

Research Topic On

Parameters of Freedom of Speech in the Constitutional mandate of Bangladesh and other statutory provisions Limitation

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Declaration

I, do hereby, declare that the Research Monograph Title “Parameters of Freedom of Speech in the Constitutional mandate of Bangladesh and other statutory Provisions Limitation” prepared solely by me and which has been submitted to the Department of Law, Sonargaon University (SU) for achieving the LLB (Hons) Degree. This is an original work. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

……..

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Abstract

This article explores the balancing of freedom of the press and reasonable restrictions in Bangladesh under existing national laws and relevant international policy instruments. Across the globe, there is unending debate as to indoctrination of free press and reasonable restrictions. Bangladesh is not an exception to the tussle between these two notions. The free but fair press enables public debates and creates essential checks on government powers. The question of reasonable restrictions on press appears at the forefront of discussion as the press is also engaging in serving self-interest or value loaded vested interests vilifying its objectivity, impartiality, and accuracy. Though, the press and other media outlets of the country are partly free, the ongoing restrictions imposed by statutory laws and self-censorship have plunged the media into a stagnated ditch. However, journalists and media activists are gradually striving to overcome the hurdles of restrictions foreseeing a silver lining. On one hand, the country is globally lauded for its exponential progress in terms of economic, social and international goals and has emerged as an Asian tiger. On the other hand, the country is struggling to uphold the spirit of the free press in nourishing a healthy democracy amid good governance that tolerates diverse, dissent, pluralist views and constructive criticism.

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Thank You.

…….

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Preface

This research monograph is an endeavor to study on “Parameters of Freedom of Speech in the Constitutional mandate of Bangladesh and other statutory Provisions Limitation” I have tried to put this research monograph in a systematic & easy understandable manner with my best effort, which will suit, of the reader. Throughout this exhaustive research, I tried to put my sincerest effort to collect the most reliable & complete information about this topic. Every effort has been made to assist the reader in grasping and understandable the subject matter of the research monograph. Every comment & suggestion for further improvement of this research paper or of any new concept will inspire most.

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Chapter I

Introductory Statement

1.1 Introduction

Speech is the worthy gift of Allah to mankind. A human being can impart his ideas, opinions, feelings etc. to others through it [1] It is such a natural right which is inherently acquired each human being on birth [2]. Everyone can enjoy the right for his mental publication. He can exercise this right without being obstructed. This is indispensable to the progress and growth of human personality and every person should be free in his thought and conscience [3]. At present, this right has got its place in many international documents like Article 02, 19 of UDHR, Article 19 of ICCPR, and Article 10 of ECHR etc.
[4] Along with these, it is also found in the constitution of Bangladesh.

Though it is said that this right is protected by constitution, it is limited in some arenas. At this, the chance of practicing this right has been shrunk or narrow. This right is also influenced by defamation laws such as the grounds of Article 39 (2), the constitution of Bangladesh, Section 171 (G), 499, 500, 501, 502 of the Penal Code, 1860, Section 57, the ICT Act, 2006[5], Section 198, the Code of Criminal Procedure, 1898[6] etc.

In this paper, the author will try to discuss the concept and perspective of freedom of speech and its place in the defamation laws, then, try to detect the relationship between free speech and laws of defamation in Bangladesh and to find out a balance. Finally, what the scenario of freedom of speech going on in Bangladesh and its impact in Bangladesh will also be discussed.[1]

[1] https://www.legalserviceindia.com/legal/article-7014-right-to-freedom-of-speech-and-the-law-of-defamation-in-bangladesh-finding-a-balance.ht

1.2 Objective of the Research

The goal of this research paper is to make clear that ever since the first formal consideration of the idea of freedom of speech, it has been recognized that this right is subject to restrictions and exceptions. Shortly after the first constitutional guarantees of freedom of speech were enacted in France and the United States, limitations on this liberty were quickly imposed.
No nation grants absolute freedom of speech to its citizens, for to do so would leave citizens unprotected from slander and the nation incapable of protecting its vital secrets. Restrictions on speech are thus sometimes clearly necessary, while other times, appeals to public order, national security, and other values are used to justify repression of speech that goes beyond established international norms.

Throughout this thesis paper we would attempt to dig out the major comparative scenarios of the freedom of speech from the constitutional views of the US and Bangladesh in a balanced manner.

1.3 Limitations

Freedom of speech is not regarded as absolute by some, with most legal systems generally setting limits on the freedom of speech, particularly when freedom of speech conflicts with other rights and protections, such as in the cases of libel, slander, pornography, obscenity, fighting words, and intellectual property.

Some limitations to freedom of speech may occur through legal sanction, and others may occur through social disapprobation[2]

[2]https://en.wikipedia.org/wiki/Freedom_of_speech -:~:text=Article%2019%20of%20the%20Universal,media%20and%20regardless%20of%20frontiers

1.4 Methodology

This research is based on qualitative approach entailing subjective assessment, analysis, and observations. Basically, it is grounded on both the primary and the secondary sources such as relevant national statutory laws, international conventions, case laws, books, journals articles, conference papers, newspapers articles and documents from webpages. In preparing the paper a comparative approach as to the best practices of free press and reasonable restrictions is sought and applied to a large extent after the thorough review of existing documents. As a part of the study, the qualitative approach is adopted because such analysis in a comprehensive way has not been done yet as to the existing status of free press and reasonable restrictions in the light of statutory and international legal instruments relating to Bangladesh.[3]

[3] https://www.google.com/url?sa=t&source=web&rct=j&url=https://essuir.sumdu.edu.ua/bitstream/123456789/72826/1/Haque_Balancing_Freedom.pdf&ved=2ahUKEwiBsLXy8MP7AhX5cGwGHb-WAewQFnoECE4QAQ&usg=AOvVaw0nZz64-1BtoEkS8eqwPAHV

Chapter II

Details on Research

2.1 Definition of freedom of speech

Freedom of speech is the right to say whatever you like about whatever you like, whenever you like, right? Wrong.

'Freedom of speech is the right to seek, receive and impart information and ideas of all kinds, by any means.'

Freedom of speech and the right to freedom of expression applies to ideas of all kinds including those that may be deeply offensive. But it comes with responsibilities and we believe it can be legitimately restricted.[4]

[4] https://www.amnesty.org.uk/free-speech-freedom-expression-human-right

2.1:1 Freedom of Speech under Constitutional law

One of the most important and contested constitutional rights is the right to free speech in the First Amendment. This prevents the government from imposing criminal penalties or civil sanctions on citizens based on what they say or write. While the constitutional text specifically prevents Congress from infringing on the freedom of speech and the press, the First Amendment applies to all types of government actors at federal, state, and local levels. On the other hand, it does not ban restraints on speech imposed by private entities. For example, a private employer can discipline its employees for their statements.[5]

[5] https://www.justia.com/constitutional-law/freedom-of-speech-under-the-constitution/

2.1.2 Rules of Freedom of Speech under International law

Freedom of speech is one of the oldest and most respected rights in the history of civilization, one that is often referred to as the "first freedom. The concept of a right to freedom of speech has origins in Athens and the writings of Plato and Euripides the concept of this right on abo be found in seventeenth century documents such as the 1688 English Bill of which provided freedom of speech for legislators within the confines of Parliament.[6]

Concepts of freedom of speech can also be traced in early human rights documents such as Magna Carat 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 1799. But now it has recognized and has given legal effect. Freedom of speech was declared as fundamental human rights by United Nation in the historical document of The Universal Declaration of Human Rights. It sets out, for the first time, fundamental human rights to be protected universally. This declaration was proclaimed by the United Nations on 10th December 1948 in Paris in their General Assembly.

