justification. Finally, I have discussed the effect of restriction upon Freedom of speech and expression over Democracy and contemporary condition of Bangladesh and USA. The main aim of this paper is to identify the reasonable grounds of restriction upon Freedom of speech and their effects over democracy.

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Chapter-One

1.1 Introduction

One of the intrinsic instincts of human being is the desire of being free. The sense of freedom makes them distinct from other animals. The struggle for freedom of expression is an old- aged struggle of groups and individual against their political environments. The term freedom of expression may be synonymously used as 'freedom of speech', 'freedom of thought and conscience', 'freedom of press', 'right to information', 'access to information' etc. Freedom of expression is a fundamental right in modern societies, and it has particular significance in relation to the well-functioning of the constitutional democratic process.[1] This freedom of expression and of speech is essential to the development of human personality and every person should be free in his thought and conscience.[2] On the other hand, freedom of speech is essential for the development and functioning of democracy.[3] Without freedom of speech, there cannot be any democracy and the first thing an autocrat does is to curb the freedom of speech.[4] So freedom of speech and expression can be defined as the cornerstone of democratic rights and freedoms. In its very first session in 1946, before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(I) stating "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.[5]

Now a days freedom of speech and expression has got its place in many international documents like UDHR, ICCPR, CEDAW etc., along with this it is also found in the constitution of almost all of the civilized nations of the world. However, the constitutions are providing this right but there is also a provision imposing restrictions over the freedom of speech and expression.

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[1] Sara Hugelier, 'Freedom of expression and transparency: two sides of one coin' (2010-2011), Jg. 47, Jura Falconis,<http://www.law.kuleuven.be/jura/ > accessed 14 November 2014.
[2] Mahmudul Islam, Constitutional Law of Bangladesh, pg.329, third edition, Mullick Brothers (2012)
[3] Ibid
[4] Farid Ahmad vs West Pakistan, PLD 1965 Lah 135
[5] Freedom of expression,< http://www.hrea.org/index.php?base_id=147> accessed 15 November 2014

These restrictions create great obstacles to democracy. In the Constitution of the People's Republic of Bangladesh, there is also enumeration of the right of freedom of speech and expression and there is also a provision restricting freedom on the basis of national security and other issues. Art. 39(1) of the Constitution of the People's Republic of Bangladesh states Freedom of thought and conscience, and of speech and the following sub art. 39(2) states the restrictions. Though the restriction over freedom of speech and expression impede the idea of democracy but it can be imposed where there is a real risk of harm to a legitimate interest, meaning there is a significant risk of imminent harm, the risk is of serious harm, that is to say violence or other unlawful action; there is a close causal link between the risk of harm and the expression; the expression was made with the intention of causing the harm.[6] In Bangladesh it is seen that the ruling party for the sake of their own interest impose restriction upon the constitutional right of Freedom of Speech and Expression. As a result the elementary ideology of democracy is hampered.

Pursuant to its mandate, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) monitors and documents in its annual reports the intervention of the region's justice system in matters of freedom of expression. In this report, the Office of the Special Rapporteur presents a compilation of different judgments handed down over the past four years by national high courts that represent progress at the domestic level or enrich the regional doctrine and jurisprudence, while incorporating the inter-American standards in support of their decisions.

> As in other annual reports, this type of analysis aims to contribute to a positive dialogue between the bodies of the system and the national courts, with the conviction that sharing different experiences leads to a virtuous circle of mutual learning.

[6] Ibid

> Indeed, the Inter-American Court and the Commission have repeatedly acknowledged that all of the national courts—regardless of their ranks and hierarchies—play an important role in the development and implementation of regional human rights standards. According to the Court's interpretation, the local justice systems not only operate as a guarantee of the rights of individuals in particular cases; through their decisions, they can also broaden and strengthen the content of the constitutional norms and national laws connected to these rights, and therefore broaden and strengthen the content of the international instruments themselves, such as the American Convention. The bodies of the system have similarly emphasized that national judges have a significant role in the process of implementing international human rights law in the domestic legal system.[7]

This compilation was put together starting with the cases that have been highlighted and documented by the Office of the Special Rapporteur in its annual reports for the 2013 – 2016 period. The criterion used for the selection of the judicial decisions summarized in this chapter was that they represent progress at the domestic level, either because they ensure the protection of the freedom of expression of the persons directly involved in the specific case, and/or because they set forth legal guidelines that incorporate and develop the inter-American standards in the national sphere.

The report includes case law from ten countries (Argentina, Brazil, Canada, Colombia, Costa Rica, United States, Mexico, Panama, Dominican Republic, and Uruguay). Of particular note is the work of the high courts of Argentina, Colombia, Mexico, and Uruguay, which are prolific in the incorporation and development of the inter-American doctrine and case law, and the work of different Brazilian courts, which have played a very important role during this period to promote the right to freedom of expression and exercise "conventionality control." Freedom of expression is an important indicator of a democratic society and development. If freedom of expression is prevailing in a country or society, other democratic rights and freedoms will automatically be ensured.

[7] IACHR. Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter
III (Domestic Case Law on Freedom of Expression). OEA/Ser.L/V/II.147.Doc.1. March 5, 2013. Para. 3.

Because, by exercising the freedom, people can participate in decision-making through free access to information and ideas. To understand the presence of freedom of expression and right to information, we need to understand the local political context, history and cultures. Bangladesh is politically a highly polarized and divided country. The guarantees of the rights do not depend only on the relevant laws, but social, political and cultural processes. The restrictions over the freedom of speech and expression as envisaged in the Constitution is the main hindrance to it, if it is exploited unreasonably to fulfill the interest of a single community or in the interest of the ruling party. The present condition of the freedom of speech and expression in Bangladesh is questionable. Though there is minimum freedom of speech and expression in Bangladesh, but it is not enough to turn Bangladesh into a successful democratic country. The most necessary thing to maximize the freedom of speech and expression in Bangladesh is that the ruling party should not use the restriction envisaged in the Constitution to fulfill their own interest. If it can be ensured then we might be able to see an ideal Bangladesh, as a model of democracy in the world.

