

Freedom of Thought and Social Networking in Bangladesh: Case Studies on Facebook

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Abstract

This study is an attempt to take a look at the role of social network site Facebook in exercising freedom of thought in the digital era of Bangladesh. Freedom of thought, conscious and expressions are one of the important fundamental rights as guaranteed by the Constitution of the Peoples Republic of Bangladesh. And study revealed that most of the Bangladeshi people, especially youths are keen to use face book as a tool to share his or her words, thoughts to the others. This face booking has a tremendous role in maintaining connectivity with the others and at the same many times face book becomes a tool for creating and humor, false news, unsocial activities and even anti-state activities. This article offers an understanding of the freedom of thought and expression in Bangladesh from a legal rights perspective. It tries to articulate the presence and reality of the phenomenon in the country by analyzing secondary data, statutory provisions, international instruments relating to freedom of thought and freedom of expression, freedom of the press, and fundamental human rights which were analyzed. This qualitative research work analyzes positive as well as the negative role of face booking in context to the Bangladesh.

Key Words: Freedom of thoughts, expression, social networking, face booking, challenges and way outs.

Introduction

Face book is a tool of great innovation; it offers an opportunity to interact with an extraordinarily expansive universe of new people. For the entrepreneurially minded, it might be an introduction into business as you think of how to “market” yourself. Social networking sites enhances communication widely as they allow people to stay connected all together. In this digital world, it is thought by all that modern connectivity, communication and free thoughts and expression of human feeling are quite impossible without this kind of tool. The idea of connotations of the studies and uses of the words and phrases such as “freedom of

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thought”, “freedom of expression”, “freedom of speech”, “right to communication”, “communication right”, “right to information” and “access to information” are intertwined and synonymous. In the article, the phrase “freedom of thought and freedom of expression” will mean all the words and phrases mentioned above.

Background of the study

Article 18 of the Universal Declaration of Human Rights of 1948 provides that everyone has the right to freedom of thought, conscience and religion the same provision is found in Article 18 of the International Covenant on Civil and Political Rights of 1966, Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.

Today freedom of speech, or the freedom of expression, is recognized in international and regional human rights law. The right is enshrined in Article 19 of the International Covenant on Civil and Political Rights, (ICCPR) Article 10 of the European Convention on Human Rights, (ECHR) Article 13 of the American Convention on Human Rights (ACHR) and Article 9 of the African Charter on Human and Peoples’ Rights (ACHPR). Based on John Milton’s arguments, freedom of speech is understood as a multi-faceted right. International, regional and national standards also recognize that freedom of speech, as the freedom of expression, includes any medium, be it orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content but also the means of expression. Now let us discuss the nature of those bloggers who have recently been killed in Bangladesh. They said they were seculars; but what is the nature of 'secularism' to us? Secularists should not be against any individual who has religious faith. "Secularism" is a term which was invented by a British writer named Holyoake. From his point of view, secularism is a concept that will promote a social order separate from religion but, of course, it has to be without actively dismissing or criticizing religious belief. But what actually are our bloggers doing?

In the context of Bangladeshi bloggers, what we have found is that bloggers mostly use words of hatred against religions. They are randomly criticizing, insulting and also trying to justify that the religions are not correct. I am not sure from where the bloggers have got the right to insult others' religions. I think no civilized nation has adopted the law of 'right to insult' others. Of course, you may be a freethinker but you are not free to insult others' beliefs. As a secularist, you can access your right to 'freedom of expression' but that has to be with due respect of others' beliefs. You must not forget your duties and responsibilities relating to freedom of expression.

However, it will not be fair to justify the acts of those criminals who have killed the bloggers. Those brutal murderers were completely in the wrong and against the laws of Bangladesh. People should not forget that we have an active judiciary whose duty is to ensure justice. The government should carefully look into the matter and bring them to justice to protect the future bloggers. On the other hand, the government should re-examine the 'freedom of

expression' with regard to the right to religious matters. We may need some censorship to protect the bloggers as well as the religious believers.

