

Restriction on the freedom of speech and expression and its effect on democracy: An evaluation in light of the Constitution of the People's Republic of Bangladesh

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Abstract

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

Keywords: *Freedom of Speech & Expression, Restriction, Democracy, Constitution of the People's Republic of Bangladesh*

Introduction

One of the intrinsic instincts of human being is the desire of being free. The sense of freedom makes them distinct from other animals. The struggle for freedom of expression is an old-aged struggle of groups and individual against their political environments. The term freedom of expression may be synonymously used as 'freedom of speech', 'freedom of thought and conscience', 'freedom of press', 'right to information', 'access to information' etc. Freedom of expression is a fundamental right in modern societies, and it has particular

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significance in relation to the well-functioning of the constitutional democratic process.¹ This freedom of expression and of speech is essential to the development of human personality and every person should be free in his thought and conscience.² On the other hand, freedom of speech is essential for the development and functioning of democracy.³ Without freedom of speech, there cannot be any democracy and the first thing an autocrat does is to curb the freedom of speech.⁴ So freedom of speech and expression can be defined as the cornerstone of democratic rights and freedoms. In its very first session in 1946, before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(I) stating "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."⁵

Now a days freedom of speech and expression has got its place in many international documents like UDHR, ICCPR, CEDAW etc., along with this it is also found in the constitution of almost all of the civilized nations of the world. However, the constitutions are providing this right but there is also a provision imposing restrictions over the freedom of speech and expression. These restrictions create great obstacles to democracy. In the Constitution of the People's Republic of Bangladesh, there is also enumeration of the right of freedom of speech and expression and there is also a provision restricting freedom on the basis of national security and other issues. Art. 39(1) of the Constitution of the People's Republic of Bangladesh states Freedom of thought and conscience, and of speech and the following sub art. 39(2) states the restrictions. Though the restriction over freedom of speech and expression impede the idea of democracy but it can be imposed where there is a real risk of harm to a legitimate interest, meaning there is a significant risk of imminent harm, the risk is of serious harm, that is to say violence or other unlawful action; there is a close causal link between the risk of harm and the expression; the expression was made with the intention of causing the harm.⁶ In Bangladesh it is seen that the ruling party for the sake of their own interest impose restriction upon the constitutional right of Freedom of Speech and Expression. As a result the elementary ideology of democracy is hampered.

Idea of the Freedom of Expression:

Freedom of speech is a civil liberty.⁷ The term freedom means the right to do or say what anyone wants without any person stopping him.⁸ And expression means things that people say, write or do in order to show their feelings, opinions and ideas.⁹ By considering the preceding meanings, it can be said that freedom of expression means that the right to say,

¹ Sara Hugelier, 'Freedom of expression and transparency: two sides of one coin' (2010-2011), Jg. 47, Jura Falconis, <<http://www.law.kuleuven.be/jura/>> accessed 14 November 2014.

² Mahmudul Islam, Constitutional Law of Bangladesh, pg.329, third edition, Mullick Brothers (2012)

³ Ibid

⁴ Farid Ahmad vs West Pakistan, PLD 1965 Lah 135

⁵ Freedom of expression, <http://www.hrea.org/index.php?base_id=147> accessed 15 November 2014

⁶ Ibid

⁷ Md. Ziaur Rahman, Democracy: Freedom of Speech and Floor-crossing interface (2010), Volume I, The Northern University Journal of Law, ISSN 2218-2578

⁸ OXFORD Advanced Learner's Dictionary, Ninth Edition.

⁹ Ibid

write or do in order to show feelings without anyone's restriction on it. Again "Expression" can include having views or opinions, speaking aloud, publishing articles or books or leaflets, television or radio broadcasting, producing works of art, communication through the internet, some forms of commercial information and many other activities.¹⁰

Concepts of freedom of speech and expression can be found in early human rights documents like Magna Carta of 1215, England's Bill of Rights 1689, the Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789.¹¹ Today the idea of freedom of expression has been recognized in many international, regional and national laws of different States. International laws like Universal Declaration of Human Rights (UDHR) adopted in 1948 mentioned about freedom of opinion and expression. In its article 19 it states that,

*"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*¹²

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

*"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*¹³

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

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

Being a common law country Bangladesh follows precedent i. e. case laws. In the case of *Dewan Abdul Kader v. Bangladesh*¹⁴, freedom of speech has been explained and it is stated as "a right to express one's own opinion absolutely freely by spoken words, writing, printing, painting or in any other manner which may be open to the eyes and ears. It thus includes expression of one's ideas on any matter by any means including even gestures, postures, banners and signs. It appears that this freedom is wide enough to include expression of one's own original ideas and also expression of one's opinion in the form of comments, explanations, annotations, solutions and answers to questions on the ideas expressed by

¹⁰ Freedom of expression explained, < <http://www.brightknowledge.org/knowledge-bank/law-and-politics/spotlight-on-law/freedom-of-expression-explained> > accessed 14 November 2014

¹¹ David Smith, "Time line: a history of free speech". *The Guardian* (London, 02 Feb2006) <<http://www.theguardian.com/media/2006/feb/05/religion.news>> accessed 13 November 2014.