Whereas UDHR states in the preamble that recognition of inherent dignity which is equal and inalienable rights of the all human is the foundation of freedom, justice and peace in the world. Article 19 of the UDHR says about the freedom of opinion and expression, which is also a part of foundation of freedom, justice and peace in the world. Article 19 clearly states that everyone has the right to freedom of opinion; this right includes freedom to hold opinion without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. So it says that every person has the right to give his or her opinion freely. Which is free from interference and one can search, receive and give information through any kind of media.

[6] KM. SMITH, TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS 267 (2007)

This process can be beyond the frontiers also.[7] Again to recognize this declaration and give it legal force a multilateral treaty adopted by United Nations assembly named International Covenant on

Civil and Political Rights (ICCPR).Article 18 of ICCPR states the freedom of thoughts and conscience. Article 19(1) of the ICCPR says that anyone can hold opinions without interference and it cannot be subject to any exception or restriction. The right stated in article 1902) protects freedom of expression in any medium as like stated in Article 19 of UDHR.

In addition, according to Article 1903) of the same Covenant, freedom of expression may be lied as provided for by low and when it is necessary to protect the rights or reputations of others, national security, public order, or public health or morals.

[7] Universal Declaration of Human Rights 1548, Article 19

Chapter III

Conceptual Analysis

3.1 Freedom of speech and Expression under Bangladesh Constitution

The Constitution of the People's Republic Bangladesh is the core piece of the constitutional law of our country. As per Article 7 of the Constitution of Bangladesh, it declares the supremacy of the Constitution and states that all powers in the republic belongs to the people and the exercise the power on behalf of the people shall be under authority of the Constitution. This supreme Constitution also recognized freedom speech as fundamental human right in its Part III Article 39.

Article 39(1) guarantees the freedom of thought and conscience. This right is absolute and there must not be presence of any barrier or interruption by the law in any ground. It is not possible to pass away any individual's right of thinking and conscience by passing any law. When a man wants to express his or her thinking to other people the freedom of speech comes to play its role.[8] Article 39(2) confirmed the expression of thought and conscience. But this right is not absolute according to the Article 39(2) of Constitution. Article 39(2) states that subject to the reasonable restrictions the right of every citizen to freedom and expression and freedom of press are guaranteed. Those restrictions included interest of security of the state friendly relation with the foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Whenever there are any kinds of lawful objection on those restrictions then the individual's right of freedom speech can be curtailed.[9]

Article 39(2) (b) states that freedom of press are also guaranteed subject to the reasonable restrictions imposed by law which also included interest of security of the state, friendly relation with the foreign states, public order, decency or morality, or in relation to contempt of court,

[8] Islam Mahmud, Constitutional Law of Bangladesh, (3rdedn, Mullica Brothers 2012) 329,330

[9] The Constitution of Peoples Republic Bangladesh

defamation or incitement to an offence. So Constitution protects the right of freedom of expression of individuals and press or media also.

3.2 Analysis of Restriction Made Under the Constitution

The main purpose of imposing restriction upon freedom of expression is not to make it absolute. Absolute freedom is not good for the society.[10] There should be a standard by following we can control our natural instinct. Terrorism is one kind of example of absolute freedom of expression. Because they think they have no limitation of saying anything. They can do anything to establish their belief which is threat to the security of state and against the public order.

To them it is not a matter of fact to kill anyone. The way of expressing their belief is too much harsh in reality. Moreover, in the era of social media we can see that some people are getting out of their control of mind. They are forgetting the way of behavior in the social media. Sometimes it may injure the freedom of a whole community to establish individual's right of freedom. We should respect others freedom around us. All are possessed with reason and conscience and should act towards one another in a virtue of brotherhood.[11] But that does not mean to arrange such system that makes every person of the society to feel fear of expressing their opinion by imposing heavy restrictions.

Article 39(2) of Constitution of Bangladesh included interest of security of the state, friendly relation with the foreign states, public order, decency or morality, or in relation to contempt of

[10] Jeffery, A. (1986) Free Speech and Press: An Absolute Right? Human Rights Quarterly, (1986) 8(2) p 218 JSTOR (accessed 28/08/2022)

[11] Universal Declaration of Human Right, Article 1

court, defamation or incitement to an offence as restriction against the freedom of speech. It is important to know how much these restrictions are.

3.3 In the Interest of Security of state

According to Kenneth Neal Waltz, there are two simple assumptions of state; (1) States are the key actors in international politics and in anarchy system, which means that there is no higher authority than them and (2) State's primary motive is to survive, which means they will uphold their sovereignty very high. Position of power in the structure then becomes the most important kit regarding the survival purpose.[12]

The security of the state is a matter of concern when there is serious and aggravated form of public disorder unlike the normal violation of public or public security which does not imply any danger to the State.[13]

The State security is in danger due to the crimes of violations overthrow the government[14] triggering a war or rebellion against the government or from external aggression or war, but the security of the state is not in danger for minor violations of public order or tranquility, such as illegal assembly, riot, reckless driving However, incitement to cruel crimes such as murder which is a crime against public order can endanger state security[15]. In times of external invasion, the State has the power to prohibit or punish utterances which obstruct war measures.[16] Reasonable restriction is permissible on the right to freedom of speech right to know and right to information when it is the matter of interest of security of the state.

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[12] http://www.e-info/2011/05/22/s the fact that man lives in an international-system-defined by anarchy the cause-of-war!

[13] Islam Mahmud, Constitutional Law of Bangladesh, (3rdednMullick Brothers 2017) 340
[14]Santosh Singh v. Delhi Administration, AIR 1973 SC 1091)
[15] Bihar v. SailabalaAIR 1952 SC 129
[16]Schaefer V US, (1920) 251 US 46

But security of state must be distinguished from the security of government. Peaceful opposition to the government with a view to changing the government cannot be suppressed

3.4 Contempt of court

Contempt of court is also regarded as one of the ground to restrict the freedom of speech and expression. In the exercise of the right to freedom of speech and expression, nobody can be allowed to interfere with the administration of justice[17] or to lower the prestige or authority of the court even in the garb of criticizing judgments of the court.[18] Freedom of speech and expression is important, but much more important is the effectiveness of the administration of justice without which the rights guaranteed by the Constitution will merely be embellishment. It is for this reason that the constitution specifically provided for the Supreme Court's power to commit for contempt of court. However the law relating to contempt of court must be reasonable and must not be as such as stifles the freedom of speech and expression.

[17] Namboodripad v. Nambair, AIR 1970 SC 2015
[18] Daphtary v. Gupta, AIR SC1132

3.5 Defamation

[56] If any person intentionally or knowingly publishes any imputation which harms the reputation of the person, then that is treated as defamation except the exceptions of this section.[57] Statement which is either true or false if it is published intentionally for harming the reputation of others, must be defamation.[19]

[19] https://www.legalserviceindia.com/legal/article-7014-right-to-freedom-of-speech-and-the-law-of-defamation-in-bangladesh-finding-a-balance.html

3.6 Incitement to Offences

Instigating anyone to commit any offence is prohibited and punishable under law. Sections 153A and 153B of the Penal Code provide that expressions promoting enmity between classes or inciting students to take part in violent political activity call for penal action. Under these two sections government is empowered to take punitive actions for instances of incitement to offences for the sake of public order. Moreover, section 3 of the Police (Incitement to Disaffection) Act, 1922 penalizes any intentional inducement to the police force to withhold his service or to commit a breach of discipline. As part of this article, some other statutes dealing with the press or media are analyzed below.

3.6.1 The Public Interest Information Disclosure (PIID) Act, 2011

The PIID Act, 2011 is another epoch-making attempt to provide legal protection to the persons disclosing information relating to issues of public interest. The person who discloses authentic information to a competent government authority is named as a whistleblower. This law prohibits any civil, criminal or departmental suit for disclosing public interest by a whistleblower but does not protect the whistleblower for disclosing false and baseless information.

