



DISSERTATION

ON

Freedom of Expression: Rights and Restrictions

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Declaration

I solemnly declare and affirm that this research is my own work, except some quotations and summaries which have been duly acknowledged. The purpose of this research is to complete my undergraduate degree as it is a requirement for the completion of my degree.

Freedom of Expression: Rights and Restrictions

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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 of freedom of speech and expression. Then I show that from where this right has been recognized. After that I discuss about the importance of this fundamental right in our different aspect. I also discuss our constitution where this right is given as fundamental human right. Further 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. I have discussed the effect of restriction by other national laws upon Freedom of speech and expression 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. Whether these restrictions may meet the real purpose or not? And how far our right is protected by law?

Chapter I

Introductory

1. Introduction:

The speech is the way of communication or expressing thoughts in words. It is the most common and fundamental tools used in the regular communication. Speaking is our God gifted power. When it is always subject to any obstruction without any valid reason, we do not feel free to speak. All we need to feel the freedom while we are expressing our thought through our own speech. Freedom of speech classified as ‘first generation right’-which protects the individual’s rights of a state. It is our basic need to express our thoughts freely. To build up a democratic society freedom of speech is the essential element and without it no one can imagine about a democratic state. On the other hand, it is not expectable to misuse the right for our own interest or in bad intention. It is our responsibility to enjoy the right with decent manner and not to violate others right to established our own right.

Freedom of speech and expression is recognized as fundamental human rights in the article 39 of the Constitution of the People’s Republic Bangladesh. Though it is constitutional right, not absolute. Moreover, it carries reasonable restrictions in the article 39(2). Some national laws are designed in such a way that serve narrow political interests but weaken the international standard of human rights and fundamental human rights of constitution. There is a gap between law and practice, as well as international and national standards.

It is a matter of question that having freedom of speech as fundamental right how far our right is protected by law? Whether the restriction imposed by the Constitution of the People’s Republic Bangladesh has meet its real purpose or not?

1.1 Methodology

This is a qualitative research work with comparison among Constitution with other national law and practical implication of laws regarding freedom of speech. All the sources of the research are based on judicial judgment and providing laws which are primary in sources, secondary sources

as books and articles and all related data is collected data have been analyzed and interpreted by the researcher.

1.2 The Scope and Limitation

At this research paper I have searched on freedom of speech and expression of citizen which also includes press and media. Here my area of research work is present scenario of implementation and existing laws on freedom of expression.

I wanted to explain that the restriction is given upon the freedom of expression is unable to meet its purpose. Here purpose means to give the proper freedom with proper check and balance. But due to my lacking of authentic data I could not make sure the real practical view in Bangladesh. I was unable to find out all the DLR, BLC to study cases, but I have tried my best and give all those case reference that I found on my research. And last but not least, on some topic I could not find out any cases or information.

Chapter II

Freedom of Expression and Its Importance

2. Idea of Freedom of Speech and Expression

Freedom of speech is a civil right. The term freedom means one kind of right of being able or allowed to do, say, think, etc. whatever you want to, without being controlled or limited.¹ On the other hand 'expression means things that people say, write or do in order to show their feelings, opinions and ideas.'²By considering the meaning the right to express freely one's belief and opinion on any matter orally or by writing, printing or any other mood for listening his expression or seeking attention of others through their eyes and ears.³

Freedom of speech is expression of feeling of mind. It is our right to communicate our ideas and opinions freely. It is our expectation as a human being to express our thoughts, beliefs, our hopes without any kind of restriction. It includes not only the visible or audible representation to others

¹Please visit the website of Cambridge Dictionary, available at:
<<https://dictionary.cambridge.org/dictionary/english/freedom>>

²OXFORD Advanced Learner's Dictionary, Ninth Edition.

