

Research Monograph

On

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

This Research Submitted for the partial fulfilment of the award of the degree in LLB (Hon's)
Department of Law Sonargaon University (SU) Dhaka.

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Letter of Transmittal

To

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Subject: Submission of Research Monograph on Parameters of *freedom* of speech in the constitutional mandate of Bangladesh and other statutory provisions.

Dear Sir,

I do hereby please to submit the Research Monograph on the topic “Parameters of *freedom* of speech in the constitutional mandate of Bangladesh and other statutory provisions” It is a great pleasure to work on such important topic. This Research work has be done according to the requirements of the Sonargaon University for the fulfilment of my LLB (Hon’s) years course Department of Law.

I respectfully acknowledge your guidance, leadership and help for the preparation of this paper. It is worthwhile to mention that there might be some errors and mistakes in my report due to limited time and knowledge. I am still at learning stage. So I respect that you will pardon my unintentional mistakes in preparing this paper.

Sincerely. Yours

.....

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Solemn Affirmation

I do there by solemnly declare that the work presented in this research has been carried out by meant has not been previously submitted to other University/College/Organization for any academic qualification, publication or a personal Degree. I hereby ensure that the work presented here not breach existing copyright.

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Guide Certificate

This is to certificate that the Research Monograph on “**Parameters of *freedom of speech in the constitutional mandate of Bangladesh and other statutory provisions***” is prepared by Saidur Rahman, ID No. : LLB 1901016018. for partial fulfilment of the requirement of the program: LLB(Hon’s) from Sonargaon University, Dhaka. It also certified that the research work has been carried out under my supervision and intensive guidance.

It is to be certified that the research work is original and suitable in its style and contents for submission and fulfilment of his LLB (Hon’s).

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Thank you

.....
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Abstract

Bangladesh is one of the few countries in the world which allows preventive detention even during non-emergency periods. Since Independence preventive detention has been the most used tool in case of violation Human rights. Irrespective of any forms of government which has been in power in Bangladesh, has used this as a mean of political exploitation. Each of them have failed miserably to stop the endemic problem regarding preventive detention. However, this is against the spirit of our constitution, democracy and the rule of law. Despite various legal safeguards against preventive detention, the practice of malicious preventive detention is rampant in Bangladesh.

The study aims to show how the rights are violated through preventive detention and how the legal authorities are abusing their powers. In my research I want to highlight the detention and scope of preventive detention, its historical development, its nature and our constitutional safeguards for it. I will also highlight why preventive detention is a necessary evil for our country. I will cite the leading cases relating to preventive detention in Bangladesh and while emphasizing on the recommendations given by the Supreme Court. And lastly will also give my recommendation on how we can put chains on this blackest of the black laws.

The Constitution of Bangladesh ensures the equal rights and status of women in public life. But nondiscrimination over women in the private sphere is not guaranteed. Consequently, there significant disparities between men and women in all realms of life. Lack of equal access to economic opportunities, education, health services and their lesser role in decision making perpetuate women's subordination to men and susceptibility to violence. The notion of the society about girl children within the family itself builds up a mindset that girls ought to be less to be important than the male children. The multiple forms of discrimination against girls begin at home and continue to the end of their lives. This imbalanced foundation of knowledge, fully biased in favor of the male of the males of the family, spreads through the society in general, resulting in tremendous forms of violence and injustice to women as a whole. The article highlight the key reasons of oppression over women such as physical, sexual and psychological abuse that cuts across lines of income, class and culture and its ultimate consequences. This article evaluates the loopholes in the existing criminal justice system of Bangladesh concerning violence against women with mentioning necessary possible way outs.

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CHAPTER 1

INTRODUCTORY CHAPTER

1.1. Introduction:

After the independence of Bangladesh in 1972, the constitution was created for the democracy. In the article 39 of fundamental rights is Freedom of thought and conscience, and of speech. Here these are not some mere words of fancy writing but a symbol of justice and equality, which ensures democracy. Although there are other laws that may say otherwise. Absolute freedom is what we all desire. Similarly, we all want to enjoy absolute freedom of speech and expression. Therefore, it is not unanticipated that even law has approved freedom of speech and expression to us. Freedom of speech and expression has been recognized as a fundamental right.

William Shakespeare said, "Conversation should be pleasant without scurrility, witty without affectation, free without indecency, learned without conceitedness, novel without falsehood."

Is the world going to be a better place if all speech or communication conforms to this standard? Communication is defined as any exchange of information, ideas, beliefs, attitudes, or feelings? Each day, people all over the world communicate by arguing, gossiping, chatting, making movies, singing songs, teaching and learning, talking on the phone, writing letters, or sending faxes or email. Communication without interference from others is called "freedom of speech," meaning the right to freely express one's opinions through public discourse, through the press and through other means."

This term includes all kinds of communication and expression, not just the spoken word." Moreover, freedom of speech plays a key role in people's exercise of other fundamental rights. As the United Nations General Assembly declared, "freedom of information [or speech] is a fundamental human right and is the touchstone of all of the freedoms to which the United Nations is consecrated. More importantly, freedom of speech is a human right that strongly relates to democracy because it allows ordinary people to participate freely in the spread of ideas and in the creation of meaning that helps constitute them as persons."

Thoughts on the Business of Life, FORBES, <http://thoughts.forbes.com/thoughts/talk-william-shakespeare-conversation-should-be> (visited 09/08/2022). LEENA SEN, COMMUNICATION SKILLS 5 (2d ed. 2007) PHILLIP STEELE, FREEDOM OF SPEECH 9 (2005) APHRODITE SMAGADI, SOURCEBOOK OF INTERNATIONAL HUMAN RIGHTS MATERIALS 238 (2008). bid

GA Res. 59 (1), 1, U.N. Doc. A/299, A/261 (Dec. 14, 1946), available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/033/10/IMG/NR003310>. Jack M. Balkin, Digital Speech and Democratic Culture: A Theory of Freedom of Expression for The Information Society, 79 N.Y.U. L. REV. 1,4 (2004). Mahmudul Islam, Constitutional Law of Bangladesh, Bangladesh Institute of Law and International Affairs, Dhaka, 1995, p. 208

1.2.Statement of the Problem:

Bangladesh became independent in 1971, and the constitution was created and established in 1972. In the constitution, fundamental rights are given more priority for the rest of the articles. Fundamental rights are all intertwined with each other. They are all related to all the articles in the constitution, as the fundamental rights are here to protect the respected citizen's interest. From article 31 to article 38 and article 41 all represented by article 39- Freedom of thought and conscience and speech. If there is no freedom in talking about what you think of the actions taken by the government then there can be no democracy in a country. Article 31-Right to protection of law, Article 32- Protection of right to life and personal liberty, 33- Safeguards as to arrest and detention,

Article 34- Prohibition of forced labour, Article 35- Protection in respect of trial and punishment, Article 36- Freedom of movement, Article 37- Freedom of assembly, Article 38- Freedom of association, Article 41- Freedom of religion each has their own way of representing the citizens best interest in the making a country a democratic country. Article 39 of the constitution addresses the implication of the right to freedom of speech and expression subject to public and foreign interest. According to the article, restrictions can be imposed to ensure public security against any offensive or immoral actions by legislative authority. Therefore, a citizen must follow the article before stating anything that can be used against him. Moreover, a citizen to use of his freedom of speech and expressing by any medium he must display reasonable ground of his belief and his thought. However, the government that one belief is harmful to the citizen then he must have reasonable grounds for his statement to be accepted by the people took actions.