With respect to the catalog of issues that have traditionally been addressed by the courts of the region, this compilation identifies advances in the judicial protection of specially protected speech, particularly political speech about public servants. With regard to the themes that have emerged in the hemisphere in recent years in relation to freedom of expression, the chapter discusses the growing litigation of matters involving freedom of expression on the Internet, privacy, and surveillance, on which the case law is still nascent.

Summarized below is a selection of notable court decisions. They have been systematized in accordance with 24 items that reflect different standards and rules of the inter-American legal framework, and grouped according to 13 analytical aspects. The decisions are preceded by a synthesis of the inter-American standard that was used as a reference in each category.

Finally, as in other annual reports, this Office recognizes that an exhaustive study of the national court decisions handed down in relation to this right is beyond the scope of this report. Accordingly, the Office of the Special Rapporteur will refer only to those notable

court decisions about which it has received information.

1.2 Purpose of Study

The purpose of the study is to identify and focus on the on going **Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA**.

1.3 Objectives of the Research

The purpose of the research is to define **Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA: A preliminary Comparative analysis**.Examining the possible role of Freedom of Speech under the Constitutional mandate in the development of Bangladesh and USA & its position Freedom of Speech of disadvantaged and vulnerable groups in society, Proceed to the legal system and the court. It is important to ask Whether this is a valid guess. Sometimes it is suggested that reliance on the court Decreases the democratic system. However, as far as Freedom of Speech is concerned, this is a mistake Argument. It does not involve the courts in particular, but rather assists in the broad definition of Freedom of Speech.For the disadvantaged and weak people to have input in the democratic process. For example, participating in the law reform process or participating in a more complete part of it Becoming more aware of the consequences (i.e. rights and responsibilities) of the legal process Created by law).

1.4 Research Methodology

This research is predominantly qualitative in nature. Now Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA a very touchable issue in judiciary. As my research topic is “Parameters of Freedom of Speech under the Constitutional mandate of Bangladesh and USA: A preliminary Comparative analysis”, I have an opportunity to collect data from various sources. It has no specific Act or any statue. It has been interpreted by judge to consider the intent of public at large. So

various types of books, articles and cases are primary data collected source of this research and I have collected data from that source. It is a legal research, so international and national judicial decisions, related on this work are enumerated. Several books, articles in book, or articles in journal, internet source are taken as reference.

Chapter-Two

Case law on the importance, function, and scope of freedom of expression in democratic systems

2.1 Idea of the Freedom of Expression:

Freedom of speech is a civil liberty.[8] The term freedom means the right to do or say what anyone wants without any person stopping him.[9] And expression means things that people say, write or do in order to show their feelings, opinions and ideas.[10] By considering the preceding meanings, it can be said that freedom of expression means that the right to say, write or do in order to show feelings without anyone's restriction on it. Again "Expression" can include having views or opinions, speaking aloud, publishing articles or books or leaflets, television or radio broadcasting, producing works of art, communication through the internet, some forms of commercial information and many other activities.[11]

Concepts of freedom of speech and expression can be found in early human rights documents like Magna Carta of 1215, England's Bill of Rights 1689, the Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789.[12] Today the idea of freedom of expression has been recognized in many international, regional and national laws of different States. International laws like Universal Declaration of Human Rights (UDHR) adopted in 1948 mentioned about freedom of opinion and expression. In its article 19 it 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*

[8] Md. Ziaur Rahman, Democracy: Freedom of Speech and Floor-crossing interface (2010), Volume I, The Northern University Journal of Law, ISSN 2218-2578
[9] OXFORD Advanced Learner's Dictionary, Ninth Edition.
[10] Ibid
[11] Freedom of expression explained, < http://www.brightknowledge.org/knowledge-bank/law and-politics/spotlight-on-law/freedom-of-expression-explained > accessed 14 November 2014
[12] David Smith, "Time line: a history of free speech". The Guardian (London, 02 Feb2006) <http://www.theguardian.com/media/2006/feb/05/religion.news> accessed 13 November 2014.

information and ideas through any media and regardless of frontiers."[13]

Again the right is enshrined in the 2nd paragraph of article 19 of the International Covenant on Civil and Political Rights (ICCPR). It is stated in it that,

> *"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*[14]

Furthermore freedom of expression has also been incorporated in some regional laws like article 10 of the European Convention on Human Rights, article 13 of the American Convention on Human Rights and article 9 of the African Charter on Human and Peoples' Rights.

National law like constitutional laws of different states protects the freedom of speech and expression. As for example article 39(2) (a) of the Constitution of Peoples Republic of Bangladesh protects the right to freedom of speech and expression. Like as article 19(1) (a) of the Constitution of India, article 19 of the Constitution of the Islamic Republic of Pakistan, article 14(1) (a) of the Sri Lankan Constitution and almost all the constitution of different states over the world protects the freedom of speech and expression.

Being a common law country Bangladesh follows precedent i. e. case laws. In the case of Dewan Abdul Kader v. Bangladesh[15], freedom of speech has been explained and it is stated as "a right to express one's own opinion absolutely freely by spoken words, writing, printing, painting or in any other manner which may be open to the eyes and ears. It thus includes expression of one's ideas on any matter by any means including even gestures, postures, banners and signs. It appears that this freedom is wide enough to include expression of one's own original ideas and also expression of one's opinion in the form of comments, explanations, annotations, solutions and answers to questions on the ideas expressed by others. It, therefore, means the expression of one's idea,

[13] Universal Declaration of Human Rights, Article 19
[14] The International Covenant on Civil and Political Rights (ICCPR), Article 19
[15] 14 BLD 418 (1994)

whether the idea is an original idea, or explanations, commentaries, or annotations of the original idea expressed by another."