¹² Universal Declaration of Human Rights, Article 19

¹³ The International Covenant on Civil and Political Rights (ICCPR), Article 19

¹⁴ 14 BLD 418 (1994)

others. It, therefore, means the expression of one's idea, whether the idea is an original idea, or explanations, commentaries, or annotations of the original idea expressed by another.”

Perspective of Democracy:

One of the patulous terms in political science is democracy.¹⁵ Democracy derived from the Greek word ‘demos’ or ‘people’, is defined, basically, as government in which the supreme power is vested in the people. The 16th US president Abraham Lincoln defined democracy as “a government of the people, by the people and for the people.” Moreover, the term democracy refers very generally to a method of group decision making characterized by a kind of equality among the participants at an essential stage of the collective decision making.¹⁶ Four aspects of this definition should be noted, first, democracy concerns collective decision making, by which it means decisions that are made for groups and that are binding on all the members of the group, secondly, this definition means to cover a lot of different kinds of groups that may be called democratic, thirdly, the definition is not intended to carry any normative weight to it, fourthly, the equality required by the definition of democracy may be more or less deep.¹⁷ David Bentham said regarding democracy that ‘when we speak of democracy, we have learnt to think of institutional arrangements such as competitive elections, multi-party-ism, the separation of powers, and so forth.’¹⁸ In that sense, democracy is the institutionalization of freedom.¹⁹ Freedom is an important aspect of democracy. This is manifested in majority rule, and in the centrality of the legislative body through which the people's representatives act. This is a formal aspect of democracy.²⁰

Compatibility of the Freedom of Speech with Democracy:

Freedom of speech is one of the basic rights in democracy.²¹ The basic rights are the common threads of a democracy. Some democratic nations guarantee it in their Constitutions or bill of rights.²² For other nations it has evolved through common law. Freedom of speech and freedom of press are fundamental personal rights and liberties which are the foundation stones of democratic institutions.²³ Freedom of speech is essential for the development and functioning of democracy.²⁴ Without freedom of speech there cannot be any democracy.²⁵ The freedom consists of the right to express freely one’s conviction and opinion on any matter orally or by writing, printing or any other mode addressed to the eyes and ears of other

¹⁵ A.K.M Shamsul Huda, *The Constitution of Bangladesh*, Chittagong, 1997, Vol-1, p. 202

¹⁶ Tom Christiano, "Democracy", (2008) *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), Edward N. Zalta (ed.), < <http://plato.stanford.edu/archives/fall2008/entries/democracy/> > Accessed 10 November 2014

¹⁷ Ibid

¹⁸ David Beetham, *Democracy and Human Rights: Civil, Political, Economic, Social and cultural Rights*, in Dr. Mizanur Rahman (ed), *Human Rights and Empowerment*, ELCOP, Dhaka, 2001, p.19

¹⁹ Ibid

²⁰ see note 8

²¹ Ibid

²² Ibid

²³ See note 15 page 494

²⁴ Mahmudul Islam, *Constitutional Law of Bangladesh*, pg.329, third edition, Mullick Brothers (2012)

²⁵ See note 4

persons.²⁶ Freedom of speech and expression is not confined to any particular field of human interest²⁷ but guarantees the broadest exercise of the right for religious, political, economic, scientific or informational ends.²⁸

Freedom of Speech and Expression in the Constitution of Bangladesh:

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

- (1) Freedom of thought and conscience is guaranteed.
- (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence—
 - (a) the right of every citizen to freedom of speech and expression; and
 - (b) freedom of the press, are guaranteed.²⁹

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

Democracy in the Constitution of Bangladesh:

Bangladesh is a democratic country since its birth in 1972. There is mention of democracy in many places of the Constitution of the People's Republic of Bangladesh. In para 2 and 3 of the preamble there is express provision regarding democracy and in para 4 there is an implication regarding democracy.³⁰ Again democracy can be found in article 8(1) and 11 of the constitution.³¹