The recent years, Section 57 of the Information and communication technology act, 2006 has a widespread criticism of violation of the freedom of speech and expression. Online media and blogs are the most important part of freedom of speech and expression. But the proposed digital security bill to replace the abusive law, in some aspects even broader than the one it seeks to replace and violates the country's international obligation to protect freedom of speech. In 2013 a Broadway of freedom of speech and expression was seen by the "Gonojagoron Mancha". But soon after it has seen some demise of many blogger and internet activist like Obijit, Ononto Niloy and many more.

Which directly affected the youth's application of freedom of speech and expression. Moreover, broadcasting laws that were enforced in 2003 have now seen some changes in its laws that was proposed in the cabinet in Oct 2018. Under the proposed Broadcast Act-2018, if anyone broadcasts false or confusing information in a discussion Programmed or anything against the spirit and principles of the Liberation War or against the state policy, he or she will face a maximum jail term of three years or a fine Tk 5 crore or both.

Where it states that any criticism against government policy may cost the offender 5 core fine or three-year imprisonment or both. Which is clearly a violation of the freedom of speech and expression where article 39 (2) of the constitution stated that the freedom of the press to be guaranteed. But by penalizing the press and free speech activist it's a soon to be a curse than a right to express their views on government policies by the broadcasting act as such the media and independent journalist cannot use their freedom of press according to article 39(2)(b).

There are many significant problems in the field of freedom of speech and expression. Such can be the violation of the article 39 of the constitution of Bangladesh. The focus of the research is to address these problems and many more that can hamper the use and implementation of freedom of speech and expression. This research will also focus on the recommendation and excess use of freedom of speech and expression that also may harm the society.

1.3. Importance of the study:

The study focuses the recent and the past event that occurred from the birth of Bangladesh. From the separation from India and East, Indian Company Pakistan stood in two different entity and with so many issues. Those issues resulted in the liberation war that brought Bangladesh as a new country in 1971. In 1972, Bangladesh wrote the constitution where freedom of speech and expression is considered as the most important fundamental right. If the use of any fundamental right is violated then there will be no rule of law or no democracy in a country. Moreover, the use of speech is more important than a government. Free press and media act as the vehicle for freedom of speech. If press and media are restricted then good governance and democracy cannot be established. Media promote and support the right of freedom of thought and speech and ensure the ground for their free operation.

Media also provide a suitable environment of free expression of views and feelings of citizens through speech, writing, drawing, picture, recording, acting, literacy as well as printing and broadcasting. It is well established that mass media which constitute the backbone of democracy has a powerful role to play in the process of democratic development.

As a backbone of a democracy, mass media can play a vital role in the political structure of each country through disseminating information, enlightening voters, protecting human rights, creating tolerance among groups and helping the government to be transparent and accountable. In Bangladesh, a country where democracy and state institutions are in their nascence, the mass media's relatively free operation is the prime means of examining governance and demanding accountability from state machinery. Moreover, it also helps an individual to judge society and form opinions, which are essential for the wellbeing of democracy. Through offering information mass media shoulder, the responsibility of making people think about an issue. Moreover, it can put an agenda in place in some cases. This research focuses the use of the fundamental right of freedom of speech and expression and the role of free press in a country and how it affects the people and to consider them as the free citizen of a democratic country. This research is important for people and

1.4. Review of literature:

For this research to be completed some books, journals, articles and news reports will be prioritized. Some specific books to be mentioned as such "On Liberty" by John Stuart Mill,

"The human stain" by Philip Roth, "Alone in Berlin" by Hans Fallada, "TheHate in Hate speech" by Jeremy Waldron and etc. There will be citations and reference in the use of the books part that will be used in this research. There will use of journals as well among them some are

"Freedom of Expression and the Media: A Case study the Netherlands" by Drs. Johan Snel, 2013, published in science journal (communication and information), "Freedom of Expression in the United Kingdom Under the Human Rights Act 1998, Eric Barendt, 2009, Indiana Law Journal (Volume 84 issue 3), Freedom of expression and hate speech by Onder Bakircioglu, 2008, Tulsa Journal of Comparative and international law and etc.

1.5. Objectives of the research:

The objective of the research is mainly to have a critical review of the legal provision about the right to freedom of speech and expression and special reference related to freedom of speech and expression. To attain the objective there will be some branches of other objectives:

1. To explain the importance of freedom of speech and expression in the democratic country.
2. To analyze the constitutional laws related to freedom of speech and expression.
3. To analyze the statutory acts and laws related to freedom of speech and expression.
4. To analyze related case laws and cases of freedom of speech and expression.
5. To explain the controversial laws related to freedom of speech and expression.
6. To the application of the fundamental right such as freedom of speech and expression in other countries and Bangladesh.
7. Explain the negative effects of freedom of speech and expression. These questions will help the research to make a summary and justification on the views of the people of Bangladesh and increase the use of freedom of speech in Bangladesh. This question may change depending on the scenario of the research as fit. However, this is the common objectives according to the freedom of speech and expression.

1.6. Scope and limitation:

Bangladesh is a young country. It is still a developing nation where people focus on the development of the infrastructure and its economic system. But in the political and governmental side it's has a long way to go to establish its democratic process and also people don't completely follow and understand the way of using the right to freedom of speech and expression. There're many scoops for the better use of the rights given by the constitution. But there's still limitation which the research will mainly focus on the Bangladeshi citizens and governmental limitation toward the improvement of the use of freedom of speech and expression. Some limitations that I feel are given below:

1. Whether a restriction on freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written. A great deal will therefore depend on context, such as whether words are used at a social event, in an employment context, in the media or when providing or receiving goods or services.
2. Democracy depends on people being free to express, debate and criticize opposing viewpoints. The courts have generally held that the right to free expression should not be curtailed simply because other people may find it offensive or insulting
3. The court has interpreted this to mean that, in every case where there is an interference with freedom of expression, a balance must be struck between the right of the individual to express himself or herself and the broader public interest justifying the interference (for example, the protection of the rights of others).
4. Newspapers and other forms of print media (including websites and other electronic media) may nonetheless commit a criminal offence if they publish 'written material' which is 'threatening, abusive or insulting' and, in doing so, either intend to 'stir up racial hatred' or are aware that racial hatred 'is likely to be stirred up'.

1.7. Research Methodology:

This research paper will be mainly based on secondary research methods, the sources of the library will be used. a few books, journals, and articles will be consulted. In the research, there will be several books and journals mentioned as the research will focus on the relevant parts of the book's chapters with freedom of speech and expression. The internet will also be browsed and standard search engines like Google scholar will be used. Another source of information is

- Available reports from different related newspaper and publications.
- Reports from recently published newspaper

1.8. Hypothesis:

It is expected to find some positive sides and some contradicting views of the freedom of speech and expression in the survey questionnaire and different views that will focus the use and misuse of freedom of speech and expression in the interviews and collected interviews. In contrast, there is a possibility of getting data that will show that the use of freedom of speech is suppressed in Bangladesh by many contradicting legislatures. Some of the legislatures are not in force but soon to be in force that will surely suppress the freedom of speech in some manner and some legislature like the proposed digital bill that is currently in government cabinet to be passed by the government cabinet. But the possibility of positive views is expected in the hypothesis.