2.2 Perspective of Democracy:

One of the patulous terms in political science is democracy.[16]Democracy derived from the Greek word 'demos' or 'people', is defined, basically, as government in which the supreme power is vested in the people. The 16th US president Abraham Lincoln defined democracy as "a government of the people, by the people and for the people." Moreover, the term democracy refers very generally to a method of group decision making characterized by a kind of equality among the participants at an essential stage of the collective decision making.[17] Four aspects of this definition should be noted, first, democracy concerns collective decision making, by which it means decisions that are made for groups and that are binding on all the members of the group, secondly, this definition means to cover a lot of different kinds of groups that may be called democratic, thirdly, the definition is not intended to carry any normative weight to it, fourthly, the equality required by the definition of democracy may be more or less deep.[18] David Bentham said regarding democracy that 'when we speak of democracy, we have learnt to think of institutional arrangements such as competitive elections, multi-party-ism, the separation of powers, and so forth.'[19] In that sense, democracy is the institutionalization of freedom.[20] Freedom is an important aspect of democracy. This is manifested in majority rule, and in the centrality of the legislative body through which the people's representatives act. This is a formal aspect of democracy. [21]

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[16] A.K.M Shamsul Huda, The Constitution of Bangladesh, Chittagong, 1997, Vol-1, p. 202
[17] Tom Christiano, "Democracy", (2008) The Stanford Encyclopedia of Philosophy (Fall 2008 Edition), Edward N. Zalta (ed.), < http://plato.stanford.edu/archives/fall2008/entries/democracy/ > Accessed 10 November 2014
[18] Ibid
[19] David Beetham, Democracy and Human Rights: Civil, Political, Economic, Social and cultural Rights, in Dr. Mizanur Rahman (ed), Human Rights and Empowerment, ELCOP,Dhaka, 2001, p.19
[20] Ibid
[21] see note 8

2.3 Importance, function, and scope of freedom of expression in democratic systems

The Inter-American legal framework grants a robust and broad scope to the right to freedom of expression. The doctrine and jurisprudence established by the Inter-American Commission and the Inter-American Court of Human Rights based on the American Convention, the American Declaration, and the Inter-American Democratic Charter, have helped to spur significant regulatory progress in the region in recent decades. They have also strengthened the intervention of the hemisphere's justice systems when it comes time to act in favor of protecting this right.

The fundamental role of freedom of expression that the bodies of the Inter-American Human Rights System have recognized has been addressed extensively by the high courts of the region which, in turn, have enriched and developed the emerging judicial discourse on the inter-American standards.

For instance, on June 20, 2013, in admitting unconstitutionality action 29/2011 filed by National Human Rights Commission [Comisión Nacional de Derechos Humanos] (CNDH) to challenge an article of the Criminal Code of Veracruz, the Supreme Court of Mexico held that freedom of expression and the right to information are "central to the constitutional and democratic rule of law" and are "fundamental pillars."[22] The high court underscored the dual dimension of these rights, and held that "they enjoy a public, collective, or institutional aspect that makes them basic components in the proper workings of a representative democracy." It emphasized that "freedom of expression is a preferential right, as it serves to guarantee the realization of other rights and freedoms." The Court also referred to the interrelationship and interdependence of freedom of expression and other human rights. It held that "having full freedom to

[22] Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz; Suprema Corte de Justicia de la Nación de México (SCNJ). Acción de Inconstitucionalidad 29/2011. Judgment of June 20, 2013. Available at:http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774; See also, Suprema Corte de Justicia de la Nación de México (SCJN). Contenido de la versión taquigráfica de la sesión pública ordinaria del pleno de la Suprema Corte de Justicia de la Nación. June 20, 2013.

express, gather, disseminate, and publish information and ideas is indispensable, not only as an essential means of self-expression and self-creation but also as a premise for the ability to fully exercise other human rights —the right of association and peaceful assembly with any lawful aim, the right of petition, and the right to vote and be voted for—and as a functional element that determines a country's democratic quality of life."

> In 2014, these conclusions were reaffirmed by the First Chamber of the Supreme Court of the Nation of [Primera Sala de la Suprema Corte de Justicia de la Nación] Mexico in the judgment handed down on February 7 of that year, in which it ruled direct amparo [petition for a constitutional remedy] 3123/2013 groundless. That petition sought to protect the honor and reputation of a public servant in view of the mass email distribution of criticism of his performance as the academic coordinator of a state university.[23] On May 20, 2015, the Supreme Court again ruled similarly by declaring the unconstitutionality of an article of the Criminal Code of Chiapas that established the so-called offense known as halconeo, or acting as a "lookout," and made it punishable by prison to obtain and disclose confidential or reserved information from the public security forces or armed forces for a number of purposes.[24] The Court held that "the rights to freedom of expression and access to information not only protect freedoms necessary for the personal autonomy of individuals but also are meant to protect and guarantee a public forum for political deliberation."

The Chamber of Criminal Cassation of the Supreme Court of Colombia [Sala de Casación Penal de la Corte Suprema de Justicia de Colombia] expressed similar considerations in its July 10, 2013 decision to acquit journalist Luis Agustín González, the director of the newspaper Cundinamarca Democrática, of the crime of defamation [injuria].[25] In this case, upon considering the extraordinary petition for cassation filed by

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[23] Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at:http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&SinBotonRegresar=1

[24] Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo en revisión 492/2014. Judgment of May 20, 2015. Available at:http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=167949

[25] Corte Suprema de Justicia de Colombia. Sala de Casación Penal. Casación sistema acusatorio Nº

the journalist's defense attorney, the Court exhaustively examined the function of freedom of expression in its political dimension. Citing the case law of the country's Constitutional Court,[26] the judgment underscored the importance of freedom of expression as a pre-condition for effective social participation, the improvement of public policies, and the guarantee of robust discussion on matters of general interest. It held that freedom of expression "promotes socio-political stability, by providing a safety valve for social dissent […] protects the political minorities that are active at a given time, preventing them from being silenced by prevailing or majority forces […] helps shape public opinion on political matters and the consolidation of a properly informed electorate." The Chamber of Criminal Cassation of the Supreme Court of Colombia thus concluded that the "profound" constitutional and international protection of freedom of expression "is justified precisely because of those lofty goals of solidifying participatory democracy."

38.909. Judgment of July 10, 2013. Available at:http://flip.org.co/resources/documents/c4ab6f8aa7b923cc81bf7d99e4da4e93.pdf

[26] The judgment quoted sentence T-391 of 2007 of the Corte Constitucional.