Legislative stands of Freedom of Thought

In the Universal Declaration of Human Rights 4 (UDHR), which is legally binding on member states of the International Covenant on Civil and Political Rights, freedom of thought is listed under Article 18: The Human Rights Committee states that this, "distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected⁵ unconditionally." Similarly, Article 19 of the UDHR guarantees that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference¹. Article 20 (2) of the International Covenant on Civil and Political Rights (ICCPR) states that 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. This Article clearly says that people are not completely free to express their views on religious matters and a certain degree of international consensus that the right of freedom of religion must, in order to be meaningfully protected, entail a right to be free from insults and offence directed at one's religious practices, beliefs or teachings. Furthermore, if we see the Article 10 of the European Convention on Human Rights (ECHR) then we can clearly identify the duties and responsibilities that may be subject to restrictions prescribed by law for the protection of reputation or right of others. Furthermore, Article 17 of the ECHR talked about the prohibition of abuse of rights. It says that you cannot perform any act aimed at the destruction of any of the rights and freedoms, if you do so, you will be restricted. In Europe, 'freedom of expression' right is not that much wide and each state has enough 'margin of appreciation' to protect the national interest. In our country, we do not have such laws which can control any activities against any religion.

National legislative stands include the Constitution of the Peoples' Republic of Bangladesh and Information, technology and communication Act, 2006. The freedom of speech and expression and freedom of press have been guaranteed by Article 39(2)1 of the Constitution. Though freedom of press is implicit in the freedom of speech and expression but considering the importance of print media, freedom of press has been mentioned separately. But these freedoms are subject to any reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, in relation to contempt of court, defamation or incitement to an offense. All the citizens of Bangladesh can exercise their freedom of speech and expression by remaining within the

¹ <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan005781.pdf> Democracy, Governance and Development: Conceptual Framework accessed on 10/04/2017

constitutionally stated horizon. If anybody oversteps the boundary she/he will be considered to have violated the constitutional provision and will be subject to the sanction of law.²

Freedom of press, an offshoot of freedom of thought, conscience, and speech, has become instrumental in establishing a democratic state where fairness, transparency and free expression constitute skeleton of that policy. Every segment of the above right is very important as freedom of thought and conscience is essential for developing human personality, knowledge, and civilization. Freedom of speech and expression including freedom of press is the very foundation of democracy. Without ensuring free expression, criticism and open discussion democracy cannot function smoothly. But this freedom, like other rights, is not unfettered as it has been given to the citizens subject to a number of conditions including the right of the persons to remain unsoiled by the press reports. Freedom of press is important but right to reputation is also important, as it is the most dearly valued property and attribute of a citizen. So law has to accomplish the delicate task of maintaining a balance between two very important but conflicting rights. The recent amendment to the Information and Communication Technology Act 2006 is a good case to examine. Under Article 57 of the amended act, if any person deliberately publishes any material in an electronic form that causes to deteriorate law and order, prejudice the image of the state or person or causes to hurt religious belief the offender will be punished for a maximum of 14 years and a minimum of seven years' imprisonment. It also made the crime non-bail able. The amendment also empowered the police to arrest the offender without the authorization of the court.

The intent of the administration in amending the law can be questioned on several grounds. Firstly, it was decreed as an ordinance only days before the parliament was due to meet denying the august body to deliberate on the amendment that had a major bearing on the enjoyment of fundamental rights of the citizens. Secondly, little effort was made to engage the public on the issue before proceeding with the act. Thirdly, no explanation offered by the government as to why the punishments were being augmented without clarifying the vagueness that exists in the original provisions of the law. An elementary knowledge of law would entail that provisions of penal laws should be clear and unambiguous. Moreover, in a situation where the criminal justice system is plagued by inordinate delays instead of putting in place measures to expedite disposal of cases, increasing the length of punishment will only undermine justice. Finally, the government has failed to assign a reason for making offenses under Section 57 cognizable, giving the police the authority to arrest alleged offenders without the court's order. The decision to give the ill-equipped and ill-trained, and increasingly partisan police force, such extensive authority only bodes ill for the enjoyment of rights of the people. Observers have noted that the amendment had done away with the little degree of protection (non-cognizable and non-bail able) that the original law provided.