1.9. Tentative Structure:

The research has been divided into five chapters as follows:

Chapter 1

Discusses the Statement of the problem, importance, and objectives of the research, Literature Review, Research Methodology and Scope and Limitation of the Research.

Chapter 2

Deals with the constitutional articles that presents the freedom of speech and expression. Where the constitution talks about the freedom of speech and expression of people of Bangladesh and has a brief of the rights of the people. How the constitutional right to freedom of speech should be followed and how one can use their freedom of speech and restrict people from using excess use freedom of speech and expression.

Chapter 3

Deals with the related acts under the civil procedure and criminal procedure, how a citizen can use their freedom of speech by civil acts. It also deals with the precedents set by the cases relating to freedom of speech and expression given judgment by the honourable High Court Division.

Chapter 4

Deals with the negative effects of the use of freedom of speech and expression in our country by media and historically how it affected many countries all over the world.

Chapter 5: Discusses the findings, recommendations and conclusion of the above research will be dealt with in this chapter

Chapter 2

Understanding the Constitutional Right to Speech

2.1. Freedom of speech and expression

Speech is God's gift to humankind. Through speech, a human being bears his thoughts, opinions and feeling to others. Freedom of speech and expression is thus a natural right, which a human being obtains from birth. It is, therefore, a basic right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). The people of Bangladesh declared in the Preamble of the Constitution, which the constitution gave the government and the court the power to resolve and secure all the citizens' liberty of thought and expression. This resolve is reflected in Article 39(1) (a) which is one of the Articles found in Part III of the Constitution, which enumerates the Fundamental Rights.

Man, as rational being wishes to do many things, but in a civil society, his wishes have to be measured, regulated and reconciled with the exercise of similar wishes by other individuals. The assurance of each of the above right is, therefore, restricted by the Constitution in the greater interest of the community. The right to freedom of speech and expression is subject to limits imposed under Article 39(2).

2.2. The Idea of Freedom of speech

The fight for freedom of expression is an old-aged fight of collections and discrete against their political surroundings. Under its Articles 18 and 19, the UDHR recognizes the freedom of expression as a basic human right. The right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19) and freedom of thought, principles, and faith, freedom to change his religion or belief (Article 18).

Robert Hargraves, *The First Freedom: A History of Free Speech* 1-22(2002). William Magnuson, *the Responsibility to protect and The Decline of sovereignty: free Speech Protection Under International Law*, 43VAND.J. transnat'l. 255,276(201) K.M. Smith, *Text Book On International Human Rights* 267(2007)

It is important, which guarantee communication and expression of opinions, in public, private, either written or spoken, by people without the interfering of the state or other actors. The concept, use and performs of freedom are relative to the nature and features of the government, statuses, civilizations, and culture. That is why, the idea of freedom of expression is perceived and practiced in different ways in developed western countries, developing or poor countries, and communist countries. In western countries, the ideas of intellectual freedom and liberty of thought are the foundation of democratic society (Hano, 1983). While, freedom of expression is not privileging that people enjoy but limited privileges that the governments sometimes license to further their own goals (Shanor & Donald, 1983). In the developing nations, like Bangladesh, where social institutions are still being shaped, democracy is in the balance, one-party states are developing, and the relation between mass and the regime are still ill-defined, represent the middle path. The freedom of expression is definite to all or with certain exclusions in the countries. The countries sometimes use the Western explanation freedom of expression and in some cases, they have their own explanation (Nam, Sunwoo, 1983).

However, the idea “freedom of expression” can be understood from two methods equality of human being and interest of political liberty (Sullivan, Kathleen M, 2011). Inequality view, free speech rights serve an overarching interest in political equality. Moreover, on the second view, people are entitled to make their own individual evaluations of speech, and the government is forbidden to intervene for paternalistic or redistributive reasons. Having freedom of speech, one can connect ideas deprived of any overthrow or interference or disciplinary action. The rights protect individual’s capacity to think and to express thoughts in physical form, including written, recorded, theatrical, or otherwise depicted visually. It protects all speech, though violent or hated. It is the bulwark of liberty. With the security of free communication, an individual gets a chance to fight to reserve rights and freedom and a chance to contrary the course of a country that has strayed from those principles.

The right of free speech guarantees the freedom to advocate one’s opinions and to bear the possible penalties, including divergence with others, disapproval, disrespect, and lack of support. An individual-centered idea of free speech advocates self-sufficiency of the individual within a community compass. Communication is a basic element in the formation of human relationship (Hano, 1983), and the idea of freedom of expression is rooted in the sense and ability of communication. Without having the scope of collaborating and talking to other people, no individual, community, group or any other institution would be able to exist or prosper. The ability to connect or the general right of communication make it imaginable to conversation opinions, thoughts, and meanings and enables people to express themselves and show their own points of view. Communication represents the individual’s identity and human

dignity (Hano, 1983). the right to connect and express personal opinions, ideas, and views, people feel treated equally. It authenticates human equality.

2.3. Constitutional Right of speech and Expression

Article 39(2) (a) of Bangladesh Constitution says that all citizens have the right to freedom of speech and expression. Freedom of Speech and expression means the right to express one's own convictions and opinions freely writing, printing, pictures or any other mode. Under Article 39(1), the constitution of Bangladesh Recognizes the freedom of thought and conscience, and of State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense” speech. Recognizing it as a constitutional right, the Article 39(2) says, “

The right is subject to any reasonable restrictions imposed by law in the interests of the security of the state

Though the constitution offers for freedom of expression subject to “reasonable and sensible restrictions,” national safety legislation as well as treason and criminal libel laws can force the press. The punishment for treason ranges from three years to life in prison. The 15th amendment to the constitution consists of language that associates criticism of the constitution with treason.

In the constitution Article 39(2) (b) says, it thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression implies also publication and thus the freedom of the press is included in this category. A free broadcast of ideas is the essential objective and this may be done on the platform or through the press. This broadcast of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation, the publication would be of little value.

The freedom of speech and expression includes liberty to broadcast not one's views only. It also includes the right to broadcast or publish the views of other people. Otherwise, this freedom would not comprise the freedom of the press.

3bdlaws.minlaw. (2018, 11 22). Retrieved from bdlaws.minlaw.gov.bd:
http://bdlaws.minlaw.gov.bd/pdf_part.php?id=3674 Ingelhart, L. E. (1987). Press Freedoms: A Descriptive Calendar of Concepts, Interpretations, Events, and Court Actions, from 4000 B.C. to the Present. London: Greenwood Publishing Group.