Chapter-Three

Freedom of Speech under the mandate of Bangladesh

3.1 Compatibility of the Freedom of Speech with Democracy:

Freedom of speech is one of the basic rights in democracy.[27] The basic rights are the common threads of a democracy. Some democratic nations guarantee it in their Constitutions or bill of rights.[28] For other nations it has evolved through common law. Freedom of speech and freedom of press are fundamental personal rights and liberties which are the foundation stones of democratic institutions.[29] Freedom of speech is essential for the development and functioning of democracy.[30] Without freedom of speech there cannot be any democracy.[31]The freedom consists of the right to express freely one's conviction and opinion on any matter orally or by writing, printing or any other mode addressed to the eyes and ears of other persons.[32] Freedom of speech and expression is not confined to any particular field of human interest[33] but guarantees the broadest exercise of the right for religious, political, economic, scientific or informational ends.[34]

3.2 Freedom of Speech and Expression in the Constitution of Bangladesh:

Article 39 of the Constitution of People's Republic of Bangladesh contains the right of freedom of speech and expression in the title of "Freedom of thought and conscience, and of speech". It is stated in the said article that,

(1) Freedom of thought and conscience is guaranteed.

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[27] Ibid
[28] Ibid
[29] See note 15 page 494
[30] Mahmudul Islam, Constitutional Law of Bangladesh, pg.329, third edition, Mullick Brothers (2012)
[31] See note 4
[32] See note 2 page 330
[33] Thomas v. Collins 323 US 516
[34] Douglas v. Jeanette 319 US 157

(2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence–

(a) the right of every citizen to freedom of speech and expression; and

(b) freedom of the press, are guaranteed.[35]

From the above article it becomes clear that the right of freedom of speech and expression has been guaranteed by the constitution of Bangladesh but it has been made subject to reasonable restrictions.

3.3 Democracy in the Constitution of Bangladesh:

Bangladesh is a democratic country since its birth in 1972. There is mention of democracy in many places of the Constitution of the People's Republic of Bangladesh. In para 2 and 3 of the preamble there is express provision regarding democracy and in para 4 there is an implication regarding democracy.[36] Again democracy can be found in article 8(1) and 11 of the constitution.[37]

3.4 Restrictions over freedom of speech and expression:

Article 39(2) of the Constitution of the People's Republic of Bangladesh imposes certain restrictions over the freedom of speech and expression. If we consider the above mentioned article then we can find some grounds or elements based on which restrictions are imposed, these are:

- In the interests of the security of the State
- Friendly relations with foreign states
- Public order
- Decency or morality

[35] The Constitution of the People's Republic of Bangladesh, Article 39
[36] The Constitution of the People's Republic of Bangladesh, Preamble
[37] Ibid Article 8 & Article 11

- Contempt of court
- Defamation
- Incitement to an offence

3.5 In the interests of the security of the state:

Free expression of opinion and ideas is possible in organized society and to preserve the right it is necessary to prohibit utterances which threaten to overthrow an organized government by unlawful or forceful means.[38] The security of the State is a matter of concern when there is serious and aggravated form of public disorder as distinguished from ordinary breach of public or public safety which does not involve any danger to the State.[39] Freedom of expression must yield when security of State is involved.[40]A reasonable restriction on the exercise of the right to know or right to information is always permissible in the interest of security of state. [41]Security of the state has to be distinguished from the security of the government.[42] Peaceful and orderly opposition of the government with the object of changing the government cannot be suppressed.[43] The security of the state is a matter of concern when there is a serious and aggravated form of public disorder as distinguished from ordinary breach of public order or public safety which does not involve any danger to the state.[44] The security of the State is endangered by crimes of violations intended to overthrow the government,[45] by wagering war or rebellion against the government, or by external aggression or war, but the security of the State is not endangered by minor breaches of public order or tranquility, such as unlawful assembly, riot affray, rash driving and the like. However, incitement to violent crimes like murder which is an offence against public order may endanger the security of the state.[46]

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[38] Strombrog v. California, 283 US 359
[39] seenote 8
[40]Attorney General v. Leveller Magazine Ltd. , (1979) AC 440
[41] PUCL v. India AIR 2004 SC 1442
[42] See note 2 page 340
[43] Herndon v. Lowry, (1937) 301 US 242
[44] see note 37
[45] Santokh Singh v. Delhi Administration, AIR 1973 SC 1091
[46] Bihar v. Sailabala AIR 1952 SC 329

3.6 Friendly relations with foreign states:

Foreign relations are always a touchy matter and the state cannot be embarrassed by irresponsible statements inside the country touching sensitive issues of internal affairs.[47] The object of this restriction on freedom of speech is the prevention of slander and libel against foreign States in the interest of friendly relations with them.[48] Moreover article 25 of the Constitution of the peoples Republic of Bangladesh has also implicated about keeping friendly relation with the foreign states.

3.7 Public order:

The expression 'Public order' includes absence of all acts which are a danger to the security of the State and absence of insurrection, riot, turbulence or crimes of violence, but not acts which merely disturb the security of others.[49] According to the constitution of Bangladesh reasonable restriction can be imposed upon freedom of speech and expression by law in the interest of public order. The expression 'in the interest of' enables parliament to make laws to curb the tendency to break the peace, even though no breach of the peace has actually taken place.[50]However, for restriction to be valid, the exercise of the right must have a rational nexus with the possible reach of public order.[51] Whether in particular case an utterance would have a tendency to create a breach of public order is to be determined objectively from the circumstances in which the utterance is made, the nature of the audience and the like.[52] In the interest of public order, the State may prohibit creating loud and raucous noises in streets and public places [53], regulate the hours and the place of public discussion[54] and the use of the public streets for the purpose of exercising the freedom of

[47] see note 2 page 344
[48] Ibid
[49] Madhu Limaye v. S.D.M Monghyr, AIR 1971 SC 2486, 2495
[50] Virendra v. Punjab AIR 1958 SC 896
[51] See note 2 page 341
[52] See note 40
[53] Kovacs v. Cooper, (1949) 336 US 77
[54] Saia v. New York (1948) US 334 558

speech.[55]