² <http://www.cdrb.org/journal/current/3/3.pdf> accessed on 09/04/2017

The amendment would make the accused stay in prison for the entire duration of the legal proceeding until he is proven innocent or guilty. The imprudent amendment has elicited an adverse response from informed sections of society.

Freedom of Thought

Freedom of thought (also called the freedom of conscience or ideas) is the freedom of an individual to hold or consider a fact, viewpoint, or thought independent of others' viewpoints. It is different from and not to be confused with the concept of freedom of expression.' Freedom of thought' is the derivative of and thus is closely linked to other liberties: freedom of religion, freedom of speech, and freedom of expression. It is a very important concept in the western world but nearly all democratic constitutions protect these freedoms. For instance, the U.S. Bill of Rights¹ contains the famous guarantee in the First Amendment² that laws may not be made that interfere with religion "or prohibiting the free exercise thereof". A US Supreme Court Justice (Benjamin Cardozo) reasoned in *Palko v. Connecticut*³ (1937) that: Such ideas are also a vital part of international human rights law.

Social Networking

If an employer looks at an employee's Facebook wall, is that an application of computational social science? Is Facebook itself a computational social science tool? Is ad-targeting based on browsing habits or personal information from other applications a form of computational social science? We see these examples as every day uses of social media-based computational social science. Social media systems contain particularly valuable information. This data derives its value from its detail, personal nature, and accuracy. The semi-public nature of the data means it is exposed to scrutiny within a user's network; this increases the likelihood of accuracy when compared to data from other sources. The social media data stores are owned and controlled by private companies. Applications such as Facebook, LinkedIn, and the Google suite of products, (including Google search, YouTube, Double-click and others), are driven by information sharing but monetized through internal analysis of the gathered data — a form of computational social science. The data is used by four classes of users: business clients, government, other users within the social media platform, and the platform provider itself.³

Freedom of Thought and Social networking in Bangladesh

Case Study-1:

A blogger was convicted in Dhaka for his writing. A group of people who backed him in the press now faces the same charge. Why is this happening in Bangladesh? A court in Bangladesh has initiated contempt of court charges against twenty-three people who had

³ <http://iacis.org/jcis/articles/55-2-1.pdf> in social networks;

signed a letter in support of British journalist and blogger David Bergman, who himself was convicted of contempt of court in December 2014.

Case Study -2:

Freedom of expression and freedom of religion are respectively articulated in article 39 and article 41 of the Constitution of Bangladesh. Both freedoms are credited as 'Fundamental Rights', delinquencies of which are enforceable at court provided that these rights will be subject to public policy, morality, public health, national security etc.

Now the debating questions pop up which are construed in diverse ways by both sides of the debate: first, have these fundamental rights of Avijit Roy been infringed? And second, is his murder plausible?

Let's pitch into the matter. Avijit Roy is a renowned writer and researcher and he is assumed as a coherent person. A writer has right to express his or her opinion but subjects to the reasonable restrictions in the constitution because as a citizen he/she is obligated to go after the dictums of the constitution. Being 'Atheist' is your right but offending other religion and religious personalities is not certainly 'Exercise of your Freedom of Expression'. Atheism means you are a 'disbeliever' and you should not hurt or attack other 'believers' of other religions. You should be placid about your stand and you should not poke into other's lives.

Movements of 'Atheist Bloggers' in Bangladesh seem to be quite apart from this basic notion of 'Atheism'. Instead, by this way or that way their actions are resulting in breeding anarchies in a society which is a clear menace to the national integrity.⁴

Though 'Freedom of Expression' is constitutionally catered to all citizens, before exercising it, they should ponder on their writings and preaching that whether those meet the 'reasonable restrictions' provided in the constitution or not. Regarding Avijit Roy and his writings, lots of words for and against him is being spoken. It is my request to all to check his writings whether those pass in the test of 'Constitutionality' or not. Regarding the second question, the murder of Avijit Roy is not in any way plausible. This is not the right of so-called Jihadist to take his life. This is God who has created and who will take this very 'Life'. If all sanctions (from the angle of jihadis) are meant to be on this earth, why God kept 'Judgment Day' then? Besides that, our 'Human' identity comes first, and then religion comes. Extremism and chaos in name of religion are entirely maddening. Nobody should be let on to do anything which goes against the essence of brotherhood and national integrity of a country.