2.4. Freedom of expression has four broad special purposes to serve:

- a) It helps an individual to attain self-fulfillment.
- b) It assists in the discovery of truth.
- c) It strengthens the capacity of an individual in participating in decision-making.
- d) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
- e) All members of society would be able to form their own beliefs and communicate them freely to others

In sum, the fundamental attitude intricate here is the people's right to know. Freedom of speech and expression should, therefore, obtain generous care from all those who believe in the contribution of people in the government.

Freedom of expression is a vital pointer of a democratic society and development. If freedom of expression is, overcome in a country or society, other democratic rights and freedoms will inevitably be ensured. Because, by exercising the freedom, people can contribute in policymaking through free access to information and ideas. To recognize the presence of freedom of expression and right to information, we need to understand the local political background, history, and principles. Bangladesh is politically a highly differentiated and divided country. The assurances of the rights do not depend only on the related laws, but social, political and cultural processes. Despite the presence of all difficulties, it can be argued that there is a certain level of freedom of expression in Bangladesh than any other developing countries.

5 lawyersnjurists. (2018, 11 29). Retrieved from www.lawyersnjurists.com:
<http://www.lawyersnjurists.com/article/freedom-speech-expression-analyze-illustrate>

Chapter 3

Related Laws Regarding Freedom of Speech and its Contradiction in Bangladesh:

3.1. Constitutional proceeding guaranteed us freedom of speech

Chapter 2 has already discussed how constitutional proceeding guaranteed us freedom of speech but in practice, it has not yet been guaranteed. It has a civil contradiction, criminal contradiction, and precedential contradiction. Therefore, this chapter will find whether the contradictions are how that can be resolved.

1. Civil laws that contradict constitutional freedom of speech. in this part of this chapter I want to discuss about civil rights (human rights of the country) our constitution also guaranteed human rights, but practice is different. If we look at the universal human rights then we can have a clear view of how our laws are averting us to apply our civil rights. According to the universal human rights declaration, equality before the law has to ensure by every nation. Regarding the matter, Bangladesh was also recognized it by their mother ruling law but in reality, it is different. So, what is the reality, are Bangladeshis equal to apply their rights? The answer is yes! However, this yes contains hiding big No! Right Bangladeshis are not equal to apply their human rights. They cannot talk against powerful. In this context powerful means, political power, masculine power, ruling power, and economic power and here is the main problem and this problem creates section 57 of ICT because powerful are benefiting by this law. However, section 57 has abolished but more sections that are outrageous has prevailed by digital security act 2018. By this discussion, it is clear that weak are powerless to express their expression. I learned from our previous chapter that media is the main component to express speech and expression. Information and Communication Technology Act and Digital Security Act this kind of laws uprooting our tongue where this act should be protecting our rights.

Now, next question is, what is about our free trial and remedy, can I freely be speaking up in our trial? The answer is silent no because powerful and administrative power is cutting our speaking rights. Corruption is another component of this disability and it is known to us our judiciary is virtually independent. So, whether all component is controlled by invisible power terror is a clear sign of missing rule of law. It is a matter of regret but it is true there is no strong rule of law. After 48 years of our independent none of the ruling party ensured it. No organs of the state cannot speak independently because they are bound to obey other powerful organs. I am technically restricted by constructive criticism,

information, opinion. Though the powerful components are tried to believe us our state is civilized by recognizing human rights law but in the thought, I have fallen pin to an uncivilized nation. It does not matter of fear but though, every organ must have to be independent to rely on their business and supervision has to be conclusive. If I want of introducing our nation is actual democratic republic then our nation has to ensure, our speaking rights, media must be freed to publishing, the judiciary has to have full independence and our legislative can't make laws against basic fundamental human rights. Hopefully, the recommended chapter will give a clear solution.

2. Criminal laws that contradict with constitutional freedom of speech, in our county most of the criminal laws that are not well reformed. Our penal code was written in 1860 now it's 2018. That means 158 years gone but still, I am living in 1860 on criminal law matters. Our circumstances have changed, the nature of the crime is changed, the world is changing but I not updating our laws. On the other hand, I am making new laws without abolishing the previous one and that makes loopholes. For example, I can see section 499-502 of the penal code. These sections are snatching our freedom of speech. Instead of changing this section government make section 57 of ICT and now it turns into digital security act. These sections are like a knife and zipper. This section zapped our mouth and cutting off our fingers to express our freedom of speech. It will be easier to understand if I analyze the previous statistics.

3.2. Findings:

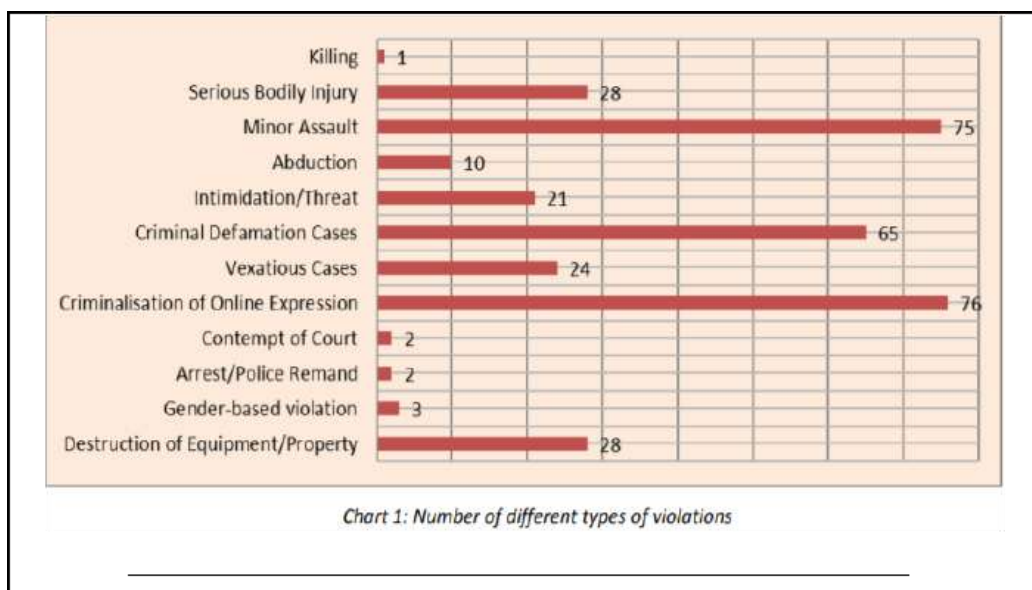
Now this research will disclose some real victim, those who suffered in their real life. Harassment by Mikey legal proceeding: Most of the cases were filed because these people were disclosing some true information in the social media or printing media. Section 57 is the main cause of this harassment. Though Government are demanding that, section 57 of the ICT act is fully abolished but the true news is another notorious law is revived. mostly political leader does not want to change this act because those sections can only keep them safe

46 DLR 596p. 599

Benett & Coleman Vs AIR 1973 SC 106, 643

Maneka Gandhi Vs India, AIR 1978 SC 597, 640

Secy., Ministry of I & B Vs Cricket Assoc of Bengal, AIR 1995 SC 1236



21 PICTURE 1: Annual Report 2017 Freedom of Expression in Bangladesh

3.2.1. Victimize from Online Expression

This research already discussed that, media and its people are the main victim of this harassment. But sad news is media man is not only sufferer, the general mass is badly suffering. Media people are being in advantageous position because media man can be highlighted if they are being victimized but general people do not have this advantage. Sometime they are losing their life on the jail room. Now this research will disclose some real-life sufferer.