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

but also the right to obtain and receive from other thoughts, ideas and information about matters of common interest⁴ and thus the right to read and be informed.⁵ The rights to dance, sing, paint or write poetry or literature is covered by the right of freedom of expression. Because core of these activities lies on the freedom of speech and expression.⁶ Even freedom includes right to educate, to be educated; to inform, to be informed and to entertain, to be entertained. This also involves communication and right to communicate comprises the right to communicate through any media that is accessible whether print, electronic or audio-visual.⁷ It includes the right of to exhibit and see cinematographic films and dramatic performances as being very important media of expression.⁸

2.1 Freedom speech and Expression as Fundamental Human Rights

Concepts of freedom of speech can be traced in early human rights documents such as 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. But now it has recognized and has given legal effect. Freedom of speech was declared as fundamental human rights by United Nation in the historical document of The Universal Declaration of Human Rights. It sets out, for the first time, fundamental human rights to be protected universally. This declaration was proclaimed by the United Nations on 10th December 1948 in Paris in their General Assembly. Whereas UDHR states in the preamble that recognition of inherent dignity which is equal and inalienable rights of the all human is the foundation of freedom, justice and peace in the world. Article 19 of the UDHR says about the freedom of opinion and expression, which is also a part of foundation of freedom, justice and peace in the world. Article 19 clearly states that everyone has the right to freedom of opinion; this right includes freedom to hold opinion without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. So it says that every person has the right to give his/her opinion freely. Which is free from interference and one can search, receive and give information through any kind of media. This process can be beyond the

⁴*Hamdard Dawakhana Vs India*, AIR 1960 SC 554

⁵*Benett & Coleman Vs* , AIR 1973 SC 106, 143

⁶*Maneka Gandhi Vs India*, AIR 1978 SC 597, 640

⁷*Secy., Ministry of I & B VS Cricket Assoc. of Bengal*, AIR 1995 SC 1236

⁸*Abbas Vs India*, AIR 1971 SC 481 ; *Southern Promotions Vs Conrad*, 420 US 546

frontiers also.⁹ Again to recognize this declaration and give it legal force a multilateral treaty adopted by United Nations assembly named International Covenant on Civil and Political Rights (ICCPR). Article 18 of ICCPR states the freedom of thoughts and conscience. Article 19(1) of the ICCPR says that anyone can hold opinions without interference and it cannot be subject to any exception or restriction. The right stated in article 19(2) protects freedom of expression in any medium as like stated in Article 19 of UDHR. In addition, according to Article 19(3) of the same Covenant, freedom of expression may be limited as provided for by law and when it is necessary to protect the rights or reputations of others, national security, public order, or public health or morals.¹⁰

2.2 Importance of Freedom of Expression

The importance of freedom of expression as a fundamental and valuable characteristic of modern society cannot be underestimated. The Universal Declaration of Human Rights was adopted by the United Nations in 1948 and in its preamble "has been proclaimed as a common standard of success for all peoples and all nations". It was the first study on the reorganization of human rights at international level and had a significant influence on the improvement of national and international human rights legislation¹¹

Democracy is regarded as the successful form of political ideas in the present world. Democracy lets people speak their mind, will, expectation and opinion. However, the democracy operate properly when people can express their will and exercise their right freely and voluntarily.¹² The Constitution of Bangladesh in its preamble states that democracy will be the ultimate goal of the government and the government will guarantee democracy. But to guarantee democracy, freedom is an important aspect. As Cooray stated, "freedom of speech is the most significant political right of citizens, although private property is necessary for its operation. Without freedom of expression, no political action is possible and resistance to injustice or oppression is not possible. It would be

⁹Universal Declaration of Human Rights 1948, Article 19

¹⁰International Covenant on Civil and Political Rights, Article 19

¹¹S. Coliver (International Center Against Censorship, Article 19's Law Programme Director) , The Article 19 Freedom of Expression Manual (The Bath Press, Avon August 1993)