Restrictions over freedom of speech and expression:

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

- In the interests of the security of the State
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

²⁶ See note 2 page 330

²⁷ Thomas v. Collins 323 US 516

²⁸ Douglas v. Jeanette 319 US 157

²⁹ The Constitution of the People's Republic of Bangladesh, Article 39

³⁰ The Constitution of the People's Republic of Bangladesh, Preamble

³¹ Ibid Article 8 & Article 11

In the interests of the security of the state:

Free expression of opinion and ideas is possible in organized society and to preserve the right it is necessary to prohibit utterances which threaten to overthrow an organized government by unlawful or forceful means.³² The security of the State is a matter of concern when there is serious and aggravated form of public disorder as distinguished from ordinary breach of public or public safety which does not involve any danger to the State.³³ Freedom of expression must yield when security of State is involved.³⁴ A reasonable restriction on the exercise of the right to know or right to information is always permissible in the interest of security of state.³⁵ Security of the state has to be distinguished from the security of the government.³⁶ Peaceful and orderly opposition of the government with the object of changing the government cannot be suppressed.³⁷ The security of the state is a matter of concern when there is a serious and aggravated form of public disorder as distinguished from ordinary breach of public order or public safety which does not involve any danger to the state.³⁸ The security of the State is endangered by crimes of violations intended to overthrow the government,³⁹ by waging war or rebellion against the government, or by external aggression or war, but the security of the State is not endangered by minor breaches of public order or tranquility, such as unlawful assembly, riot affray, rash driving and the like. However, incitement to violent crimes like murder which is an offence against public order may endanger the security of the state.⁴⁰

Friendly relations with foreign states:

Foreign relations are always a touchy matter and the state cannot be embarrassed by irresponsible statements inside the country touching sensitive issues of internal affairs.⁴¹ The object of this restriction on freedom of speech is the prevention of slander and libel against foreign States in the interest of friendly relations with them.⁴² Moreover article 25 of the Constitution of the peoples Republic of Bangladesh has also implicated about keeping friendly relation with the foreign states.

Public order:

The expression 'Public order' includes absence of all acts which are a danger to the security of the State and absence of insurrection, riot, turbulence or crimes of violence, but not acts which merely disturb the security of others.⁴³ According to the constitution of Bangladesh

³² *Strombrog v. California*, 283 US 359

³³ *seenote 8*

³⁴ *Attorney General v. Leveller Magazine Ltd.*, (1979) AC 440

³⁵ *PUCL v. India* AIR 2004 SC 1442

³⁶ *See note 2 page 340*

³⁷ *Herndon v. Lowry*, (1937) 301 US 242

³⁸ *see note 37*

³⁹ *Santokh Singh v. Delhi Administration*, AIR 1973 SC 1091

⁴⁰ *Bihar v. Sailabala* AIR 1952 SC 329

⁴¹ *see note 2 page 344*

⁴² *Ibid*

⁴³ *Madhu Limaye v. S.D.M Monghyr*, AIR 1971 SC 2486, 2495

reasonable restriction can be imposed upon freedom of speech and expression by law in the interest of public order. The expression 'in the interest of' enables parliament to make laws to curb the tendency to break the peace, even though no breach of the peace has actually taken place.⁴⁴ However, for restriction to be valid, the exercise of the right must have a rational nexus with the possible reach of public order.⁴⁵ Whether in particular case an utterance would have a tendency to create a breach of public order is to be determined objectively from the circumstances in which the utterance is made, the nature of the audience and the like.⁴⁶ In the interest of public order, the State may prohibit creating loud and raucous noises in streets and public places⁴⁷, regulate the hours and the place of public discussion⁴⁸ and the use of the public streets for the purpose of exercising the freedom of speech.⁴⁹

Decency or morality:

A law may impose reasonable restrictions on speech which lead to undermine public morality.⁵⁰ Whether any speech is likely to undermine decency or morality is to be determined to the probable effect it may have on the people to whom it is addressed.⁵¹ The test of judging a work should be that of ordinary man or common sense and prudence and not an 'out of the ordinary or hypersensitive man.'⁵² The concept of obscenity has different meaning in different cultures; even it is different between or among communities in the same culture.⁵³ So, age, culture and the like of the audience thus become material. Use of mere abusive language without any suggestion of obscenity to the person in whose presence it is uttered will not be a speech offending decency or morality.⁵⁴ Publication of indecent material cannot enjoy the protection of Art.39.⁵⁵ A political party opposed to abortion in 2002 general election submitted for broadcasting a video that contained graphic footage of an actual abortion including image of aborted fetuses which B.B.C. refused to transmit on grounds of taste and decency. The judge refused permission to apply for judicial review. The court of appeal reversed the decision, but the House of Lords set aside the judgment of the Court of Appeal holding that on the basis accepted by the claimant that party political broadcasts were subject to the same restriction on transmission of offensive material as other programmes there had been no ground for interfering with the decision of the BBC that, applying the standard laid down by parliament, the claimant's video should not be transmitted.⁵⁶