3.8 Decency or morality:

A law may impose reasonable restrictions on speech which lead to undermine public morality.[56] Whether any speech is likely to undermine decency or morality is to be determined to the probable effect it may have on the people to whom it is addressed.[57] The test of judging a work should be that of ordinary man or common sense and prudence and not an 'out of the ordinary or hypersensitive man.[58] The concept of obscenity has different meaning in different cultures; even it is different between or among communities in the same culture.[59] So, age, culture and the like of the audience thus become material. Use of mere abusive language without any suggestion of obscenity to the person in whose presence it is uttered will not be a speech offending decency or morality.[60] Publication of indecent material cannot enjoy the protection of Art.39.[61]A political party opposed to abortion in 2002 general election submitted for broadcasting a video that contained graphic footage of an actual abortion including image of aborted foetuses which B.B.C. refused to transmit on grounds of taste and decency. The judge refused permission to apply for judicial review. The court of appeal reversed the decision, but the House of Lords set aside the judgment of the Court of Appeal holding that on the basis accepted by the claimant that party political broadcasts were subject to the same restriction on transmission of offensive material as other programmes there had been no ground for interfering with the decision of the BBC that, applying the standard laid down by parliament, the claimant's video should not be transmitted.[62]

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[55] Schneider v. New Hampshire, (1942) 315 US 568
[56] Ranjit v. Maharastra, AIR 1965 SC 881
[57] Ranjit v. Secker & Warburg, (1954) 1WLR 1138
[58] Ajay Goswami v. India, AIR 2007 SC 493
[59] Ibid
[60] Kartar Singh v. Punjab AIR 1956 SC 541
[61] See note 2 page 345.
[62] Regina (Pro-Life Alliance v. B.B.C [2004] 1 AC 185 in Mahmudul Islam, Constitutional Law of Bangladesh, pg.345, third edition, Mullick Brothers (2012)

Chapter-Four

Freedom of Speech under the mandate of USA

4.1 The right to protect the confidentiality of sources

The inter-American standards have acknowledged that journalists and media workers are entitled to the right to keep their sources confidential. Principle 8 of the Declaration of Principles on Freedom of Expression establishes that "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." The Office of the Special Rapporteur for Freedom of expression has interpreted that this principle "provides for the right of every social communicator to refuse to disclose sources of information and research findings to private entities, third parties, or government or legal authorities."[63] This prerogative rests on the premise of ensuring, through the work of journalists and media workers, that society as a whole is able to learn of information that it would not otherwise have any way of knowing. Thus, the Office of the Special Rapporteur has maintained that, "confidentiality is an essential element of the work of the journalist and of the role society has conferred upon journalists to report on matters of public interest."[64]

4.2 The importance of this prerogative to guarantee the most extensive flow of information has also been expressed by different courts in the region:

> Thus, for instance, in Judgment 2014-004035 of March 21, 2014, the Constitutional Chamber of the Supreme Court [Sala Constitucional de la Corte Suprema de Justicia] of Costa Rica upheld the right of journalists to maintain the confidentiality of their sources.[65] The case came before Court as an amparo

[63] IACHR. Office of the Special Rapporteur for Freedom of Expression. Background and Interpretation of the Declaration of Principles. 2002. Para. 36.
[64] IACHR. Office of the Special Rapporteur for Freedom of Expression. Background and Interpretation of the Declaration of Principles. 2002. Para. 37.
[65] Sala Constitucional de la Corte Suprema de Justicia de Costa Rica. Fallos Relevantes Año 2014. Expediente No. 14-000848-0007-CO. Judgment 2014-004035 of March 21, 2014. Available at: http://sitios.poderjudicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relev

petition filed by journalists from the newspaper Diario Extra after one of the paper's journalists, Manuel Rodríguez Estrada, was subjected to telephone surveillance. The surveillance order was given by the Office of the Assistant Attorney General on Organized Crime [Fiscalía Adjunta contra Crimen Organizado], and was executed and requested by the Judicial Investigations Agency [Organismo de Investigación Judicial], a body within the Judiciary, as part of an investigation to determine the responsibility of a public servant for leaking confidential information related to two kidnappings for ransom.

4.3 The high court reaffirmed and cited judgment

The Court concluded that, in this specific case, the journalist's right to privacy had been violated, and it sought to determine whether that circumstance had additionally entailed a violation of his right to freedom of expression and the right to keep sources confidential. Citing article 13.1 of the American Convention, article 19.2 of the International Covenant on Civil and Political Rights, and Principle 8 of the Declaration of Principles on Freedom of Expression, the Constitutional Court held that, "the confidentiality of sources of information" is "a fundamental right of journalists," and is "instrumental" to the "full enjoyment of the right to disseminate and receive information." In those terms, the high court reaffirmed and cited judgment 2008-007548 of April 30, 2008:

antes/Sentencias%20Relevantes.htm; See also, Sala Constitucional Corte Suprema de Justicia de Costa Rica. Expediente No. 13-007483-0007-CO. Recurso de Amparo. Judgment 00531 of January 17, 2014.

Chapter-Five

Restrictions imposed over Freedom of Speech

5.1 Reasonableness of restrictions imposed over Freedom of Speech:

The question of reasonableness behind the restriction imposed over the freedom of speech is a matter of great discussion and sometimes it becomes a relative matter based on circumstances. In determining the reasonableness of a restriction upon the freedom of speech, a reasonable balance must be struck between the need for the freedom in a democratic system of government provided for by the Constitution and the social interest in the prevention of disorder and anarchy.[66] As for example though a person is under an order of detention, he continues to possess his fundamental right to read[67] but he may be prevented from reading a literature which is prejudicial to the security of the state or any other social interest mentioned in the restriction clause as envisaged in the provision relating to freedom of speech.[68]The restriction is to be imposed by law and when discretion is conferred on any authority, the law should provide sufficient guidelines for the exercise of the discretion.[69] If the law is vague or arbitrary, or is disproportionate to the mischief sought to be remedied or the restriction has no rational connection with the permissible grounds of restriction, or there is no procedural safeguard against an arbitrary exercise of the power under the law, the restriction imposed will be unconstitutional.[70] Generally, a restriction imposed will be unconstitutional if it is indefinite in duration unless it can be shown that a permanent restriction is necessary in the facts and circumstances of a given case.