Freedom of Expression should be utilized by citizens in bona fide intention without any clandestine drive and subject to reasonable restrictions. In our country, when people live on the street in winter or die out of hunger, or child beggars are seen in streets, well, are a debate on 'Religious belief' going to help them? Let's forget the factors segregating us and focus on

⁴ <http://www.thedailystar.net/frontpage/blogger-killed-once-again-123493> 8 Aug 2015

the factors connecting us, because our motherland should look forward to a sparkling future where basic needs of everybody will be sufficed.

Case Study -3:

Avijit Roy Case (Avijit Roy: 12 September 1972 – 26 February 2015) was a Bangladeshi-American online activist, writer, blogger known for pioneering Bengali *freethinkers'* weblog-forum, Mukto-Mona. Roy was a prominent advocate of free expression in Bangladesh, coordinating international protests against government censorship and imprisonment of bloggers. He founded *Mukto-Mona*, an Internet community for freethinkers, rationalists, skeptics, atheists, and humanists of mainly Bengali and other South Asian descent. He was hacked to death by machete-wielding assailants in Dhaka, Bangladesh, on 26 February 2015; Islamic militant organization Ansarullah Bangla Team claimed responsibility for the attack

Case Study-4:

Blogger Niloy's Murder

His wife Asha Moni pressed charges against four unidentified persons with the Khilgaon Police Station late on Friday night, Inspector Anwar Hossain Khan told bdnews24.com.

Niloy was hacked to death in his home in Gorhan on Friday afternoon by suspected Islamist militants. Al-Qaeda's Indian offshoot AQIS's 'Bangladesh branch' has purportedly claimed responsibility. Police say the murder was planned. The UN, US, and the Amnesty International have condemned the killing and called upon the authorities to bring the killers to justice. Niloy is the fourth blogger to have been killed this year. All of them were involved with the Ganajagaran Mancha, a popular movement demanding maximum penalty for war crimes convicts and outlawing of religion-based politics.

Niladri Chatterjee Niloy was killed in front of his wife at his flat in east Gorhan on Friday afternoon, Khilgaon Police Station OC Mustafizur Rahman said.

Home Minister Asaduzzaman Khan Kamal promised to catch the killers 'soon', even as police have failed to crack cases in regard to the killings of three other blog activists earlier this year. Niloy, 27, was an activist of the Ganajagaran Mancha, the popular movement demanding maximum penalty for war crimes convicts and outlawing of religion-based politics. Niloy, who wrote against communalism and fundamentalism, was known as Niloy Neel on social networking sites and he used to blog under this name on website 'Istishon' (Station).

He recently received numerous threats for his writings and his stand against radicalism said people close to him. Those threats made him take down all his photos from his Facebook page and use Kolkata as the current city. In one of his posts on Facebook three months ago, he said he knew he was a target of the extremists. Niloy wanted to file a general diary (GD) but police 'advised him to leave the country as early as possible' instead, read the May 15 post. Khilgaon police OC Rahman told bdnews24.com five assailants armed with machetes entered the flat in two groups after the Juma prayers.

Niloy, who worked in an NGO, had been living with his wife Asha Moni for the past two years in the flat, which was sublet since they got married in court without the consent of their families. OC Rahman said the attackers entered his home on the pretext that they wanted to rent a flat. “They fled right after slaughtering Niloy.” DMP’s Detective Branch Joint Commissioner Krishnapada Roy told reporters at the crime scene, “There were signs of haphazard hacking on Niloy’s throat and neck.” “The nature of the attack is very similar to those on other bloggers murdered earlier,” he said. Radical militants earlier killed four other pro-liberation bloggers and legendary writer Humayun Azad in the same style of attack. Upper parts of the body, particularly head and neck, were the main targets.