1. Imran H. Sarkar the organizing leader of Gonojagoron Mancho. He is also the victim of this harassment. He made a slogan against the government discussion. Somehow this slogan brake out on the online media. Now he cannot stay in his country because his life is under risk.
2. Toufiqul Islam Babor a young writer was arrested because he disclosed some important information of corruption of a ruling party.
3. Arman Shekhor a member of student union of Norail got arrested because he has drowned a cartoon of a leading political leader.

6 Freedom of Expression in Bangladesh: Annual Report 2017 . 7.Tipu, M. I. (2017, November 1). Imran H Sarker gets bail in defamation case. Dhakatribune. Retrieved November 18, 2018, from <https://www.dhakatribune.com/bangladesh/court/2017/11/01/imran-h-sarker-gets-bail-defamation-case>

4.Irad Ahmed Siddiqe a young leader was arrested because he wrote a status against a political leader and also make a bigotry remark of this leader

3.2.2. False Defamation Case:

Another Harassment tool is false defamation case. Sometime people are also use it to stop his opponent. Some of the real story is giving bellow.

1. A member of the parliament Patuakhali district alleged a case against Nayeem Nizam, who wrote against his corruption.
2. Mahmudur Rahman, the editor of daily AMAR DESH was detained in his office for disclosing some information
3. Mahmudur Rahman and Iqbal Subhan Chowdhury were arrested because they disclose information against Drug godfather

3.2.3. Inconvenient cases:

Inconvenient cases also known as vexatious case. In a simple meaning it can be described as case that has no merit. It is a form of harassment. Generally, journalist are the main sufferers. Because journalist has the information of all crime. Criminals have fear if journalists disclose that then everyone will know their real face. That's case they're always trying to shut them off. Interestingly criminals are lucky to have section like 57 of ICT act where it made committing crime easy. Though the government is arguing that section 57 of ICT act is totally abolished. Where government enacted new laws like the DSC act. Effectiveness of the law enacted by the government is pretty much more harmful than the previous. If the previous statistic is reviewed it can be easily assumed that why is harmful for the journalism and the general public. In 2016, 25 people were arrested under section 57 of ICT act and in the next year the number of cases were 24. Where the abolishment of section 57 of ICT act is clearly visible in the digital security act 2016 is still in process of misuse. Here I want to introduce some of the real victims of the act above:

1. Monir Hossain, a senior reporter of the Daily Jugantar is a sufferer. He has a reported a news about the corruption of a local government leader.
2. In Moulobi Bazar district a staff reported of NTV also was physically assaulted. A local businessman alleged that the reporter and his partner were threatening him with murder and extortion. If the annual report of freedom of expression that it will be found that Partho Sharoti das (Jamuna Television), Prashanto Kumar Das (Saptahik BanglarAlo) they had investigative report on illegal activities concerning claim of compensation emerging from land acquisition.

These journalists were harassed by the concerning parties because of the report of illegal activities they had in their disposal. Which the government is staying blind at the activities of the alleged assaulters.

3.2.4. Contempt of Court Proceedings:

In 2017, It was recorded that two contempt of court proceedings, against Enamul Haque Choudhury and Partho Sarothi Das (Editor in Charge of the Daily Sun, Dhaka, respectively). They were charged with contempt of court for their meddling with court proceeding. This kind of meddling are seen as overuse and abuse of freedom of speech.

3.2.5. Illegal detention:

In the survey of the annual report in 2017 shows that two cases of detention against Tushar Tohin (Staff Correspondent, Bangla News, Cox's Bazar) was detained in an illegal case and Md. Sohrab Hossain (Editor and Publisher, Daily Mukto Shangbad, Gazipur) was detained, due to his reporting on alleged irregularities by local land administration. Because of this kind of detention which is a clear indication of deprivation of freedom of speech.

3.2.6. Hate Speech and Violation Against Women in the Media and Internet (Electronic Media Such as Facebook News Portal and Workplace)

Total 13% women are journalists in the print and electronic media. In 335 violations 2017, almost 4% were executed against women, including physical assault, legal harassment, and gender-based workplace harassment. Certified claims also indicate that 73% of women online have confronted some form of violence there. Aggression toward women journalists continues. Verified and most controversial 13 violations in 2017 are Jui Chakma, Chondona Sharma, Tulona Al Haroon, Shusmita Golam who were charged under Section 57 of the ICT Act, Tasmia Hossain, Tarin Hossain, Khushi Kabir with criminal defamation cases, Nusrat Jahan, Shamima Sultana, and Mahmuda Doli were physically assaulted, and Alison Joyce, Kumu, and Farhana Neosho suffered gender-based violations.

1. Jui Chakma the News Editor of CHT Media24.com, on 17 January 2017 was caught up in a case under section 57 of the ICT Act on accusation of publishing news on the discernment against media workers in the CHT area. Jui was detained and put in custody for nine days along with her 28-month-old daughter.
2. Tulona Al Harun (Media Worker, Dhaka) on 23 June 2017, Tulona was detained by police on charges under section 57 of ICT Act. The case was filed by one of her

colleagues who alleged that she was humiliated by Tulona via Facebook posts in which she apparently made offensive remarks.

3. Susmita Golam (Dhaka) on 20 July 2017, a case was filed against Susmita under Section 57 of the ICT Act on the accusation of defaming M. Hafizur Rahman, a customs Commissioner, by publishing an edited photograph online.
4. Tasmima Hossain and Tarin Hossain are Editor in Charge and Publisher, Daily Ittefaq, Rajshahi. on 15 March 2017, a case of criminal defamation was initiated against the journalists on accusations of publishing false news on a sensitive issue. It was reported that the Rajshahi University Administration had spent a large amount of money on obtaining without any tender, representing corruption.
5. Khushi Kabir (human rights defender, Dhaka) on 4 June 2017, a case of criminal defamation was launched against Khushi Kabir, claiming that she had made defamatory statements about Prime Minister Sheikh Hasina while she participated in a protest against the elimination of a sculpture from the location of the Supreme Court of Bangladesh.
6. Farhana Nisho a TV reporter in Ekushey Television, on 17 May 2017, she was sacked when her 'selfie' went viral online. The photo was taken with several individuals who were the accused in a sensationalized rape case in Dhaka though it was taken previously to their committing the crimes. However, the authority of the Ekushey Television purportedly terminated the journalist without notice.
7. Nusrat Jahan (reporter, Daily Sarejomin Barta, Chittagong) on 10 April 2017, the journalist was physically attacked by some local people while gathering information for investigative reporting on unlawful land grabbing in the Chandgaon of Bodderhat area of Chittagong

8 (Freedom of Expression in Bangladesh, 2017)
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8. Shamima Sultana a reporter in Channel-24, on 29 November 2017 the journalist was attacked by the activist of the student wing of the ruling party on the Dhaka University campus while meeting a colleague.