5.2 Restriction over Freedom of speech and its effects over Democracy in Bangladesh:

Bangladesh is a democratic country since 1971. After few years of practicing parliamentary democracy since its liberation, Bangladesh went through a serious

[66] Santosh Singh v. Delhi Administration, AIR 1973 SC 1091
[67] Maharastra v. Probhakar. AIR 1966 SC 424
[68] Narayana v. Kerala, AIR 1973 Ker 97
[69] Shuttlesworth v. Birmingham, (1969) 394 US 147
[70] See note 2 page 353

political instability with the staging of coups and counter coups. Several political ups and downs like introduction of one party system by Sheikh Mujibur Rahman which was known as BAKSAL, military rule by Ziaur Rahman and HM Ershad and irresponsible competition of political parties to capture power have placed the democratic journey of the countries at stake.[71] However, the nation has restarted her journey to democracy with over throw of Ershad in 1990 but the path is not moisturized till now, though as an independent nation, Bangladesh has passed about forty three years but the achievements in the spheres of democracy and development are not noteworthy.[72] And still the democracy is facing problems. Though the Constitution of People's Republic of Bangladesh guarantees freedom of speech and expression under article 39, but such freedom is subject to reasonable restrictions. Again, people's speech and expression is mostly expressed through press and media. There is also restriction imposed upon press. 'The committee to protect journalists' (CPJ) declared Bangladesh to be one of the most violent places in the world for reporters.[73] In deed, investigative journalism has become an increasingly hazardous occupation in Bangladesh.[74] The journalists are harassed in Bangladesh in different ways. Libel and defamation cases against journalist are used as tools of harassment. Although turning to procedures laid out in the law, rather than resorting to extra legal measures such as rouging up and intimidating individuals on ransacking offices, may appear democratic, the uses and interpretation of the law leave much room for manipulation.[75] Many laws in Bangladesh compel journalists to practice some degree of self censorship, when even a case is filed under section 501 of the penal code, which relates to printing or engraving matter known to be defamatory. The courts response is to issue an arrest warrant rending investigation, it has become a practice in Bangladesh that on the day of the first hearing, the court issues a warrant and in most cases, irrespective of the charges gravity, journalists are ordered to be arrested immediately. It has been a long-standing demand

[71] Ms. Amrita Chowdhury, Democratic Deficit in Bangladesh: A Cause for Concern (2010) <www.globalindiafoundation.org/democratic%20deficit.pdf> accessed on 25 October 2014
[72] Mohammad Tarikul Islam,Freedom of press in democracy :Bangladesh perspective, [2007] , Vol. 29,Asian Affairs, page. 44-60.
[73] Ibid
[74] Ibid
[75] Ibid

of the press that the practice on issuing warrants be changed so that journalists are not inhibited by the fear of arrest even if their report is based on facts.[76]

In addition to this provision, there are certain other provisions of the penal code, viz., sedition (section 124 A), defamation (section 499-502), statements conducing to public mischief (section 505), offence relates to obscenity (sections 292 and 293), deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion on religious feelings (section 295A) etc. manipulation of which allow the govt. to intrude on the free and fair exercise of freedom of press, the Official Secrets Act, 1923 restricts the journalists to have access to official materials.[77] The administration is a vital source of news as it is the arena where corruption, mismanagement are most likely to take place the bureaucracy in Bangladesh till looks at the press with suspicion and fear, and tries to avoid the journalists.[78] This is a stumbling block to the growth and impact of freedom of speech and expression and of the press for an accountable and efficient democratic system in Bangladesh.

Political parties in Bangladesh influence the role of press to a great extent. To fulfill their own needs political parties often violate all the fundamental rights guaranteed in the constitution. The takeover of power by care-taker Govt. backed by the military in 11 January, 2007 shown a new dimension of violation restricting the right of freedom of speech and expression and postponing the basic ideology of democracy.[79]

Almost 18 months after the military takeover, the country held what were generally regarded as free and fair elections on December 29, 2008, bringing Sheikh Hasina's AL-led alliance to power. Though the Government was committed to uphold the ideology of democracy but it can't be seen in their activities. Despite repeated promises to promote freedom of expression, government actions in the last few years have raised serious

[76] Ibid
[77] Ibid
[78] Ibid
[79] Professor Emajuddin Ahamed, Democracy in Bangladesh: Prospects and problems, The Bangladesh Chronicle (Bangladesh, 19 December 2013)<http://www.bangladeshchronicle.net/index.php/2013/12/democracy-in-bangladesh-prospects-and-problems/> accessed 20 November 2014

questions about its commitment to press freedom. Newspapers and TV stations must obtain government permission to operate, and the government can cancel publication rights at its discretion. The government has shut down two TV stations named as Channel One and Jamuna TV and also canceled the publication rights of the Bangla daily newspaper Amar Desh, and indirectly interfered with the publication of news items and editorials highly critical of government policies and programs.[80] It has also made decisions to block Facebook and Youtube without reasonable grounds.[81] In addition, the government has significant control over several broadcast media outlets and owns the only national terrestrial channel, the public BTV. The government's long pattern of harassment of Amar Desh continued until it shut the paper down in June 2010.[82]It is also engaged in extensive legal harassment of the editor, Mahmudur Rahman, who is known to be a close ally of opposition leader Mrs. Khaleda Zia and a former energy adviser to the BNP government.[83] Rahman was arrested on charges of fraud and defamation in June 2009. He was held on charges of sedition and reportedly tortured while in custody, then sentenced to six months' imprisonment on charges of contempt in another case.[84] A regional human rights organization claims that "the government has been suppressing the media in fear of criticism of its own actions that threaten the democratic process and the upholding of the rule of law in Bangladesh."[85] Criminal libel laws were used to silence voices critical of the government and key members of the ruling party.