⁴⁴ Virendra v. Punjab AIR 1958 SC 896

⁴⁵ See note 2 page 341

⁴⁶ See note 40

⁴⁷ Kovacs v. Cooper, (1949) 336 US 77

⁴⁸ Saia v. New York (1948) US 334 558

⁴⁹ Schneider v. New Hampshire, (1942) 315 US 568

⁵⁰ Ranjit v. Maharastra, AIR 1965 SC 881

⁵¹ Ranjit v. Secker & Warburg, (1954) 1WLR 1138

⁵² Ajay Goswami v. India, AIR 2007 SC 493

⁵³ Ibid

⁵⁴ Kartar Singh v. Punjab AIR 1956 SC 541

⁵⁵ See note 2 page 345.

⁵⁶ Regina (Pro-Life Alliance v. B.B.C [2004] 1 AC 185 in Mahmudul Islam, Constitutional Law of Bangladesh, pg.345, third edition, Mullick Brothers (2012)

Obscenity means offensive to modesty, or decency; lewd, filthy, repulsive.⁵⁷ In *Roth v. United States*⁵⁸, the Supreme Court defined obscenity as something which “to the average person, applying contemporary community standard, the dominant theme of the material taken as a whole appeals to prurient interest”. The court defined ‘prurient’ as “material having a tendency to excite lustful thoughts”. Even an immodest representation may not be reasonably restricted in the interest of decency or morality if it conduces to the propagation of ideas and information of public interest, e.g., books on medical science.⁵⁹ A balance must be struck between freedom of speech and expression and public decency and morality, but when morality or decency is substantially transgressed, freedom of speech must give way.⁶⁰

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 justice⁶¹ or to lower the prestige or authority of the court even in the garb of criticizing judgments of the court.⁶² 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.⁶³ It is for this reason that the constitution specifically provided for the Supreme Court’s power to commit for contempt of court.⁶⁴ 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.⁶⁵

Defamation:

Reputation is a valuable asset or property of a man.⁶⁶ Nobody should be allowed to injure the reputation of a man in the name of freedom of speech and expression.⁶⁷ 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.⁶⁸ The American Supreme Court held that libelous utterances are outside the area of constitutionally protected speech.⁶⁹

⁵⁷ *Ranjit Singh v. Maharashtra*, AIR 1960 SC 881

⁵⁸ (1957) 354 US 476

⁵⁹ See note 58

⁶⁰ *Ibid*

⁶¹ *Namboodripad v. Nambair*, AIR 1970 SC 2015

⁶² *Daphtary v. Gupta*, AIR SC1132

⁶³ See note 2 page 349

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ See note 2 page.350

⁶⁷ *Gertz v. Robert Welch, Inc.*, (1974) 418 US 323

⁶⁸ *Saxena v. Chief Justice*, AIR 1996 SC 2481

⁶⁹ *New York Times Co. v. Sullivan*, (1964) 376 US 448

Incitement to an offence:

Incitement to an offence is also considered to a ground to restrict the freedom of speech and expression. This ground will permit legislation not only to punish or prevent incitement to commit serious offences like murder which lead to breach of public order, but also to commit any offence which according to the General Clauses Act means 'any act or omission made punishable by any law for the time being in force'.⁷⁰ It is not permissible to instigate another to do any act which is prohibited and penalized by any law.⁷¹

Reasonableness of restrictions imposed over Freedom of Speech and Expression:

The question of reasonableness behind the restriction imposed over the freedom of speech and expression is a matter of great discussion and sometimes it becomes a relative matter based on circumstances. In determining the reasonableness of a restriction upon the freedom of speech and expression, a reasonable balance must be struck between the need for the freedom in a democratic system of government provided for by the Constitution and the social interest in the prevention of disorder and anarchy.⁷² As for example though a person is under an order of detention, he continues to possess his fundamental right to read⁷³ but he may be prevented from reading a literature which is prejudicial to the security of the state or any other social interest mentioned in the restriction clause as envisaged in the provision relating to freedom of speech and expression.⁷⁴ The restriction is to be imposed by law and when discretion is conferred on any authority, the law should provide sufficient guidelines for the exercise of the discretion.⁷⁵ If the law is vague or arbitrary, or is disproportionate to the mischief sought to be remedied or the restriction has no rational connection with the permissible grounds of restriction, or there is no procedural safeguard against an arbitrary exercise of the power under the law, the restriction imposed will be unconstitutional.⁷⁶ Generally, a restriction imposed will be unconstitutional if it is indefinite in duration unless it can be shown that a permanent restriction is necessary in the facts and circumstances of a given case.

Restriction over Freedom of speech and expression and its effects over Democracy:

Bangladesh is a democratic country since 1971. After few years of practicing parliamentary democracy since its liberation, Bangladesh went through a serious political instability with the staging of coups and counter coups. Several political ups and downs like introduction of one party system by Sheikh Mujibur Rahman which was known as BAKSAL, military rule by Ziaur Rahman and HM Ershad and irresponsible competition of political parties to capture power have placed the democratic journey of the countries at stake.⁷⁷ However, the nation

⁷⁰ See note 2 page 352

⁷¹ Daphtary v. Gupta AIR 1971 SC 1132

⁷² Santosh Singh v. Delhi Administration, AIR 1973 SC 1091

⁷³ Maharashtra v. Probhakar. AIR 1966 SC 424

⁷⁴ Narayana v. Kerala, AIR 1973 Ker 97

⁷⁵ Shuttlesworth v. Birmingham, (1969) 394 US 147

⁷⁶ See note 2 page 353

⁷⁷ Ms. Amrita Chowdhury, Democratic Deficit in Bangladesh: A Cause for Concern (2010) <www.globalindiafoundation.org/democratic%20deficit.pdf> accessed on 25 October 2014

has restarted her journey to democracy with over throw of Ershad in 1990 but the path is not moisturized till now, though as an independent nation, Bangladesh has passed about forty three years but the achievements in the spheres of democracy and development are not noteworthy.⁷⁸ And still the democracy is facing problems. Though the Constitution of People's Republic of Bangladesh guarantees freedom of speech and expression under article 39, but such freedom is subject to reasonable restrictions. Again, people's speech and expression is mostly expressed through press and media. There is also restriction imposed upon press. 'The committee to protect journalists' (CPJ) declared Bangladesh to be one of the most violent places in the world for reporters.⁷⁹ In deed, investigative journalism has become an increasingly hazardous occupation in Bangladesh.⁸⁰ The journalists are harassed in Bangladesh in different ways. Libel and defamation cases against journalist are used as tools of harassment. Although turning to procedures laid out in the law, rather than resorting to extra legal measures such as rousing up and intimidating individuals on ransacking offices, may appear democratic, the uses and interpretation of the law leave much room for manipulation.⁸¹ Many laws in Bangladesh compel journalists to practice some degree of self censorship, when even a case is filed under section 501 of the penal code, which relates to printing or engraving matter known to be defamatory. The courts response is to issue an arrest warrant rending investigation, it has become a practice in Bangladesh that on the day of the first hearing, the court issues a warrant and in most cases, irrespective of the charges gravity, journalists are ordered to be arrested immediately. It has been a long-standing demand of the press that the practice on issuing warrants be changed so that journalists are not inhibited by the fear of arrest even if their report is based on facts.⁸²

In addition to this provision, there are certain other provisions of the penal code, viz., sedition (section 124 A), defamation (section 499-502), statements conducing to public mischief (section 505), offence relates to obscenity (sections 292 and 293), deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion on religious feelings (section 295A) etc. manipulation of which allow the govt. to intrude on the free and fair exercise of freedom of press, the Official Secrets Act, 1923 restricts the journalists to have access to official materials.⁸³ The administration is a vital source of news as it is the arena where corruption, mismanagement are most likely to take place the bureaucracy in Bangladesh till looks at the press with suspicion and fear, and tries to avoid the journalists.⁸⁴ This is a stumbling block to the growth and impact of freedom of speech and expression and of the press for an accountable and efficient democratic system in Bangladesh.

Political parties in Bangladesh influence the role of press to a great extent. To fulfill their own needs political parties often violate all the fundamental rights guaranteed in the constitution. The takeover of power by care-taker Govt. backed by the military in 11

⁷⁸ Mohammad Tarikul Islam, Freedom of press in democracy :Bangladesh perspective, [2007] , Vol. 29, Asian Affairs, page. 44-60.