3.6.2 The National Broadcast Policy, 2014

The National Broadcast Policy, 2014 aims at monitoring news, programs, advertisements, talk-show in television and radio. In fact, it restricts the news that harm unity and independence of Bangladesh, spark anarchy, mutiny, unrest, violence, and hatred, invade privacy, impede state security, hurt religious values and non-communal spirit, inspire corruption, ridicule the armed forces and the law enforcing agencies. It also prohibits advertisements undermining the liberation war, language movement and Independence Day along with restricting the scope of advertisement on social and professional issues.

3.6.3 The National Online Mass Media Policy, 2017

The National Online Mass Media Policy, 2017 emerged suggesting the constitution of a National Broadcast Commission (NBC) to facilitate the operations of online mass media in an organized manner. Under the policy, every online mass media is required to get registration. Under this policy, every online media is to get approval from the proposed Broadcast Commission and the online media outlets are required to have an editorial policy, which may hamper the growth as well as freedom of mass media. Though the government consulted with the stakeholders and took opinions from them, their recommendations are not properly reflected in it. To regulate the online mass media, forming of the independent, neutral and effective broadcast commission is the demanded by the stakeholders concerned but it is yet to be formulated. However, the draft law on the National Broadcast Act 2018 is now in the forefront of discussion and debate. The proposed law bears the provision to form a seven-member National Broadcast Commission (NBC) through recommendations from a search committee and the NBC will be the sole authority to permit licenses to broadcast media and the registration of online media outlets apart from the Ministry of Information.[20]

[20]https://www.google.com/url?sa=t&source=web&rct=j&url=https://essuir.sumdu.edu.ua/bitstream/123456789/72826/1/Haque_Balancing_Freedom.pdf&ved=2ahUKEwiBsLXy8MP7AhX5cGwGHb-WAewQFnoECE4QAQ&usg=AOvVaw0nZz64-1BtoEkS8eqwPAHV

3.6.4 Restrictions from others National Laws: Digital Security act 2018,

The Digital Security Act 2018 has extraordinary scope. This law allows Bangladeshi law enforcement authorities to search and detain any person, seize computers and handheld devices on mere suspicion, without any court-issued warrants, on charges that may land someone up to 14 years in jail for simple expressions of views in a digital platform that the authorities may deem defamatory or subversive.[21]

This Act can be used to deals with defamation, hurting religious feelings, deteriorating law and order and instigating violence against any person or organization by publishing or transmitting any material on any website or in electronic media. According the Section 17 if anyone uses digital media to intimidate people or cause damage to the state, he or she will be in jail not exceeding 14 years and Tk 1 crore may be fine or both. Also, if anyone hurts another's religious sentiment as defined by the Penal Code, he or she will face 10 years in jail or Tk20 lakh fine or both, says Section 28 of the new act.

As per Section 29, if a person publishes information with the intent to defame someone, he or she will face three years in jail or TKS lakh fine or both. Section 31 says that it will be an offence if any person intentionally publish any kind of file in any website or digital format which will create hostility, hatred or adversity among people or destroy any communal harmony or create deteriorates or threatens to deteriorate the law and order. For this punishment is imprisonment not exceeding 5 years or fine not exceeding Tk. 10 lakh or both.

[21]Shaquat Rabbee, "Bangladesh the latest assault on free speech" (The Interpreter 2 October, 2018)

Chapter IV

Impacts, Challenges and opportunities of Free press

4.1 Balancing Free Press and Reasonable Restriction

Putting restrictions on the freedom of the press is a sensitive issue. Nonetheless, it has been well-established idea that there is no such thing as absolute freedom as it always entails obligations to respect certain boundaries. According to UNESCO, the tool kits of the FOE envision FOE as a complex right because it is not absolute carrying some special duties and responsibilities with it. The right to FOE protects both the speaker and the listener respecting people's right to dignity, safety, and privacy (Bhuiyan, 2015).

The fundamental role of the media has been recognized in several international cases, notably in Thorgeison v Iceland, 13778/88, ECHR 1992, at para 63, in which the European Court of Human Rights (ECtHR) stated:

Whilst the press must not overstep the bounds set, [among other things], for "the protection of the reputation of ... others", it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".

However, restriction on the various forms of FOE including the press is a common phenomenon in every form of government across the globe. There are certain general exceptions to the FOE and such issues include child pornography, hate speech, incitement to offence, contempt of court, privacy and fair trial. Even USA being a champion of free press, imposes certain restrictions under the 1st Amendment of its Constitution. The restrictions include perjury (lying under oath or false swearing), fraud, defamation, and obscenity, incitement of panic or crime and sedition. The U. S. Federal Supreme Court (SC) in New York Times Co. v. Sullivan, 376 US 254, held that the 1st Amendment shields criticisms of official conduct and protect public officials from defamation unless performance of public duties involve malice.

The SC in Saia v, New York, 334 US 558, also held that the restriction as imposed by law to be reasonable and proportionate not arbitrary. Even Americans are having trust deficit on their media. According to a report, only one out of five Americans has "great deal" or a "quite a lot" trust in news media (Cillizza, 2014). The Privy Council of the United Kingdom, in Hector v. A. G. of Antigua and Barbuda, [1990] 2 All ER 103, 106, held that public administrators are always open to criticism in a free democratic society and barring criticism amounts to political censorship and is unreasonable. However, Collins English Dictionary of the UK has declared "Fake News" as the word of the year 2017. Fake news runs apace while positive news follows snail's pace. The SC of India in the case of Santosh Singh v. Delhi Administration, AIR 1973 SC 1091, held that in determining reasonability of restriction on freedom of speech and expression, a reasonable balance must be struck between the need for the freedom in democracy and social interest preventing disorder and anarchy as per the Constitution. In another case of Life Insurance Corp. v. Manu Bhai, AIR 1993 SC 171, the SC decided that in case of imposing restrictions, the onus lies on the respondent to show that the denial is authorized by a law imposing reasonable restrictions.

In case of Bangladesh, such restrictions often have crossed the ambit of reasonableness as the colonial mindset of government powers, concomitant vulnerability in nourishing the cultures of democracy, division among journalists and their partisan attitude have taken the grip of the press (Bhutan, 2016). Arguably, the press should enjoy maximum freedoms and minimum but reasonable restrictions encouraging responsible journalism. In order to ensure responsibility in the august profession, the restrictions can be balanced by the sense of proportionality. At present, with the advent of ICT and expansion of the tiers of communication, the idea of restriction on press or on media is fading away in other countries but not in Bangladesh. The 21st century has opened a floodgate of openness of all communicative forms including the press and the virtual communications have transcended frontiers with lesser restrictions except few countries like North Korea, China, Russia, Bangladesh, India, Pakistan etc.

Nevertheless, in 2015, the High Court Division (HCD) of the Supreme Court (SC) of Bangladesh in the case of Badiul Alam Majumdar and others v. Information Commission, Bangladesh and another, 69 DLR (HCD) 100, has outlawed the secrecy of information concerning financial issues of the political parties. The SC observed that political parties operating in the public sphere have constitutional and statutory obligations for accountability and transparency and such financial documents are public documents under section 74(2) of the Evidence Act, 1872. But, abuse of the power in the guise of press freedom may be more damaging and so reasonable restrictions are also sought to control the wildness of the press or media. Sometimes, yellow journalism, embedded journalism, aggressive journalism also causes restrictions of press freedom and in such occasions, journalists cannot avoid responsibility. In Bangladesh, a satire magazine named Alpin was suspended by the government because of its objectionable contents (Maunder, 2007). The trend of 'if it bleeds, it leads' is not a proper way for an objective press or media.