> The March, 2011 dismissal of Nobel laureate and political critic Dr. Muhammad Yunus as the managing director of Grameen Bank makes it apparent that the current government has little patience for dissident voices. Yunus's removal suggests that the current government will not hesitate to push forward state

[80] "Bangladesh: Government should stop the repression of freedom of expression and release the detained media-professionals," Asia Human Rights Commission, June 3,2010,<http://www.ahrchk.net/statements/mainfile.php/2010statements/2582/> in Fahimul Quadir, Countries at the crossroads 2011: Bangladesh (Freedom House,2011)<https://freedomhouse.org/report/countries-crossroads/2011/bangladesh#.VHF5asl9vIV> accessed 20 November 2014
[81] Ibid
[82] Ibid
[83] Ibid
[84] Ibid
[85] Ibid

frontiers to maintain its control over civil space.[86] In the year of 2012, a young lecturer of Jahangirnagar University, Savar, Dhaka, posted a Facebook status while in Australia on educational leave regarding a tragic road accident of a creative film director Tareq Masud and mismanagement of the concerned authority relating to licensing of drivers along with the Prime minister. The highest court of Bangladesh had asked the government to bring sedition charges against this lecturer as it advocates unlawful conduct against the government.[87] Moreover, amendments brought to the ICT Act, 2006 through the ICT (Amendment) Act, 2013 gives law enforcers broad powers of arrest and are restrictive to online expression.[88] As we know in democratic society, every citizen has the right to criticize the mismanagement of the Government. But, if criticizing results in the people charged with sedition then it harms the essential elements of democracy.

The present elected Government of Bangladesh on the election of 5 January 2014 has been elected through an election where the major opposition party BNP did not take part. They may be lawful under the 15th Amendment of the constitution, but its legitimacy remains subject to question. And the present Government is violating many of the fundamental rights including the right to freedom of speech and expression of the people specially the people belonging to the opposition. As a result of this the core ideology of democracy is to some extent destroyed in this country.

5.3 The idolization of free speech in the United States

The issues raised during Donald Trump's second impeachment trial are a logical continuation of a presidency that pushed the limits of the American legal system. One of the arguments used by the former president's lawyers was that freedom of speech

[86] Fahimul Quadir, Countries at the crossroads 2011: Bangladesh (Freedom House, 2011) <https://freedomhouse.org/report/countries-crossroads/2011/bangladesh#.VHF5asl9vIV> accessed 20 November 2014

[87] Elin Saha, 'Facebook and freedom of speech', Dhaka Tribune (Dhaka 20 June 2013) <http://www.dhakatribune.com/long-form/2013/jun/20/facebook-and-freedom-speech-0> accessed on 20 November 2014

[88] Bangladesh: Lack of protection for journalists and online activists, (ARTICLE 19, 02 May 2014) <http://www.article19.org/resources.php/resource/37538/en/bangladesh:-lack-of-protection-for-journalists-and-online-activists> accessed on 21 November 2014.

as guaranteed by the First Amendment to the US Constitution covers not only his January 6 remarks but also his unsupported allegations that the 2020 presidential election was "rigged".[89]

For many constitutional law scholars, this is a "legally frivolous" argument because, in an impeachment trial, the president is not accused of a crime but of having violated his oath – in this case, by inciting an insurrection. However, it is a classic line of defense that Trump's attorneys could take up in a civil or criminal trial.

Beyond this case, freedom of expression is a crucial question when seeking to understand events such as the white-nationalist demonstrations in Charlottesville in 2017, the protests by Black Lives Matter and "antifa" activists in 2019 and 2020, and even the pro-Trump mob's January 6 attack on the US Capitol. It is also related to the out-sized prominence of personalities such as the late conservative right-wing host Rush Limbaugh and even the porn king Larry Flynt, both of whom saw themselves as champions of free speech.[90]

5.4 American free speech: a unique but contested concept

For many Americans, freedom – especially freedom of speech – is the most cherished founding principle of the nation's identity, and they see it is a tenet of American exceptionalism. It is true that the United States is different from other democracies in that it holds what is sometimes called an "absolutist" view of freedom of speech. In American law, even hate speech is protected, and the Supreme Court has repeatedly confirmed that there is no exception for hate speech in the First Amendment (Beauharnais v. Illinois, 1952; Matal v. Tam, 2017).[91]

> Former national legal director of the American Civil Liberties Union (ACLU) Steven Shapiro calls the United States unique in this regard. He points to the country's reservations on Article 20 of the 1966 International Covenant on Civil and Political Rights, which requires signatories to prohibit hate speech, even though the US signed and ratified this international human-rights treaty in 1992.

[89] www.theconversation.com
[90] ibid
[91] ibid

Despite quasi-religious reverence for the First Amendment, the issue of freedom of speech is sometimes controversial even in the United States, as we see a rise in populism, increased political polarization, and an increase in provocative and extremist speech on social networks. In the words of Supreme Court Justice Kagan, freedom of speech has been politically weaponized. This has been done particularly by the conservative right and the alt right. Paradoxically, with the rise of white nationalism, it is now the more moderate liberals and the millennials who tend to support a measure of restrictions of free speech.[92]

5.5 A chaotic history

The right to freedom of expression is almost as old as the United States itself. It is enshrined in the First Amendment ratified in 1791:

"Congress shall make no law […] abridging the freedom of speech, or of the press."

From a strict literal perspective, free-speech protection thus initially concerned only laws passed by Congress. Over time, however, the Supreme Court extended this protection to other forms of governmental power, from the federal to local and across all three branches: legislative, executive and judicial. It should be noted in passing that the First amendment doesn't address or prevent censorship imposed by private individuals and private businesses who can apply their freedom of commerce as they see fit.[93]

> Contrary to what is often assumed, the current interpretation of the First Amendment is relatively recent. For a long time, there were many restrictions to free speech. This was in part due to different societal norms, particularly in terms of sexual morality (see the Comstock Acts for instance). But there were also greater restrictions of political speech in what was considered interests of the State, like the Espionage Act of 1917.[94] Thus, during the two world wars and at the beginning of the Cold War, the Supreme Court upheld judgments against dissidents who opposed conscription or advocated revolutionary socialism or

[92] ibid
[93] www.theconversation.com
[94] ibid

communism (as in Schenck v. United States, 1919, or Dennis v. United States, 1951).