9. Mahmuda Doli a journalist, On 5 December 2017, the journalist was assaulted by police while casing a protest by the opposition party leaders and activists. She was pulled from the protest scene into the police custodial van, but released after other journalists protested her arrest.

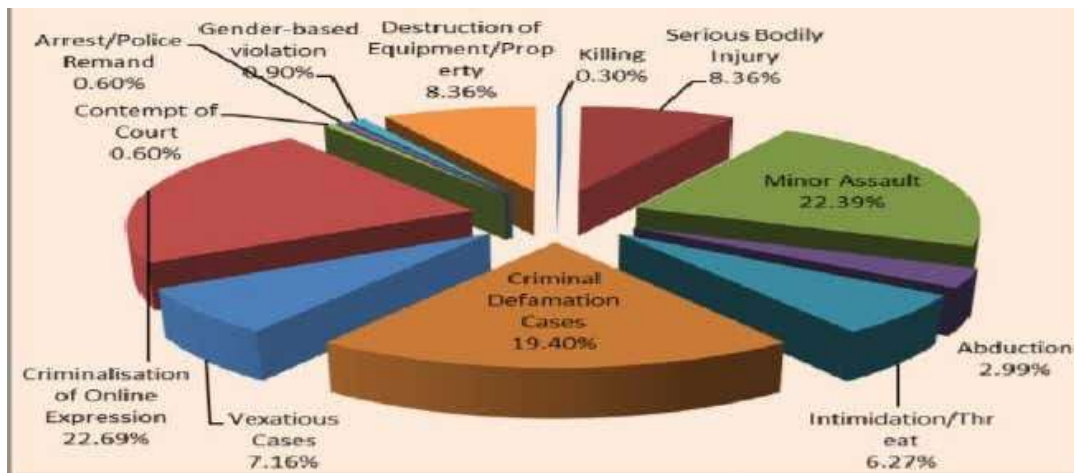


Chart 2: percentage of violations by category

. PICTURE 2: Annual Report 2017 Freedom of Expression in Bangladesh.

Year by year violations indicates an overall deterioration on the safety and security situation of journalist, media workers and those who exercise their freedom of expression in Bangladesh is worsening. As 2018 the year of election where There are significant concerns for an enabling environment for freedom in the lead up to the elections and beyond. 2017 was also dominated by concerns on the use of the Section 57 of the ICT Act, criminal defamation laws, the proposed Digital Security Act, proposals for online news media policy, and the proposed National Broadcasting Bill 2016. 2017 saw 169 cases of criminalization of expression, with criminal defamation prosecutions and use of restrictive laws relating to online expression such as the notorious Section 57 of the ICT Act 2006. So, these kinds of laws are concerning the freedom of speech workers and general public of Bangladesh.

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Chapter 4

Misuse of Freedom of Speech and Expression by Media

4.1. The fundamental characters of the human being

One of the fundamental characters of the human being is the desire of being free. The sense of freedom brands them diverse from other animals. The idea, implications, imports and uses of the words and sayings such as "freedom of expression", "freedom of speech", "right to communication", "communication right", "right to information" and "access to information" are intertwined and synonymous. This research offers an understanding of the freedom of expression in Bangladesh from the legal perspective. It tries to coherent the presence and reality of the phenomenon in the country by investigating secondary data and information. Relevant laws, acts, rules, regulations, and declarations relating to freedom of expression, freedom of the press, human rights were analysed. A perilous study of the Universal Declaration of Human Rights (UDHR) also helped to make sense of the phenomenon.

4.2. Misuse of Freedom of speech and expression by media

Media is known to be the most influential means of communication. Mass media are media, which can be used to communicate and interrelate with a large number of audiences. Be it the pictographic communications of the early ages, or the high-technology media that are existing today, one thing that we all agree upon is that mass media are a devoted part of our lives. Malcolm X, an African American leader and prominent figure in the nation of Islam quoted, "The media's the most powerful entity on earth. They have the authority to make the innocent guilty and to make the guilty innocent, and that's power. As they control the thoughts of the common people." The mass media, containing news, movies, magazines, music, or other entertainment basis has become a part of daily life for many people. Mass media and its power are capable of manipulating people's mind and behaviour.

Contents in the media presented to people make it challenging them to differentiate between what is real and what is not, because of encouraging confusion and blind imitation. The mass media plays an important role in the rise in violence, sexual activity, and risky actions among teenagers. Though traditional television watching and newspaper reading are no longer as popular as before, people spend more time in front of computers listening to music and radios, reading news and evidence, interacting with other people in the social network. Mass Media can be very valuable in our daily lives. For example, the internet is a very resourceful tool that we use every day. When used appropriately, it can tremendously aid in areas such as, work, school, communication, and googling specific topics or skyping family and friends. Music informative films and news also benefit our knowledge and help us become conscious of

current states that are happening around the world. Media, however, can also be used in destructive ways that consequence in crucial significances.

Many television shows and movies, portrayed in our current society, encourage many harmful habits such as smoking, drug abuse, unprotected sex, and alcohol. Even though it may seem harmless while you are listening to or watching immoral movies, the reality is that we are becoming unfeeling to sin. When used improperly, the media can influence our minds and actions in more ways that are destructive. For example, when we do not defend ourselves from what we watch or listen to then we fall into desire and sin. We need to protect our hearts, minds, and opinions, from what the world is presenting through its media. What we watch and spend our time doing is what forms us as a person.

4.3. Misuse of Mass Media:

There are many ways to manipulate and misuse the mass media and media also uses their resources to create a manipulative situation. Politicians, brands and other news that get published in the mass media they sometimes manipulate the human mind. The media and other sources use psychological aspects to control the human mind. The most important way to control a mind is fear, sensation, language are the main factors. As a human being way take fear as the most important part of our lives. From the dawn of time, fear hunted human and still, it's manipulating the mind of young. As an example: When a person starts to climb a mountain, people around him tell him about the consequences if he falls then he will break his body, if the climate is too cold, he will freeze to death. This kind of response will create fear for the person. In 2018, the use of freedom of speech was used by the students of Bangladesh by the death of 2 students by reckless driving. They demanded the transportation act be amended and held the country stand still. But in day three of the protest minister of home affairs stated that "go home or if something unwanted happens then the government will not take any responsibility." Which triggered fear among the parents and halted the protest and more over the 4th-day violence and attack on the students permanently stopped the protest. In humans, fear plays a vital role where anyone can force them to submit sensation is one more important part of life and a human mind.

To create a sensation, one just has to use some short title and news that the audience wants. Moreover, brands do this all the time. Using sub-minimal massages and sensational ads which control the human minds. These techniques are used for generations. Seductive women and muscular man are shown in many brands that they are using their products. This kind of advertisement is kind of misleading the consumer and human mind creating a fake sensation. Politicians' also do this all the time. When an emotional news appears or any politicians that are

sick or admitted to the hospital are often seen visited by the ruling party or opposition part despite, they attacked the person before or sometimes ago by words or physically. This news portrays a person in a saint aura that the human mind thinks that he/she are best suited for the job.