¹²Razon Chandra Ghosh, "The constitutional reality of Right to Vote", The Daily Star <<https://www.thedailystar.net/law-our-rights/news/the-constitutional-reality-right-vote-1672054>> [Accessed 11 Nov. 2019].

meaningless if it is not free elections; competitors' policies are made known to the public and become sensitive to public opinion only by virtue of freedom of expression. In the elections opinions freely expressed by citizens help restrain tyrannical domination. It is useless to expect political freedom or, consequently, economic freedom without this freedom. Therefore, freedom of expression is the *sine qua non* of a democratic society."¹³

Freedom of expression is also important for governments because when criticisms of a government are freely expressed, the government has the opportunity to respond to unfair comments and criticisms of its actions.

Freedom of speech and expression serves many functions of every state. One cannot deny the importance of freedom of speech and expression while making any decision. Decision making functions brings out best output when the decision maker feels free to express his decision and reason behind his decision. Decision making process is in the every sphere of our life and sector. To run a family, society, community or country, decision making process is there. Legislature, judiciary and executive sectors need to take decision to run the country. If one sector faces serious obstacle while taking decision, it will unable to serve its best purpose.

One of the difficulties inherent in the discussion of freedom of expression is that it contains what libertarians often describe as the paradox of freedom.¹⁴ On a more practical level, freedom of expression has many functions. The European Court of Human Rights in many cases has emphasized the special importance of freedom of expression for democratic institutions.¹⁵ For example, in *Handyside v. United Kingdom*, the Court declared that "Freedom of expression constitutes one of the important basis of that society, one of the basic conditions for its progress and the development of every man." Freedom of expression gives citizens the right to participate in common life as supporters and guarantees their ability to contribute to the action and improvement of institutional organizations that serve the public welfare.¹⁶

¹³Dr. M. Cooray, 'The Importance of Freedom of Expression' (An explanation of the importance of freedom of expression and freedom of association and how they are being eroded in Australia in 1996.) <<http://www.ourcivilisation.com/cooray/btof/chap211.htm>> accessed 20 November 2019

¹⁴Waluchow, W.J. *Free Expression: Essays in Law and Philosophy*. Oxford (1stedn, Oxford University Press 1994)

¹⁵*Handyside v. United Kingdom*, (App 5493/72) ECHR 7 December 1976

¹⁶T.R.S. Allan, 'Common Law Constitutionalism and Freedom of Speech' in J. Beatson and Y. Cripps, 'Freedom of Expression and Freedom of Information', (Oxford University Press, Oxford 2000) 15

Chapter III

Freedom of Speech and expression in Bangladesh Constitution

3. Freedom of Speech and Expression in Bangladesh Constitution

The Constitution of the People's Republic Bangladesh is the core piece of the constitutional law of our country. It declares the supremacy of the Constitution and states that all powers in the republic belongs to the people and the exercise the power on behalf of the people shall be under authority of the Constitution.¹⁷This supreme Constitution also recognized freedom speech as fundamental human right in its Part III Article 39. Article 39(1) guarantees the freedom of thought and conscience. This right is absolute and there must not be presence of any barrier or interruption by the law in any ground. It is not possible to pass away any individual's right of thinking and conscience by passing any law. When a man wants to express his/her thinking to other people the freedom of speech comes to play its role.¹⁸ Article 39(2) confirmed the expression of thought and conscience. But this right is not absolute according to the Article 39(2) of Constitution. Article 39(2) states that subject to the reasonable restrictions the right of every citizen to freedom and expression and freedom of press are guaranteed. Those restrictions included interest of security of the state, friendly relation with the foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Whenever there are any kinds of lawful objection on those restrictions then the individual's right of freedom speech can be curtailed.¹⁹Article 39(2) (b) states that freedom of press are also guaranteed subject to the reasonable restrictions imposed by law which also included interest of security of the state, friendly relation with the foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. So Constitution protects the right of freedom of expression of individuals and press or media also.