At the same time, social media users also need to learn the limits of their means of FOE. Spreading false, fabricated or distorted information or image, defamatory comments, hate speech, issuing threats through posts and messages in various forms of social media including Facebook, Twitter, LinkedIn, Instagram etc. instigating violence must not be protected in the name of FOE. Every press is supposed to follow five ethical principles such as truth and accuracy, independence, fairness and impartiality, humanity and accountability (White, 2015).

But sometimes journalists are involved in following seven deadly sins (Harrower, 2005) forgetting the values of their profession.

i. Deception in the form of lie or misrepresentation of information.
ii. Indulging in the conflict of interest through acceptance of gift or favour for personal, political or social causes.
iii. Slanting quotes or imaginary sources to fabricate or exaggerate news and views.
iv. Manufacturing quotes or imaginary sources.
v. Unlawful obtaining of information from a source.
vi. Deceiving and betraying the confidence of those who provide information.
vii. Doing plagiarism through passing off someone else's words or ideas as own.

It is believed that if freedom of the press is not ensured then other destructive forms of journalism engulf and emerge with the aid of partisan politics plunging the nation into the ditch of uncertainty and volatility (Zamir, 2018). With respect to governmental information, any government may determine which sorts of information are open to all to seek and disseminate and also which materials and information are protected as sensitive, classified or secret from public disclosure in the name of national interest or state security. In 2017, a U.S. based nonprofit body, the Freedom House, found that only 13 percent of the world's population enjoys a free press and the safety and security of journalists are at risk (Dunham, 2017). It has been visible that restrictions are harsher, the vulnerability of democratic values, rule of law and respect for human rights with human dignity are in shambles. There are examples that showing the gray area of State interest, some states are taking preemptive or preventive measures against the media corrupting the solemn idea of reasonable restriction.

On June 16, 1975, in Bangladesh, all newspapers were banned by the then government except the State patronized four newspapers and this day is known as the black day in the history of newspapers in Bangladesh. On that day, all newspapers (29 dailies and 138 weeklies and periodicals) accept four namely the State-owned The Dainik Bangla and The Bangladesh Times; and privately owned and later nationalized The Daily Ittefaq and The Bangladesh Observer were closed by the government. The Martial Law Regulations, 1976 prohibits criticism of the imposition of martial law and made it as a seriously punishable offence. Similarly, on 17 August 1975, the burial news of Bangabandu Sheikh Mujibur Rahman was restricted to report by the press. The Dainik Bangla carried out a tiny Bangladesh Sangbad Sangtha (BSS) report, which was literally of one short paragraph in length, and the report read:

"Former president Sheikh Mujibur Rahman's body was taken to his village at Tungipara in Faridpur on Saturday by air and buried in his family graveyard with full respect (Manik, 2014)".

In most cases, the government treats media as a government property whose main task is to support and facilitate government. Also, the aggressive demand for absolute freedom by the media can be portrayed as a truck with a dysfunctional break.

So, neither an aggressive nor a lapdog press rather a responsible press can reshape the society towards the desired change ensuring people's right to know, right to share and right to participate in decision making of societal and government functions.

Evidently, responsible journalism is an accepted notion to protect press freedom. Both freedom of the press and responsible journalism are cooperatively intertwined not in conflict with each other. Journalism is a profession in which there are more responsibilities than rights to be claimed by journalists. It is said that if a teacher teaches a wrong content, his students may suffer for it but if a journalist put any wrong information or source, the entire nation suffers for it. Sometimes, the sufferings can cross the national boundary and affect the international community. So, the concept of press ombudsperson may be considered in balancing free press and reasonable restriction. In Bangladesh, The Daily Amader Somoy had a press ombudsperson to ensure responsible journalism but the role of the position is quite insignificant.

Under article 20 of Bangladesh Constitution, every citizen is prescribed to carry out professional work as a right and duty while article 21 necessitates the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property. Under articles 36, 37, 38 and 40, all journalists and other employees involved in the press industry have a right to movement, engage in association and assemble coupled with freedom of profession to realize their legitimate demands through peaceful means, not by violent ones.

Article 70 also creates a hindrance for freedom of speech. There is no scope to raise judicial voice against the functions of the parliament as a member or official of the parliament is immune under article 78 of the Constitution. So, the scope for investigative reporting is also limited under the theme of this article. However, the SC in a case of 51 DLR 1, para-11, citing Constitutional experts in Bangladesh opined that the article 70 was framed to ensure the stability and strengthen the parliamentary democracy because of previous bitter experience of floor crossing and horse-trading. In 2011, the 15th amendment to the Constitution includes language in article 7A that equates criticism of the constitution with sedition.

The Appellate Division (AD) of the SC in Bangladesh v. Md. Abul Hossain, 2003 BLD (AD) 129, held that once the privilege is given to a person on condition of doing any act and if such condition is fulfilled, such privilege or right cannot be taken away or canceled without giving him a chance of being heard. This judicial precedent is an example of legitimate expectation. In balancing press freedom and reasonable restrictions, the social responsibility theory may be utilized believing objective journalism can change the society. This theory offers media freedom on the one hand and external control, on the other hand, creating a synergy between the free press and responsible press. Moreover, Jeremy Bentham's pain and pleasure theory (hedonism) may be considered positively. Hence, the government should inflict lesser pain and ensure maximum pleasure for a larger number of people as to the free press.

As part of international legal obligations, Bangladesh is obliged to comply with the international human rights instruments in which she is a State party. The country cannot deny its obligations showing lame excuses. In the case of Bangladesh, it is observed that the restrictions under article 39(2) of the constitution are not in conformity with those suggested under article 19(3) of the ICCPR. The scope of article 19(3) under the ICCPR in putting restrictions on press or media is lesser than those of article 39(2). ICCPR is more balanced on the right to privacy but the State often violates the right to privacy of citizens in the name of national interest. As per article 32 of Bangladesh Constitution, 1972, no person shall be deprived of life or personal liberties save in accordance with law while article 43 guarantees the privacy of home and correspondence and in communications. So, any interference with the right to privacy and FOE should be based on the clear provision of law reflecting legitimate reasoning and proportionality with minimal interference necessary. Similarly, the restrictions on the basis of friendly relation of foreign states are to be in parity with reasonableness and objective satisfaction.

Bangladesh is obliged under the International Covenant on Civil and Political Rights to protect its citizens from arbitrary arrest (article 9), from arbitrary or unlawful interference with their privacy and correspondence (article 17), and their freedom of expression (article 19). Peaceful criticism of the government and state authorities should always be permitted.

As per the observation of the Reporters Sans Frontiers (RSF), a global think-tank of journalists, media self-censorship is growing in Bangladesh as a result of endemic violence against journalists and media outlets. All journalists and free thinkers including outspoken secular bloggers and writers are scared of it. Even the female journalists are not spared from the curse of violence (Reporters Sans Frontiers Report, 2018). According to a report, about 20 journalists were killed in Bangladesh from 1992 to 2016 but there is no evidence of prosecuting the killers (Singhvi, 2016). In commemoration of the assassination of two French journalists in Mali on 2 November 2013, the UN General Assembly adopted a resolution A/RES/68/163, in 2013 and proclaimed 2 November as the international day to end impunity for crimes against journalists. The landmark resolution condemns all attacks and violence against journalists and media workers. It also urged the UN member States to do their utmost to prevent violence against journalists and media workers bringing the perpetrators to justice so that the victims have appropriate remedies. It further calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without any undue interference. Moreover, the comments and guidelines of the UN Human Rights Council, reports and observations of various committees under different human rights treaties and directions of the regional human rights bodies are to be followed to justify the reasonableness of restrictions on press freedom.