4.3.1. Creating a Diversion

Media is considered part of our life. But sometimes it can hamper our lives of anyone. It is said that the media should tell the truth and only the truth to the viewers. But sometimes media can foul play by diverting the viewers. This kind of behaviour happens a lot by media. As an example, the Gonojagoron mancho was the most influential protest regarding the amendment of liberation war tribunal act. But it was quickly disassembled by the death of many active mancho leaders who were mysteriously found dead and killed. Also, the creation of Hefajote Islami which was a religious party formed after the creation of Gonojagoron mancho protest against the protest of many secular activists of Gonojagoron mancho. After that on May 5th of 2013, police and protesters clashed in Shapla chatter and both protests lost its phase. Where media did not cover the full story and handed the people some fragmented news. Moreover, in the international news trump is the face of news in the United States of America. He is the everyday news faces many controversies. After his international travel ban on some countries and DACA program was one of the diverting news that created headlines. DACA is a program that unites parents who have given birth to their child in the US can stay with the child in the US. But Trump failed international travel ban that was halted by the federal court of USA. Suspension of DACA program was a diversion for the Trump supporters.

4.3.2. Exaggerating a Problem

Exaggeration is always a way to tell a good story. People like to exaggerate any story for the attention. Likewise, media is the best seller of exaggerating news. Trump 2016 election was one of them. He made promises that were used simple words that captured a lot of voters' heart. One of the top promises was building a wall in the southern border of Mexico and USA. Over his campaign, he exaggerated this promise. 1st he said the wall will be 20 feet he said 30 feet, 40 feet lastly 65 feet that were exaggerating his promise where News channel Fox network exaggerated his news over and over.

In Bangladesh, Padma Multipurpose Bridge, Metro Rail in Dhaka and many of the promises under construction are the campaign promise for 2019 election for the ruling party Awami league. But the media and the party are trying their best to win the vote. But their achievement of the last ruling year is being exaggerated in the media.

4.3.3. Deceptive Headlines

Among all media sources, the headline is important and not only media headline is important in every aspect of life. Sometimes media gives deceptive headline. When a person reads the news or watches them in online or televising, they first read the headlines. But if the headline is not interesting enough then the person is more likely to ignore the news. But if a news of a headline is exaggerated and twisted then the person will read or watch the program. That happened in most of the cases over the world which is known to the world as yellow journalism. This kind of journalism by media can some time harm a country or sometimes give a person disturbing view over anyone.

4.3.4. Whataboutism

This is a when a person to divert any questions asked to him and directed to any previous controversial question or moments. This is popular in the politician where they divert the media by asking a question that is more controversial than the question that he/she was asked. Moreover, favoured media networks do this kind of actions all the time. Like Fox news of USA defend trump by this theory where any controversial topic arises against Trump, they convert the conversation by saying random topics like Hilary Clinton's emails, or Obama's birth certificate etc. This theory has gained popularity in favoured media news networks.

4.3.5. Sensational Promotions and advertisement

Popular brand spent more money on advertisement than any other businesses. But not all advertisement is thought to be true and factual. Moreover, the brand advertised their brands as if you are using this or that brand then you will fall behind others or this/ that will make your life easier. But on the contrary that it how the human mind works. The top brand like Coca-Cola, Pepsi has over billions of customers around the world but they portray every advertisement as such as the brand has improved your social life or bring you closer to your closed ones. But this works a lot of people are bound by emotions and this kind of advertisement works very well in the industry. Nowadays' advertisement in the man's daily use products are growing where a man is shown with a beautiful lady or girl that if the product is used then there will be guaranteed love and happiness. But which is a false way to advertise the 31 product. But the people are more likely to buy a product that was portrayed in the media in a sensational way than in a simplistic way.

4.3.6. Statistics and bandwagon appeal

It's a way to portray the brand as a popular brand and it gives a person a deceptive statistic. Researchers found Most of the statistics shown in the advertisement in media are 83% false. The Bandwagon Appeal attempts to persuade people by making them feel that a product or idea is popular and that everyone else is doing it. The idea of the Bandwagon Appeal is to make people feel like they're missing out or falling behind if they don't join the crowd and be a part of the trend. The Statistics Appeal persuades people to purchase a product or buy into an idea or service based on numbers, statistics, and scientific evidence. Research has shown that people generally trust numbers as such, many advertisers use numbers and statistics to give perceived weight to their products' value or qualities. The Statistics Appeal is applied by using numerical data that enhances the perception of your product. While images are good for attention and aesthetics, the Statistics Appeal relies less on the visuals and more on the numbers themselves. Pictures can be used as ancillary devices that supplement what the statistics say.

Media plays a vital role to form a society and managing a good governance over the government but if there is a lack of monitoring then media can have devastating effects. In Bangladesh, October 15, 2018, approved a draft for the broadcasting act that will strictly prohibit if anyone broadcasts false or confusing information in a discussion Programmed or anything against the spirit and principles of the Liberation War or against the state policy. In addition, many laws regarding social media that will force anyone that uses any misleading news will be punished. The proposed digital draft is still in the cabinet for approval. Media's efforts on misleading anyone is worthless until a person take the news as justifies it. However, the person who is watching does not follow the full news but the title is sure to be misled. More strict regulations must be made to prevent such yellow journalism of such.

Chapter 5

Major Findings of This Research

5.1. Major Findings

The major findings of this research are given below:

1. Media is losing its freedom of expression as the new laws are targeting the journalist's freedom to report in against the political opponents' suppression.
2. Freedom of expression of Bangladeshi youth are also being suppressed by the digital security act 2016.
3. Bangladesh has 28 million Facebook users. Since social media emerged as a key tool to express dissent and organize protests, the authorities have monitored various platforms and internet-based communication. This has already led to arrests for using social media to criticize the government. Unlawful arrest is demotivating the public to speech freely and use their freedom to express their thoughts.
4. Online freedom of speech is under attack by the section 57 of the ICT act.
5. People are getting sensitive to others point of views and using ICT act to protect themselves.
6. Any intrusion with the rights to privacy and free expression should be based on clear law, for a legitimate reason, and be balanced.
7. Peaceful criticism of the government and state authorities should always be permitted.
8. Bangladesh is using claims about public security to silence opponents and critics," said Brad Adams, Asia director. "The government's surveillance practices are violating the rights to privacy and freedom of expression ahead of the elections.

5.2. Recommendation

5.2.1. Amend the legal framework which restricts freedom of expression online and offline

1. Decriminalize defamation by repealing Sections 499- 502 of the Bangladesh Penal Code 1860, ensuring that individuals' reputation rights can be vindicated through the civil law only
2. Fully protect the right to freedom of expression online, ensuring that any Digital Security Act repeals fully, and does not replicate, content-based offences in Section 57 of the ICT Act 2006 (as amended)

14 Chowdhury, E. (2018). HRW worried about new media laws in Bangladesh. daily-sun. [online] Available at:<https://www.daily-sun.com/post/344299/2018/10/19/HRW-worried-about-new-media-laws-in-Bangladesh> [Accessed 22 Dec. 2018].

3. Cease harassment of individuals under the ICT Act 2006 (as amended in 2013) for exercising their rights to freedom of expression, as well as quashing existing convictions for such cases, and dropping outstanding investigations and charges.