Niloy is the fourth blogger to have been murdered this year after Avijit Roy, Oyasiqur Rahman Babu and Ananta Bijoy Das. He was hacked to death in the same way as the others. The ‘Bangladesh branch’ of al-Qaeda in Indian Sub-continent (AQIS) has claimed responsibility for the latest murder. An e-mail sent out to the media said the AQIS carried out the killing and threatened more such attacks on secular blog activists. But police say they have no information about AQIS or al-Qaeda proper’s involvement. The UN, US and Amnesty International have condemned the killing and called upon the authorities to bring to justice the killers in a swift

Recommendations

1. Amend section 57 of the ICT Act so as ensure any contemplated restrictions on freedom of opinion and expression are consistent with international law and standards. Amend section 57 of the ICT Act to ensure prohibited expression is clearly defined. Amend the ICT Act to ensure that any restriction on freedom of expression and information, including any sanction provided for is necessary to a legitimate objective and proportionate to the harm caused by the expression. Take steps to ensure that provisions of the ICT Act are not used to violate the right to freedom of expression, including to limit the legitimate exercise of comment on public matters which might contain criticism of the Government.
2. Ensure the protection of freedom of expression in the context of religion for all individuals and all communities at all times, by recognizing that freedom of expression is essential to sustaining a pluralistic society and by respecting all religious belief and opinions, creating an enabling environment for the exercise of freedom of expression in the context of religion, implementing laws, and accompanying policy measures relating to freedom of expression in the context of religion in a non-discriminatory manner especially in relation to women & LGBT people.
3. Ensure that core legal instruments such as the constitutions provide for equal status to all religions and beliefs, protect freedom of expression online and offline, in accordance with international human rights norms and standards;
4. Repeal laws at the national and sub-national levels that criminalize ‘defamation of religion’, ‘insult to religion’, ‘blasphemy’, apostasy, as per the Rabat Plan of Action;

5. Repeal laws at the national and sub-national levels that criminalize the expression of sexuality as well as laws imposing dress codes, including in the name of religion; Revise and strengthen existing anti-discrimination legislation to meet universal standards towards substantive equality across all groups, communities, men and women;
6. Allow and enable religious minorities' parliamentarians to raise issues relating to freedoms of expression and religion, and the intersection of these rights, in the parliament and other fora;
7. Condemn and prevent, without discrimination, all instances of violations of freedom of expression in the context of religion and incitement of hatred resulting in violence, including those uttered and disseminated in the name of religion;
8. Refrain from promoting or disseminating incitement of hatred, including in the name of religion, and from censoring individuals engaged in the legitimate exercise of their freedom of expression. This includes ensuring that media and telecommunications regulators, education and agencies concerned with religion abide by this principle;

Conclusion

I have tried to stress the complexity of protecting constitutional values like privacy and free speech in the age of Google and Facebook, entities that are not formally constrained by the constitution. On the one hand, I am trying to offer an optimistic story, escaping your Facebook past, and promoting free speech on YouTube and Google. In each of these cases, it is possible to imagine a rule or technology that would protect values like free speech and privacy in a changing world. An expansion of disappearing data technology and an enlightened leadership at companies like Google and Twitter also needs to protect free speech rather than suppress it. But whether these good rules or technologies will, in fact, be adopted depends crucially on what sort of rules and technologies the public demands. Facebook has reluctantly made it easier to delete data in the face of user demand (and legal threats from Europe), although it is still betting that the demand for privacy will be outweighed by the demand for exposure. And Google, despite its commitment to free expression, chose not to resist political demands to expand its categories of prohibited speech on YouTube. Those categories, of course, are ultimately enforced by users and therefore reflect community standards rather than resisting them. Will Government of Bangladesh take note of these international views on the concept of freedom of speech in this new era of Facebook and Google while imposing criminal liability upon the citizens? Will citizens around the globe demand laws and technology that protect liberty rather than threaten it? The choice is ours.

We now demand immediate action to ensure freedom of expression on Facebook and request to restore the site for the sake of all users in Bangladesh. We also call on the government to stop all kinds of censorship and surveillance both in offline and online media. We urge the government to ensure freedom of expression and promote the right to access to information with human rights standard and democratic values.

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