4.2 Impacts of Free Press and Reasonable Restrictions: Past, Present, and Future

In the absence of free press, malpractices or maladministration, corruption, money laundering, misappropriation of government funds etc. may increase rapidly. George Sutherland, an English-born U.S. jurist and politician said that a free press stands as one of the great interpreters between the government and the people. He further said that to allow a free press to be fettered is to fetter people of that country. The President of the People's Republic of Bangladesh Abdul Hamid says:

During the Pakistan period, newspapers of the land stood courageously against the oppression and discrimination of the Bengali people by West Pakistani ruling cliques, vocally asserting the common man's demand for the right to freedom.

During the Liberation War, the international media were instrumental in creating global public opinion in favour of the cause of our freedom struggle.

After independence, newspapers devoted their creative energy to the rebuilding of the war-torn nation. In all these years, most newspapers have maintained a secular and democratic stand and played a patriotic role at various critical moments of the country. They voiced the woes of the downtrodden people of the society to establish their rights. Their intellectual input to planning and implementation of various development policies such as women empowerment, poverty reduction, urban and rural development is well recognized (Hamid, 2016).

He again says that you (press) may criticize the government keeping in mind that it should be based on fact not on fiction or bias as constructive criticism can play an important role in taking the right decision for running the government and building the nation. The government usually depends on two sets of sources for information i.e. official source and independent media. For credible and authentic information, independent media is more reliable than the complacent and fabricated information emanating from bureaucrats. After a glorious revolution in 1917, the Soviet Union collapsed for many reasons including excessive dependence on bureaucratic information and unreasonable restrictions on media. As per the advice of the Islamic clergymen, the Ottoman Empire banned the printing presses for 200 years showing the reason for non-Muslim ownership of all the presses until 1726. It is one of the major causes of the relative decline of Ottoman science and culture in comparison to Europe. Mahfouz Anam, the editor of the Daily Star says:

“Has the world been served better because of Wikileaks, Panama papers and Paradise papers? Under the law in question, all Bangladeshi whose names appeared in those papers could have taken us to court and the police could have arrested us for publishing secret documents (Anam, 2018)”.

In March 2017, Facebook authority refused to sign a Memorandum of Understanding (MoU) with Bangladesh police, who had asked Facebook to demand additional identification, including National ID numbers, from Bangladesh nationals who want to sign up to the social network. In 2018, social media, particularly Facebook, played a significant role in nationwide protest movements calling for better road safety and protesting a quota system used to fill certain public service and other positions.

Protesters used Facebook to mobilize, and both protesters and the government used it to express their positions. Photos and videos were shared using the hashtags #WeWantJustice, #RoadSafetyMovement, and #Bangladeshstudentprotests drawing massive support from people of all walks of life.

Despite being partially free and less vibrant media has served Bangladesh in many national crises including during the war of liberation. It has contributed significantly to improving the image of the country and of its democracy. The DSA, 2018 will hamper both the FOE and the press in all forms. The New York-based Committee to Protect Journalists (CPJ) published a recent report depicting that the dividing line between politics and journalism is "more blurred than ever" in Bangladesh. The country is experiencing a decline in press freedoms and journalists are attacked from all sides‖ and have very low life security (Farhana, 2014). It is to be noted that between 2012 and June 2017, a total of 1,417 cases were filed under section 57 of the ICT Act- a whopping 65 percent of them for defamation. As high as 65 percent accused were acquitted by the court after or during the trial. In addition, police did not even find any merit to frame charges in some 180 cases. This makes it clear how the ICT Act particularly section 57 is abused to gag freedom of press, speech and other forms of expression (Rabbi, 2018).

Following the declaration of unconstitutionality of section 66A of the Indian ICT Act by the Indian SC, journalists, rights activists, and free thinkers demanded to repeal similar section 57 of the ICT Act, 2006 as amended in 2013 with tougher legal actions. In the wake of widespread criticism, the government has recently repealed the section 57 of the ICT Act in 2018 but has kept its contents in several provisions of the DSA, 2018 allowing police more arbitrary powers. Some provisions of the DSA, 2018 are even more draconian in comparison to its predecessor and can be used against dissidents.

The newspaper editors' council in Bangladesh has raised concerns on at least nine sections of the DSA, 2018 fearing further obstructions on the FOE and the press. It may be opined that the freedom of the press in the country started blooming from 1990 with the restoration of democracy but is fading with some draconian laws. Throughout the history of the country, it is seen that the democratically elected governments are more respectful towards freedom of the press with reasonable restrictions than the military-backed governments.

To understand the presence of freedom of the press and reasonable restrictions in a country, it is imperative to understand the historical, political, economic and cultural dimensions along with the legal environment of that country. Bangladesh is a politically polarized country and the press industry with privatized or public ownership is also highly politicized with numerous groupings. Privatized media to some extent except decisive political issues like national poll shows impartiality in accessing and disseminating of information, ideas and views but prioritizes its commercial or corporate interests while the State-owned media is only covering positive news stories of the government and exploding the negative news of the opposition political parties. Seemingly, journalists of the State-owned media in Bangladesh are bound to serve the government otherwise they are likely to lose their jobs. In fact, most journalists in State-owned media are changed with the change of government with different political parties. The government is seemingly complacent with the positive data presented by the State-owned media and it expresses backlash against the privately owned media. In the case of the State-owned media of the country, the restriction is imposed by the respective governments. But in some other countries, the State-owned media like BBC, Al Jazeera are not absolutely controlled by the government. A media whether State-owned or privately owned needs to secure its national interest and sovereignty than the interests of journalists or other vested quarters.

A fundamental tenet of a free press is the ability to access information and in doing so, to keep sources safe and confidential. As the press is partly free, uncensored and unhindered, it cannot play its desired role. When we see the recent trend of government attitude we can find that press freedom has randomly been violated in Bangladesh in many ways. This strategy matches with the then prime minister of Singapore Lee Kuan Yew who in 1971 said that the freedom of the press must be subordinated to the overriding needs of the integrity of a sovereign territory. No country on earth except China to a large extent or Singapore to a little extent has benefited from curbing free press and freedom of expression (Yew, 1971). A united media has had glorious roles in different developments in Bangladesh's history including its independence. Prominent journalist Manik Miah inspired the common masses during independence (Jahangir, 2015).

However, the situation has changed recently as the journalist community has become more divided and influenced by the political ideology of the owners of certain media, a development that is sometimes reflected in the journalists' writings and reports. Even in the case of developing professionalism in the field, ensuring better wages and job security, the journalist community is not united.

The ownership of media outlets by the politicians, business persons, and influential ones is also a cause of concern for the free and responsible press. Apart from oppression on journalists, the groupings and division among the different representative bodies of journalists including the Newspaper Owners Association of Bangladesh, Newspaper Editors Council and Association of TV Channel Owners are responsible for the present status of media freedom. Also, the polarization among the various journalistic associations such as National Press Club, Bangladesh Union of Federal Journalists, Dhaka Union of Journalists, Reporters Unity and many other organizations expose threats to free press. According to a survey report, 57% of readers are skeptical about media reports while 43% of respondents are positive about media reports (Has an, 2018). All of the above circumstances have been weakening the voice of journalists and free thinkers in upholding and protecting freedom of expression and press in the country.

Nonetheless, the press must have public trust and confidence while carrying out its professional functions otherwise press freedom can bring disaster for the society. However, like the people of the entire world, Bangladeshi people have also witnessed the role of Julian Assange and Edward Snowden- two most dominant whistleblowers in disclosing a large volume of classified documents. As the number of media and media houses are increasing rapidly, the future of press freedom is likely to increase and restrictions to go down gradually. At present, according to the Ministry of Information report in 2016, there are 1,086 daily newspapers, 41 television channels, 28 FM stations and 32 community radio stations in Bangladesh while 1,700 online news portals have applied for registration. It is better not to express cynicism or skepticism rather to express optimism as to the betterment of the FOE and free press in the days ahead.