¹⁷ The Constitution of the People's Republic Bangladesh, Article 7

¹⁸ Islam Mahmud, Constitutional Law of Bangladesh, (3rdedn, Mullick Brothers 2012) 329,330

¹⁹ The Constitution of Peoples Republic Bangladesh

3.1 Analysis of Restrictions Made Under 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.²⁰ 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.²¹ 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.

3.2 In The Interest of Security of State

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.²² The State security is in danger due to the crimes of violations overthrow the government²³, triggering a war or rebellion against the government or from external aggression or

²⁰ Jeffery, A. (1986). Free Speech and Press: An Absolute Right? Human Rights Quarterly, (1986) 8(2) p 218
JSTOR <www.jstor.org/stable/762283> accessed 14 November 2019

²¹ Universal Declaration of Human Right, Article 1

²² Islam Mahmud, Constitutional Law of Bangladesh, (3rdednMullick Brothers 2012) 340

²³ *Santokh Singh v. Delhi Administration*, AIR 1973 SC 1091)

war, but the security of the state is not in danger for minor violations of public order or tranquility, such as illegal assembly, riot, reckless driving. However, incitement to cruel crimes such as murder which is a crime against public order can endanger state security.²⁴ In times of external invasion, the State has the power to prohibit or punish utterances which obstruct war measures.²⁵ 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.²⁶ 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.²⁷

3.3 Public Order

The term "public order" includes the absence of all actions that constitute a danger to the security of the state and the absence of rebellion, turbulence or crimes of violence, but not actions that simply violate the safety of others.²⁸ A reasonable restriction may be imposed according to law when it is matter of public order. In particular cases whether an utterance would have a tendency to make a breach of public order is to be justified objectively from the circumstances in which utterance is made. In the interest of public order state may prohibit creating loud and noises in streets or public places, control the hours and the place of public discussion and the use of the public streets for the exercising the freedom of speech.²⁹

The right to free speech includes right to reach as many people as possible and public speech cannot be thought of without the aid of loudspeaker. In case of listener of loudspeaker, one has to listen no matter whether he wants to listen or not. For the purpose of maintaining public order and preventing from public nuisance, reasonable restriction can be imposed for using loudspeaker. Loudspeaker should not be used for the disturbance which is serious enough to breach the peace and lead it to the public disorder. If law reasonably regulating the time, place and manner of using loudspeaker, it cannot be said to be the violation of article 31 of the constitution.³⁰

²⁴*Bihar v. Sailabala* AIR 1952 SC 329

²⁵*Schaefer V U.S.*, (1920) 251 US 466

²⁶*PUCL v. Idia*, AIR 2004 SC 1442

²⁷*Herndon v. Lowry*.(1937) 301 US 242

²⁸*Madhu Limayev. S.D.M Monghyr*, AIR 1971 SC 2486, 2495

²⁹Islam Mahmud, Constitutional Law of Bangladesh, (3rdednMullick Brothers 2012) 341

³⁰The Constitution of the People's Republic of Bangladesh, Article 31

3.4 Friendly relations with foreign States

Foreign relations are always a sensitive issue and the state cannot be embarrassed by irresponsible statements within the country that touch sensitive internal affairs. The purpose of this restriction on freedom of expression is the prevention of slander and libel against foreign states in the interest of friendly relations with them.³¹ Moreover, article 25 was included in the Constitution of Bangladesh that talks about friendly relations with relevant foreign states in this regard.