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

January, 2007 shown a new dimension of violation restricting the right of freedom of speech and expression and postponing the basic ideology of democracy.⁸⁵

Almost 18 months after the military takeover, the country held what were generally regarded as free and fair elections on December 29, 2008, bringing Sheikh Hasina's AL-led alliance to power. Though the Government was committed to uphold the ideology of democracy but it can't be seen in their activities. Despite repeated promises to promote freedom of expression, government actions in the last few years have raised serious questions about its commitment to press freedom. Newspapers and TV stations must obtain government permission to operate, and the government can cancel publication rights at its discretion. The government has shut down two TV stations named as Channel One and Jamuna TV and also canceled the publication rights of the Bangla daily newspaper Amar Desh, and indirectly interfered with the publication of news items and editorials highly critical of government policies and programs.⁸⁶ It has also made decisions to block Facebook and Youtube without reasonable grounds.⁸⁷ In addition, the government has significant control over several broadcast media outlets and owns the only national terrestrial channel, the public BTV. The government's long pattern of harassment of Amar Desh continued until it shut the paper down in June 2010.⁸⁸ It is also engaged in extensive legal harassment of the editor, Mahmudur Rahman, who is known to be a close ally of opposition leader Mrs. Khaleda Zia and a former energy adviser to the BNP government.⁸⁹ Rahman was arrested on charges of fraud and defamation in June 2009. He was held on charges of sedition and reportedly tortured while in custody, then sentenced to six months' imprisonment on charges of contempt in another case.⁹⁰ A regional human rights organization claims that "the government has been suppressing the media in fear of criticism of its own actions that threaten the democratic process and the upholding of the rule of law in Bangladesh."⁹¹ Criminal libel laws were used to silence voices critical of the government and key members of the ruling party.

The March, 2011 dismissal of Nobel laureate and political critic Dr. Muhammad Yunus as the managing director of Grameen Bank makes it apparent that the current government has little patience for dissident voices. Yunus's removal suggests that the current government will not hesitate to push forward state frontiers to maintain its control over civil space.⁹²

⁸⁵ Professor Emajuddin Ahamed, Democracy in Bangladesh: Prospects and problems, The Bangladesh Chronicle (Bangladesh, 19 December 2013) <<http://www.bangladeshchronicle.net/index.php/2013/12/democracy-in-bangladesh-prospects-and-problems/>> accessed 20 November 2014

⁸⁶ "Bangladesh: Government should stop the repression of freedom of expression and release the detained media-professionals," Asia Human Rights Commission, June 3, 2010, <<http://www.ahrchk.net/statements/mainfile.php/2010statements/2582/>> in Fahimul Quadir, Countries at the crossroads 2011: Bangladesh (Freedom House, 2011) <<https://freedomhouse.org/report/countries-crossroads/2011/bangladesh#.VHF5as19vIV>> accessed 20 November 2014

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

⁹² Fahimul Quadir, Countries at the crossroads 2011: Bangladesh (Freedom House, 2011) <<https://freedomhouse.org/report/countries-crossroads/2011/bangladesh#.VHF5as19vIV>> accessed 20 November 2014

In the year of 2012, a young lecturer of Jahangirnagar University, Savar, Dhaka, posted a Facebook status while in Australia on educational leave regarding a tragic road accident of a creative film director Tareq Masud and mismanagement of the concerned authority relating to licensing of drivers along with the Prime minister. The highest court of Bangladesh had asked the government to bring sedition charges against this lecturer as it advocates unlawful conduct against the government.⁹³ Moreover, amendments brought to the ICT Act, 2006 through the ICT (Amendment) Act, 2013 gives law enforcers broad powers of arrest and are restrictive to online expression.⁹⁴ As we know in democratic society, every citizen has the right to criticize the mismanagement of the Government. But, if criticizing results in the people charged with sedition then it harms the essential elements of democracy.

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

Conclusion:

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

⁹³ Elin Saha, 'Facebook and freedom of speech', Dhaka Tribune (Dhaka 20 June 2013) <<http://www.dhakatribune.com/long-form/2013/jun/20/facebook-and-freedom-speech-0>> accessed on 20 November 2014

⁹⁴ Bangladesh: Lack of protection for journalists and online activists, (ARTICLE 19, 02 May 2014) <<http://www.article19.org/resources.php/resource/37538/en/bangladesh:-lack-of-protection-for-journalists-and-online-activists>> accessed on 21 November 2014.