4.3 Reasonable Press, Democracy and Citizens

Theoretically or ideally, the voice of the press is treated as the voice of the people aiming at ensuring check and balance of government functions. In fact, the press is not an enemy of a government rather it is supportive to the government. Hence, censoring the press means the suppression of people‘s voice.

It is said that a popular democracy without a balanced interconnection between citizens and free press is a farce or a tragedy. The need of the FOE and the free press in combating corruption and ensuring transparency and accountability can never be underestimated. If the press is lenient to corporate interest and works as a vehicle of propaganda, it loses its credibility. As a result, the press must be supportive and critical in discharging its neutral functions. Media and democratization are closely interrelated. The presence of a vibrant media is a sine qua non for democracy to survive, grow and flourish. Constructive criticism can play an important role in taking the right decision for running the government and building the nation.

Mahatma Gandhi once said:

“One of the objects of a newspaper is to understand the popular feeling and give expression to it, another is to arouse among the people certain desirable sentiments, and the third is the fearlessness to expose popular defects”.

Media can foster open public debate and information exchange which is vital for a democracy to flourish, and a democratic environment, in turn, can lead to the development of better media structures that respond to the concerns of people enhancing the notion of good governance amid transparency, accountability, predictability, and participation.

The SC of Pakistan in the case of Farid Ahmed v. West Pakistan, PLD 1965 Lah 135, held that without a free press there cannot be any democracy. The SC of India in Secretary, Ministry of I & B v. Cricket Association of Bengal, AIR 1995 SC 1236 at 1293, held that the freedom of the press is the foundation of a democratic society and the court in Union of India v. Motion Pictures Association, AIR 1999 SC 2334, held that press freedom is essential for the rule of law and liberty of citizens.

The SC of India in M. Nagaraj v. Union of India, (2006) 8 SCC 212, at p. 214, held that the concept of open government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19 (1) (a). In Dewan Abdul Kader v. Bangladesh, 46 DLR 596 at p. 599, the SC court held that freedom of speech is a right to express one's own opinion absolutely freely by spoken words, writing, printing or in any other manner which may be open to the eyes and ears while expression may also include comments, explanations, annotations, solutions and answers to questions on the ideas expressed by others.

However, the path towards democratization and media development is rocky, and obstacles can include continued interventions by traditional (often governmental) or new (often commercial) power structures. Weak democratic institutions are a threat to the independence of the media. Conflicting and irresponsible media can be a threat to a fragile democracy. Press works as watchdog or whistleblower that not only barks but also bites depicting the social disorders and discrepancy. Independent and pluralistic media promote people's participation in various decisions making and provide an opportunity to other stakeholders as to the sharing their voice. Media freedom can benefit the government by providing information on what is really happening so that governments can adjust policies or correct any mistakes. The greatness of a newspaper is not measured by the size of its readership but by its influence and credibility. However, the absolute power of media may be a threat when its ownership is mostly private and concentrated in the hands of a few. In such situation censoring media is not a solution rather there may be proper regulation by the government or to let the consumer choose which media outlet they want to read, view or listen. It is true that governments in most developing countries fail to see the role free media plays in informing the government. But without critical evaluation of democracy and development of a State by independent and pluralist media outlets, the State remains malnourished and imbalanced in attaining good governance. Free, pluralistic and independent press or media is creating a delicate balance among government, society, and citizens paving the way for flourishing democracy and development.

4.4 Opportunities and Challenges

A free, unbiased, accountable and vibrant media informs the public and policymakers through the dissemination of authentic information and creates space for diversified views regarding socio-economic and political processes accelerating people's scope for democratic participation (Hu dock, 2003). In Bangladesh, where democracy and State institutions are in their nascence, the mass media's operation despite being partially free is the main way of examining governance and demanding accountability from state machinery (Kabir, 2003). In fact, freedom of the press is intertwined with the prevailing condition of democracy, rule of law and good governance. As a result, the expectation of freedom of the press is unthinkable and a mere eye-wash without the presence of strong democracy with rule of law and elements of good governance. Simultaneously, freedom of the press without transparency and accountability may end up in sensational or yellow journalism impeding the democracy and destabilizing the fabric of good governance. So, free press and accountability of the press go hand in hand to support each other. For ensuring accountability of journalists, there should be a strong code of conduct for them along with its effective implementation mechanism.

The legal restrictions except a few are the core challenges for a free press in the country. Simultaneously, the political and corporate ownership of media also affects the practice of FOE including the press freedom. Sometimes, owners or their representatives advise the newsroom not to publish certain types of news stories which hamper their interests. Occasionally, if any news runs against the business interest of the media houses and their policies, then that news never sees the light of day. And, in the same vein, in cases where the media owners belong to a political party or a corporate group, that particular media outlet often refrains from publishing news hostile to its owners' political ideology or corporate pressure. When religious and political ideologies generate a sense of unity and purpose of journalism, then these divide people and society posing ultimate threat to free press and media. Recent use of social media for fomenting violence through misinformation, disinformation, and hatred has been used against ethnic groups in Myanmar and Sri Lanka. In Bangladesh, the overuse of social media for political purposes cannot be denied.

There are pieces of evidence of misuse of social media by vested quarters through the politicization of spontaneous protests of students from even schools and colleges to yield political dividends. Politicians from both ruling and opposition parties wait to politicize any movement or protest

Deliberately to deteriorate law and order blaming each other using conspiracy theory and blame game. In nearly 50 years of independence, the nation is striving to rectify the political instability and disorders. If politics in the right order, almost all things including freedom of the press may be in the right track to guide the nation towards plurality, inclusivity, and prosperity amid sustainability. In spite of division, journalists and media activists are striving for ages towards a free press. However, the core opportunities and challenges of press freedom are given below:

4.4.1 Opportunities

1) Freedom of the press can drive the State and society towards the right direction and can pave the way to a solidified nation. A free press amid reasonable restrictions can work to serve the society better and can keep national interest intact.

2) There is a wider scope to stimulate the existing magnitude of press freedom by repealing some controversial legal provisions for expediting democratic functionality amid good governance through eradication of malpractices of government, semi-government and other entities.

3) Strengthening of the press institute of Bangladesh (PIB) and the press council of Bangladesh (PCB) to hold journalists, freethinkers, media activist and CSOs just, duty bound, transparent and accountable is possible and of urgent necessity.

4) The government especially the Ministry of Information can take steps to create mutual understanding among the media houses, journalist organizations and the regulatory bodies regarding their reciprocal rights and duties.

5) There is a strong chance of institutionalization of media outlets of all print and electronic ones as only a few of them are institutionalized among the large bunch of them. Online news portals are mainly lagging behind in institutionalization.

6) Self-censorship can be justified with the needs of reasonable restrictions, not on personal, political, corporate or other forms of vested interest.

7) If the government allows press freedom for the State-sponsored media, it may help government policymakers to rectify its wrongs through constructive criticism unearthing the misdeeds of government machinery.

8) Similarly, with the sense of responsibility, the press or media can work towards strengthening the sovereignty and integrity of the nation. It is the duty of the press and media to build an environment where the people of the country can cultivate unity and harmony, not polarization.

9) In the current milieu, media as watchdog is at a transitional stage but there is a large scope for its expansion of social role, the wider framework of operation, greater competition and increasing professionalization.

10) Globally the free press is booming and in Bangladesh, with the increasing number of media outlets, there is a strong possibility for acceleration of the FOE and free press.