3.5 Decency or Morality

Law may impose reasonable restriction to maintain public morality in the society. A restriction on certain pornographic materials from minors would be an example of limiting freedom of expression based on public morals. But the definition of indecency is differs from culture to culture, one person to another, between communities within single culture. Thus, age culture and audience become material regarding indecency. Use of mere abusive language without suggestion of indecency to the person in whose presence it is uttered will not be a speech offending decency or morality.³² Publication of indecent materials cannot claim protection under Article 39. Because it becomes the matter of public knowledge and for this publisher have to more conscious about publishing the indecent news. There should be a balance between freedom of expression and speech and decency and morality. But when morality or decency is substantially transgressed, freedom of speech must give a way.³³ The standard to be adopted for judging obscenity should be that of an ordinary man of common sense and prudence and not of an ordinary and or highly sensitive person.³⁴

3.6 Contempt of Court

In the exercise of his freedom of speech and expression, no one can be allowed to interfere with the administration of justice³⁵ or to reduce prestige or the court's authority even criticizing the

³¹ Islam Mahmud, Constitutional Law of Bangladesh, (3rdednMullick Brothers 2012) 345

³² *Kartar Singh v. Punjab*, AIR 1956 SC 541

³³ *Ranjit v. Maharashtra*, AIR 1965 SC 881

³⁴ *Ajay Goswami v. India* (2007)1 SCC 143

³⁵ *Namboodripadv. Nambair*, AIR 1970 SC 2015

capacity of judgment of the court.³⁶Freedom of speech and expression is important, but effectiveness of the administration of justice is more important without which the rights guaranteed by the Constitution will merely be embellishment. People's confidence in the effectiveness of the administration of justice cannot be shake. The freedom of speech has to be carefully and cautiously used. However, the laws regarding contempt of court must be reasonable and must not be such as stifles the right of freedom of speech and expression. The Appellate Division of the Supreme Court of Bangladesh has observed that 'Freedom of press being recognized in our Constitution, a Court is to suffer criticism made against it, and, only in exceptional cases of bad faith or ill motive, it will resort to law of contempt.'³⁷The statements based on inaccurate assessments of situation, however grossly misleading those may be cannot tantamount to contempt of the Court. In the absence of mensrea no contempt is constituted.³⁸

3.7 Defamation

Reputation is very valuable asset for us. It is not expectable that someone without any cause or ground hampered our reputation. Nobody should be allowed to injure one's reputation in the name of freedom of speech.³⁹The freedom of expression is available so long as it is not malicious, if the speech is false, the speaker will not get the constitutional right.⁴⁰

3.8 Incitement to an Offence

This ground allow legislator to punish or prevent incitement to commit serious offences like murder which lead to breach of public order and also to commit any offence. Which is according to the meaning of General Clause Act, it says that any act or omission made punishable by any law for the time being in force.⁴¹However, it is not permissible to influence or instigate to do any act which is prohibited and penalized by any law.

³⁶*Daphtaryv.Gupta*, AIR SC1132

³⁷*Saleemullahv.State* 44 DLR (AD) 309 p. 313

³⁸*Mr. MainulHosein vs. Ms. Sheik HasinaWazed*(2001) 53 DLR 138

³⁹*RumaDayal v. M.P.*, AIR 1978 SC 921

⁴⁰*Saxena v. Chief Justice*, AIR 1996 SC 2481

⁴¹ The General Clauses ACT, 1897, Section 3 (37)

3.9 Reasonable Restriction

When a person shows his fundamental right under article 39 as a petitioner which is being denied, the respondent need to show that, the denial is authorized by a law imposing reasonable restriction.⁴² To determine the reasonableness of restriction upon freedom of speech and expression, a Judge should be more cautious, neutral and use his scrutiny power in this regard.

Chapter IV

Restrictions from others National Laws

4. Repealed Section 57 of Information and Communication Technology Act 2006 and its Effect

Section 57 Information and Communication Technology Act 2006 was regarded as draconian law. Though the Section 57 has been repealed by the pressure of the civil society, its fear of freedom speech has been shifted to the Digital Security Act 2018. However section 57 states that an activity will be regarded as offence if any person deliberately publishes or transmits or cause to be published or transmitted in the website or any other electronic form any materials which is false and obscene and if anyone sees, hears or reads it and it makes him dishonest and corrupt, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of state or person or cause hurt religious belief or instigate any person or organization . And for these offences, anyone accused of it, can be sentenced to maximum 14 years and minimum 7 years of punishment. The accused can also be fined Tk 1 crore or more.