Everything changed with the Warren Court (1953-1969) due to a growing support for speech related to civil rights and the war in Vietnam. Paradoxically, the liberal interpretation of the First Amendment also provided protection for hate speech spurred by the Ku Klux Klan, as stated in Brandenburg v. Ohio, a 1969[95] decision that remains the standard for allowing extreme speech. Since then, freedom of speech in all its forms has generally been protected, including hate speech, unless there are specific exceptions.[96]

5.6 The limits of free speech today

One of the lessons of the history of free speech in the United States is that standards are not set in stone. They do change as society changes and may yet change again.

Free speech is not absolute – US law does recognize a number of important restrictions to free speech. These include obscenity, fraud, child pornography, harassment, incitement to illegal conduct and imminent lawless action, true threats, and commercial speech such as advertising, copyright or patent rights.[97]

Political speech, on the other hand, is one of the most protected categories. The Supreme Court even went so far as to conclude that campaign spending limits represent a violation of freedom of expression because it would restrict the financial means to express an opinion (as first ruled in Buckley v. Valeo, 1976, and then more recently and controversially in Citizens United, 2010).[98]

As for the role that Donald Trump played in the months leading up to January 6 and on the day itself, the question still to be answered is the relationship between his false claims and harsh rhetoric and the attack on the US Capitol that immediately followed.

[95] ibid
[96] Schenck v. United States, 1919, or Dennis v. United States, 1951
[97] www.theconversation.com
[98] ibid

Was his speech protected by the First Amendment? According to Brandenburg v. Ohio,[99] freedom of speech allows “advocacy of the use of force” or “lawless acts” unless it is “directed to inciting or producing imminent lawless action” and is “likely to incite or produce such action”.

Because these words can be up to interpretation, context is everything. The assessment of the context in which the insurrection took place will allow for what is called the “Brandenburg test” to determine whether Trump’s words were aimed at encouraging his supporters to commit a crime and advocating an offense that is both imminent and likely to occur.[100]

[99] ibid
[100] ibid

Chapter-Six

Concluding chapter

6.1 Findings:

The findings are as follows:

1. Freedom of speech is a civil liberty.

2. Freedom of information is a fundamental human right and the touch stone of all the freedoms to which the United Nations is consecrated.

3. The right to freedom of expression is almost as old as the United States itself.

4. Freedom of thought and conscience is guaranteed.

5. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence–

(a) the right of every citizen to freedom of speech and expression; and

(b) freedom of the press, are guaranteed.

6. American law, even hate speech is protected, and the Supreme Court has repeatedly confirmed that there is no exception for hate speech in the First Amendment

6.2 Suggestions

The suggestions are as follows:

1. However, it is still too early to observe the effect of the Freedom of Speech to ensure on the development of the people of Bangladesh.

2. Since the passing of the constitution, though not numerous, unmistakably shows that it was already creating a new readiness to stand A Cup for one's rights, and the necessity of the Freedom of Speech the rights.

3. To knowledge of the scope of the rights, and the means of their enforcement spreads, if the Freedom of Speech of the citizen improves.

4. To increase in the number of such cases may be reasonably expected, and the respect for the rights will grow. In the East, people in general do not take day to day interest in what government is doing.

5. The cause may be due to widespread illiteracy or long different sources of domination or it may be ascribed to the social-religious background of their thought-processes or apathy to physical action, for admittedly.

6. The conduct of a law-suit is both involves considerable exertion.

6.3 Conclusion

Freedom of expression is an important indicator of a democratic society and development. If freedom of expression is prevailing in a country or society, other democratic rights and freedoms will automatically be ensured. Because, by exercising the freedom, people can participate in decision-making through free access to information and ideas. To understand the presence of freedom of expression and right to information, we need to understand the local political context, history and cultures. Bangladesh is politically a highly polarized and divided country. The guarantees of the rights do not depend only on the relevant laws, but social, political and cultural processes. The restrictions over the freedom of speech and expression as envisaged in the Constitution is the main hindrance to it, if it is exploited unreasonably to fulfill the interest of a single community or in the interest of the ruling party. The present condition of the freedom of speech and expression in Bangladesh is questionable. Though there is minimum freedom of speech and expression in Bangladesh, but it is not enough to turn Bangladesh into a successful democratic country. The most necessary thing to maximize the freedom of speech and expression in Bangladesh is that the ruling party should not use the restriction envisaged in the Constitution to fulfill their own interest. If it can be ensured then we might be able to see an ideal Bangladesh, as a model of democracy in the world. The report includes case law from ten countries (Argentina, Brazil, Canada, Colombia, Costa Rica, United States, Mexico, Panama,

Dominican Republic, and Uruguay). Of particular note is the work of the high courts of Argentina, Colombia, Mexico, and Uruguay, which are prolific in the incorporation and development of the inter-American doctrine and case law, and the work of different Brazilian courts, which have played a very important role during this period to promote the right to freedom of expression and exercise “conventionality control.” Freedom of expression is an important indicator of a democratic society and development. If freedom of expression is prevailing in a country or society, other democratic rights and freedoms will automatically be ensured. Because, by exercising the freedom, people can participate in decision-making through free access to information and ideas. To understand the presence of freedom of expression and right to information, we need to understand the local political context, history and cultures. Bangladesh is politically a highly polarized and divided country. The guarantees of the rights do not depend only on the relevant laws, but social, political and cultural processes. The restrictions over the freedom of speech and expression as envisaged in the Constitution is the main hindrance to it, if it is exploited unreasonably to fulfill the interest of a single community or in the interest of the ruling party. The present condition of the freedom of speech and expression in Bangladesh is questionable. Though there is minimum freedom of speech and expression in Bangladesh, but it is not enough to turn Bangladesh into a successful democratic country. The most necessary thing to maximize the freedom of speech and expression in Bangladesh is that the ruling party should not use the restriction envisaged in the Constitution to fulfill their own interest. If it can be ensured then we might be able to see an ideal Bangladesh, as a model of democracy in the world.

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