4.4.2 Challenges

1) The absence of press freedom can accelerate malpractices in administration and weaken the State institutions on which the transparency and accountability of various functionaries of government depend on.

2) Some legal provisions under some laws of Bangladesh including the Penal Code, 1860, the OSA, 1923 and the DSA, 2018 are very detrimental to freedom of the press both in print and electronic forms.

3) The colonial 'we v. them' attitude of the government on the one hand and the partisan affiliation and disorganization of the journalist community, on the other hand, pose major threat to free press or media.

4) Deviation of media from its true responsibility towards society and over engagement for corporate or commercial purposes diminishes its integrity and social acceptance.

5) Like a group of Ostrich, journalists, freethinkers, media activists and civil society organizations (CSOs) are often driven by self-interest or vested interest, leading them to adopt self-censorship. Also, the growing self-censorship on media outlets as a result of endemic violence against journalists, free thinkers, and bloggers along with media activists is a genuine impediment towards a free press. Self-censorship vitiates the objectivity and authenticity of journalism and its professional excellence.

6) Like the UK, USA, India, Pakistan and many countries, the ownership of most media outlets in the country goes to corporate business houses, influential persons or politicians. These newspapers or media houses are driven by privatized attitude, progressive-capitalistic and corporate values serving vested interest posing threat to national interest.

7) The economy of media outlets is heavily dependent on an advertisement from both public sector and private companies. As a result, the press usually has a flexible attitude towards negative news about its advertisers, fearing that otherwise, they may lose advertisements.

8) Division among different representative organizations of journalists because of their political affiliations, personal, group and vested interest along with cynicism or skepticism of people as to their trust or confidence on media outlets generate government sanctions on FOE in all forms of media.

9) Lack of awareness of general masses because of their backwardness on educational, economic and social conditions facades free press and vibrancy of other forms of media in Bangladesh.

10) The regulatory bodies of the press or media like the press institute of Bangladesh (PIB) and the press council of Bangladesh (PCB) are not playing their due part because of their incapacity and over politicization requiring institutionalization in the true sense.

11) In the case of media outlets, only a handful of them is having institutionalized character while most of them are exposing partisan attitude with value-loaded interest than being objective.

12) Abuse of press freedom by newspersons not only generates threat to them but also to the media houses creating an opportunity for the government to curb press freedom in the name of different restrictions.

13) The quotation of Mark Twain i.e. "if you don't read newspaper you will be uninformed but if you read newspapers you will be misinformed" is true in many angles and is still a big challenge for Bangladeshi media. Seemingly like Napoleon Bonaparte, the rulers of the country fear the newspapers more than a hundred thousand bayonets.

Chapter V

Recommendations

5.1 Findings and Recommendations

The culture of secrecy is deep-rooted and perhaps it needs time to establish the culture of openness to thrive. Bangladesh as a developing country cannot deny the global reality of press freedom and its restrictions. According to a report less than 14% world population live in countries with a free press (Manuli, 2013). In many developing nations, governments and ruling political parties consider press as one of the biggest obstacles to development and national interest. From a 2017 report of Freedom House, an American organization which assesses the status of press freedom of different countries every year, the press of Bangladesh was found to be partly free. In Bangladesh, the reality is that the successive governments have resorted to suppress press freedom through various means including regulatory measures to perpetuate their vested political interests. Apart from restrictions on press or media under the existing statutory laws, some other factors such as lack of institutionalized character of the press and the ownership of press by politicians and business people are the major barriers towards free press in the country. Politicians cannot avoid liability for the present condition of the press freedom because they also lag behind in nourishing and practicing the better political culture to change the political landscape of the country paving the way for positive change in the domain of the press or media. Also, because of existing immunity or impunity, the secrets of government officials as to their misjudgments, incompetence, misconduct, venality, cupidity, corruption, or criminality are not exposed.

Moreover, the politicization of media outlets and unfair competition among media houses as to news and views undermines the accountability of journalism and offer government chance to impose restrictions on the freedom of the press. Undoubtedly, some provisions of various statutory laws restrict FOE and freedom of the press violating the spirit of article 39 of the Constitution. These restrictions also go against the mandate of the UDRH, ICCPR and some other international legal instruments undermining democratic values.

As compared to other forms of governments, press and media enjoy more freedom in a democracy. Political scientists opine when communication systems are subject to formal political control as in socialist, fascist or authoritarian regimes – the media becomes little more than a propaganda machine (Heywood, 2000). In an emerging democratic society, the media empowers social groups through the dissemination of true news and views and guard the public officials against misuse of powers. The question of the freedom of the press and media is an issue that still goes unsettled on the point whether the press should be allowed to enjoy absolute freedom. It is agreed that too much censorship of press and media is bad. At the same time, every press needs to publish impartial and unbiased news so that it does not instigate the people against the Government to resort to violence. So, the freedom of the press and reasonable restrictions are in need of delicate balance. Some core findings and recommendations are as follow:

5.1.1 Findings

1) Some provisions of existing Bangladeshi laws on the press have taken away the freedom of the press or media and the ambit of reasonable restrictions has been too much impeding the fabric of democracy, rule of law and good governance amid transparency, accountability, predictability, and participation.

2) Freedom of the press is partially enjoyed by the media in Bangladesh because of direct and indirect restrictions under the existing statutory laws and self-censorship.

3) The idea of freedom of the press is not absolute rather qualified subject to reasonable restrictions and press freedom does not mean transforming the truth into the lie and vice versa. On one hand, absolute press freedom is neither possible nor desirable and on the other hand, the term reasonable restriction demands proportionality and reasonability.

4) There are instances of misuse of press freedom for personal, political and vested corporate interests ignoring the priority of national interest or public interest. Social media and online blogs are also centred to personal, political, corporate or other forms of vested interest.

5) Abuse of freedom of the press tends to gain momentum before any election or referendum in wooing or emotionally blackmailing the voters applying the false propaganda or claims with osmotic effects within a society. Even abuse of media on the national election on 30 December 2018 cannot be overlooked.

6) Some provisions of the existing laws including the ICT Act, 2006 and the DSA, 2018 are inconsistent with articles 7, 26, 27, 31, 32 and 39 of Bangladesh Constitution guaranteeing FOE amid reasonable restrictions.

7) Media in Bangladesh suffers from a trust deficit for many reasons including a lack of experience and professionalism. As a result, politicians, criminals, and businessman exert undue influence to get benefits by exploiting the media.

8) Because of privatization of the print and electronic forms of media, influential business persons and politicians are getting the ownership of them. The owners are targeting the maximization of profits forgetting the true purpose of media outlets.

9) To some extent, media is widely seen as a tool of empowerment for people in Bangladesh but successive governments have failed to realize it rather they compete with each other to curb the FOE in all forms of media.

10) Without improving the social, economic, political and cultural dimensions, expecting desired freedom of the press is not worth thinking. At the same time, media can be held liable for surface reporting in lieu of investigative journalism involving 360-degree approach.

11) From the British to Pakistan period and from the Pakistan period to the journey of independent Bangladesh, the FOE has been suppressed in the country by the politicians imposing unreasonable restrictions that impeded good governance.

12) Dysfunctional statutory bodies like the Press Institute and Press Council also add insult to the injury of press freedom. The political division of owners of media outlets, the polarization of journalists, media activists, and their representative organizations are also responsible for the present status of the freedom of the press.

5.2 Recommendations

1) Without imposing harsh restrictions, FOE and freedom of the press should be protected and promoted in parity with responsible, transparent and accountable journalism. Simultaneously, reasonable restrictions should be maintained and the journalists should obey the code of conduct, social norms, and values in the dissemination of news, views, images and audio-visual clips.