5.2.2. Protect media freedom

Finalize the draft National Broadcasting Act 2016 and ensure its compliance with international human rights law and freedom of expression standards, ensuring the independence of the Broadcasting Commission, with powers to deliver sanctions limited to proportionate administrative sanctions.

5.2.3. Ensure safety of journalists, bloggers, and human rights defenders, and tackle impunity.

1. Ensure that public officials at all levels publicly condemn violations against journalists, bloggers and HRDs, and commit to ensure justice for those targeted, especially where State actors are implicated.
2. Consider the appointment of dedicated personnel with special training for the investigation of cases of violations against freedom of expression.
3. Enact legislation to recognize an aggravated category of “crimes against freedom of expression,” where persons have been targeted for the exercise of this right.
4. Provide training to law enforcement authorities on the safety of journalists, bloggers and HRDs, including how to ensure the protection of those at risk.
5. Revise guidance to investigating law enforcement authorities, in order to ensure that perpetrators of crimes against journalists and communicators are swiftly identified, and crucial evidence collected.
6. Ensure the availability of concrete protection measures for journalists, bloggers and HRDs identified as at risk of violence, tailored to the individual’s specific needs.
7. Provide training on crimes against freedom of expression, including gender-specific crimes, to relevant law enforcement officials, including the police, prosecutors and judiciary.
8. Collect and regularly publish data on the status of investigations and/or prosecutions in cases relating to crimes against journalists and bloggers, and share these with relevant international organization’s and mechanisms.
9. The National Human Rights Commission in Bangladesh (NHRCB) should establish a dedicated Sub-Committee to address violations of freedom of expression and information and ensure that

violations of right to freedom of expression is prioritized as a major human rights concerns including on the safety of journalists and freedom of expression online.

10. Media houses should adopt equality action policies, anti-harassment guidelines to address discrimination and harassment of women, including in terms of pay and promotion. and

11. Media houses should make a clear commitment to support their staff when they are the subject of violations and/or legal harassment, including by supporting them to take legal action against the perpetrators.

5.2.4. Some recommendations for the media and journalist

- a. Accuracy.
- b. fairness in the reporting of views of both sides.
- c. underlining and revealing the sources of the information used,
- d. gathering information fairly and using the same without having induced it through the use of money
- e. media representatives not taking gifts or money for their services
- f. be accountable to society
- g. be neutral, impartial and free from bias in the use of freedom of expression
- h. respect social norms and values
1. mention with regard to opinion polls the identity of the sponsor of the survey, sample size, and also report the proper date and reasons behind the survey
- j. not having an intentional discriminatory attitude in reporting a situation
- k. not use misleading images or video clips.

In the recent past we have experienced controversy and debate as to whether citizens, and the media in particular, are being deprived of their right to express themselves freely on social media. References are also being drawn to the manner in which law enforcement authorities are pursuing their efforts towards maintaining public order by taking to task those who are breaching Section 57 of the ICT Act. Legal experts have drawn attention to articles 39 (1) and (2) of our constitution, which guarantee freedom of thought and conscience and also freedom 36 of the press.

CHAPTER 6

Restrictions Made Under the Constitution

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

6.2 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."⁷

Jeffery, A. (1986). Free Speech and Press: An Absolute Right? Human Rights Quarterly, (1986) 8(2) p 218 Universal Declaration of Human Right, Article 1 <https://www.e-ir.info/2011/05/22/is-the-fact-that-man-lives-in-an-international> system defined by anarchy- 21 ISTOR (accessed 28/08/2022 the cause-of-wa

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,

The State security is in danger due to the crimes of violations overthrow the government 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 tranquillity, 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. In times of external invasion, the State has the power to prohibit or punish utterances which obstruct war measures." 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. 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.

6.3. 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" or to lower the prestige or authority of the court even in the garb of criticizing judgments of the court." 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.

Islam Mahmud, Constitutional Law of Bangladesh, (3rd edn Mullick Brothers 2012) 340 Santokh Singh v. Delhi Administration, AIR 1973 SC 1091)
Bihar v. Sailabala AIR 1952 SC 329
NO Schaefer V US, (1920) 251 US 466
Nambodripad v. Nambair, AIR 1970 SC 2015 "Daphtary v. Gupta, AIR SC1132

6.4. Defamation:

Reputation is a valuable asset or property of a man. Nobody should be allowed to injure the reputation of a man in the name of freedom of speech and expression. The freedom is available so long as it is not malicious or libelous and if the speech or expression is untrue and reckless, the speaker or the author does not get protection of the constitutional right. The American Supreme Court held that libelous utterances are outside the area of constitutionally protected speech,

6.5 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 36 authorities may deem defamatory or subversive."

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 Tk5 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.

Gertz v. Robert Welch, Inc, (1974) 418 US 323 New York Times Co. v. Sullivan, (1964) 376 US 448
Shafquat Rabbee, "Bangladesh: the latest assault on free speech" (The Interpreter 2 October, 2018)

6.6 Conclusion of the Research

In the recent past we have experienced controversy and debate as to whether citizens, and the media in particular, are being deprived of their right to express themselves freely on social media. References are also being drawn to the manner in which law enforcement authorities are pursuing their efforts towards maintaining public order by taking to task those who are breaching Section 57 of the ICT Act. Legal experts have drawn attention to articles 39 (1) and (2) of our constitution, which guarantee freedom of thought and conscience and also freedom 36 of the press. However, one has not come across any comment about the need for observing the required ethical standards which are expected and associated universally with the dictum of freedom of expression. I am stressing on the need to observe ethical and supervisory standards to reinforce our rights more meaningfully.

In this regard I shall referred to certain traits that need to be observed in the context of freedom of expression within the parameter of any functioning media unit which I have discussed in the recommendation. In this research I discussed about the freedom of expression and speech and how people are being suppressed by the government. I also discussed about the Misuse of freedom of speech by media and others for their own gain. In Bangladesh, it is observed over the last four years a growing trend in the use of social media as an instrument for social or political purposes. With the rise of functional and digital literacy many users have been misusing this form of communication. Right to freedom of information and the right to expression is being directed at others and being distorted. We have seen evidence of misapplication of technology during the student protests carried out at the end of July and in the first week of August. We have seen attempts by vested quarters to transform and politicize an innocent and justified protest by students. Senior politicians from opposition parties, instead of sharing their concern, tried to use this protest for their own political ends. This included urging their political supporters to infiltrate the different groups of student demonstrators in different parts of the country in general and Dhaka in particular.

This was done to create deterioration in law and order through violence. Fortunately, improved training in cyber security within our counter-terrorism units enabled the matter to be dealt with carefully and pre-emptively. On August 4, an unidentified person approached student demonstrators in Jigatola and informed them that four students had been killed, one student's eye had been gouged out, and four female students were being raped inside. The Awami League office located in Dhanmondi. Without checking the veracity of this rumour, actress Nawshaba used Facebook to put out a video message about events which had not taken place. All the rum our-mongering incited unnecessary violence. Freedom of expression is a pre-requisite for accountability. It is a cornerstone for building good democratic governance. We have to also remember that while we have the right to free expression, it should not be misused to foment anger and violence.

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