2) Press freedom should not be used to distort information vilifying the professional attributes of journalists who are considered to be the conscience of a nation. Journalists and freethinkers should remember the maxim "salus populi est suprema lex" meaning public welfare is the highest law.

3) Measures should be taken to amend or repeal the draconian provisions of statutory legal instruments obstructing free press and other forms of FOE and to comply with the standard of international human rights instruments in which Bangladesh is a party.

4) Journalists, freethinkers, bloggers, press activists have to keep in mind that the news, views and other forms of expression should be the reflection of truth, authenticity, impartiality, fairness, and accuracy not prejudice, pressure, bias, or gift and bribery. Newspapers should hear both sides before reporting and reveal the sources of information respecting laws, code of ethics and privacy issues.

5) With the rise of social media, digital literacy and digitization of press, a comprehensive set of ethics should be formulated and enforced to create awareness and sense of compliance to all especially to journalists, freethinkers, and media activists.

6) Sustainability of press freedom amid reasonable restrictions should be ensured catering to the needs, rights, and responsibilities of the State, people, journalists and media outlets. In imposing reasonable restrictions, the sense of reasonability, proportionality, legitimate expectation, convenience and inconvenience of state security and free press should be considered justifiable.

7) Journalists should shun themselves away from partisan political affiliation, polarization or groupings rather they should be more united and professional reflecting independence, honesty, impartiality, courage and ethical standard. There may be a difference of opinions among them but they should be imbibed with the sense of mutual respect and tolerance for the greater interest of freedom of press or media. Exaggerated journalism may be avoided by two ways either by rejecting the agenda-setting through curious and investigative reporting and rejecting the anonymous sources.

8) All stakeholders of a free press should bear in mind that temporary benefits and political favour do not sustain a healthy environment for the press rather demolish it. But, responsible journalism can inculcate more freedom of the press overcoming the perils of the yellow or biased journalism. For ensuring responsible journalism, press ombudsperson can be a positive thought.

9) Only laws alone cannot secure the FOE or free press. In order to ensure the FOE or free press, there is an exponential necessity of tolerance and respect as to dissenting ideas and opinions based on truth and accuracy not on obscurity, fallacy, and fiction.

10) Media houses should be institutionalized and united irrespective of their affiliation and stance to any group, corporate body or political affiliation for the functionality of FOE.

11) Government regulatory bodies like Press Council and Press Institute should be strengthened so that they can regulate the media houses properly. For broadcast media, there should be a broadcast commission for their proper governance.

12) Concerted efforts of all stakeholders are needed to overcome the impediments of the FOE including the press. The government, owners of newspapers, journalists, freethinkers, bloggers, media activists, and CSOs should cooperate and collaborate in setting the boundary of the freedom of the press and reasonable restrictions balancing the interests of all.

Chapter VI

Conclusion

6.1 Conclusion

Freedom of the press is very crucial and it bears resounding implications for every individual in accessing and disseminating information in a society to raise voice against the malpractices of the government and other entities. A free press is an important indicator of a democratic society and sustainable development. If free press prevails in a country, other democratic rights and freedoms will eventually be ensured. However, the privatized press is more interested to serve its commercial purposes and publishing negative news of doom and gloom rather than positive or success stories of governments necessitating reasonable restrictions occasionally. Sometimes, people lose trust in media when it is serving politically motivated agenda and dubious propagandas undermining public interest and social benefits. In spite of the gradual increase of the number of press in the country, the trend of press freedom is on the wane worrying the conscious section of people. To a large extent, the shield of reasonable restrictions is abused by all the governments unjustifiably limiting freedom of the press, speech, targeting journalists, protesters and other persons with dissenting news and views. Even the blocking or filtering of online and social media is now an augmented reality. The successive governments of Bangladesh especially military based ones have treated press freedom as a threat against their ruling regimes. Arguably, the procrastinated clock is ticking as to balancing the freedom of the press and reasonable restrictions. However, apart from the restrictions by the governments, the polarization, partisanship, self-seeking attitude of the journalist community and the told and untold pressure of the owners of press and corporate bodies hinder the freedom of the press and create a dilemma for the reasonable restrictions. There was a crackdown on media in the past, is at present and ostensibly will be in the future.

The unity of journalists and media personalities can ease the suppression on them and media houses accelerating the freedom of the press for the greater interest of society. Ultimately, the government in collaboration with the pluralistic, diverse and independent media can create a conciliating attitude in balancing the freedom of the press and reasonable restrictions replicating tenets of good governance.[22]

[22]https://www.google.com/url?sa=t&source=web&rct=j&url=https://essuir.sumdu.edu.ua/bitstream/123456789/72826/1/Haque_Balancing_Freedom.pdf&ved=2ahUKEwiBsLXy8MP7AhX5cGwGHb-WAewQFnoECE4QAQ&usg=AOvVaw0nZz64-1BtoEkS8eqwPAHV

Bibliography

Books:

KM. SMITH, TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS 267 (2007)

Universal Declaration of Human Rights 1548, Article 19

Islam Mahmud, Constitutional Law of Bangladesh, (3rdedn, Mullica Brothers 2012) 329,330

The Constitution of Peoples Republic Bangladesh

Jeffery, A. (1986) Free Speech and Press: An Absolute Right? Human Rights Quarterly, (1986) 8(2) p 218 JSTOR (accessed 28/08/2022)

Universal Declaration of Human Right, Article 1

Islam Mahmud, Constitutional Law of Bangladesh, (3rdednMullick Brothers 2017) 340

Santosh Singh v. Delhi Administration, AIR 1973 SC 1091)

Bihar v. SailabalaAIR 1952 SC 129

Schaefer V US, (1920) 251 US 466

Namboodripad v. Nambair, AIR 1970 SC 2015

Daphtary v. Gupta, AIR SC1132

Shaquan Rabbee, "Bangladesh the latest assault on free speech" (The Interpreter 2 October, 2018)

Online Journals:

http://www.e-info/2011/05/22/s the fact that man lives in an international-system-defined by anarchy the cause-of-war!

Online Recourses:

https://www.legalserviceindia.com/legal/article-7014-right-to-freedom-of-speech-and-the-law-of-defamation-in-bangladesh-finding-a-balance.ht

https://en.wikipedia.org/wiki/Freedom_of_speech -:~:text=Article%2019%20of%20the%20Universal,media%20and%20regardless%20of%20frontiers

https://www.google.com/url?sa=t&source=web&rct=j&url=https://essuir.sumdu.edu.ua/bitstream/123456789/72826/1/Haque_Balancing_Freedom.pdf&ved=2ahUKEwiBsLXy8MP7AhX5cGwGHb-WAewQFnoECE4QAQ&usg=AOvVaw0nZz64-1BtoEkS8eqwPAHV

https://www.amnesty.org.uk/free-speech-freedom-expression-human-right

https://www.justia.com/constitutional-law/freedom-of-speech-under-the-constitution/

https://www.legalserviceindia.com/legal/article-7014-right-to-freedom-of-speech-and-the-law-of-defamation-in-bangladesh-finding-a-balance.html

https://www.google.com/url?sa=t&source=web&rct=j&url=https://essuir.sumdu.edu.ua/bitstream/123456789/72826/1/Haque_Balancing_Freedom.pdf&ved=2ahUKEwiBsLXy8MP7AhX5cGwGHb-WAewQFnoECE4QAQ&usg=AOvVaw0nZz64-1BtoEkS8eqwPAHV

https://www.google.com/url?sa=t&source=web&rct=j&url=https://essuir.sumdu.edu.ua/bitstream/123456789/72826/1/Haque_Balancing_Freedom.pdf&ved=2ahUKEwiBsLXy8MP7AhX5cGwGHb-WAewQFnoECE4QAQ&usg=AOvVaw0nZz64-1BtoEkS8eqwPAHV