Human Rights Watch stated in their report stated that scores of people had arrested under section 57 of the Information and Communication Technology Act 2006 (ICT Act) for criticizing the government, political leaders, and others on Facebook, as well as in blogs, online newspapers, or

⁴²*Life Insurance Corp. v. Manubhabi*, AIR 1993 SC 171

other social media over the past five years in Bangladesh.⁴³ It was reported on Daily Star that 300 cases were filed under section 57 of ICT Act in just one year of 2017. According to the procedures in force since the 2013 amendments, the police can use a complaint as a basis for the arrest. If after an investigation and the police believe that there is sufficient evidence to support the initial complaint, they submit a charge sheet to Cyber Tribunal located in Dhaka. Records of Cyber Court show that the police filed a total of 1,271 charges between the creation of the court in 2013 and April 15, 2018. After the charges was filed, the Court "frames the charges" against the defendant, which is the formal beginning of the trial.⁴⁴ There were 335 violations of the right to freedom of expression in Bangladesh in 2017 and this is the highest number since 2013. Almost 70% of violations were against journalists working at grassroots level.⁴⁵

4.1 Digital Security Act 2018

The Digital Security Act 2018 has extraordinary scope. This law allows Bangladeshi law enforcement authorities to search and detain any person, seize computers and handheld devices on mere suspicion, without any court-issued warrants, on charges that may land someone up to 14 years in jail for simple expressions of views in a digital platform that the authorities may deem defamatory or subversive.⁴⁶ This Act can be used to deal 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.

⁴⁷ According to 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 28⁴⁸ of the new act.

⁴³ David Bergman, 'Bangladesh: Protect Freedom of Expression' (Human Rights Watch, 9 May 2018) <<https://www.hrw.org/news/2018/05/10/bangladesh-protect-freedom-expression>> accessed 19 November 2019

⁴⁴ Ibid

⁴⁵ 'Bangladesh: Violations of the right to freedom of expression in 2017' (Article 19, 2 May 2018) <https://www.article19.org/wp-content/uploads/2018/05/Bangladesh_violations-of-right-to-FOE-2017.pdf> accessed 18 November 2019

⁴⁶ Shafquat Rabbee, "Bangladesh: the latest assault on free speech" (The Interpreter 2 October, 2018) <<https://www.lowyinstitute.org/the-interpreter/bangladesh-latest-assault-free-speech>> accessed 10 November 2019

⁴⁷ Digital Security Act 2018

⁴⁸ Ibid

⁴⁹As 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 lac 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.⁵⁰ For this punishment is imprisonment not exceeding 5 years or fine not exceeding Tk. 10 lac or both.⁵¹

Above mentioned sections also provide further punishment for the further occurrence of the same offence by the same person. Though the Digital Security Act is enacted to ensure the national digital security and enact laws for digital crime identification, prevention, trial and others matter. No doubt, it is a good piece of law regarding our privacy and security. But above mentioned laws create loop holes. Facing a draconian section 57 of ICT Act peoples are scared about the Digital Security Act. Basically Journalist and bloggers do not feel free to share their thoughts for this kind of restriction. If those laws will be implied by considering the consistency of constitution it may help the citizen to overcome the fear.

Chapter V

Findings

5. Findings of the Research

“After liberation of Bangladesh it is reported in the case of 44 DLR (AD) 39, Appellate Division observed that freedom of speech and freedom of press is recognized by Article 39 of Constitution of Bangladesh. Then Court must be ready to suffer criticism because justice is not a cloistered virtue. Only in exceptional cases of malice or bias, courts will invoke the power.” So there should be always a way to give the speech or expression tastes of freedom. But it is important to know the limitation and restriction of being freedom. We know that absolute freedom may bring out the worst part of ours. It should be controlled, It is known to all that every right comes with a great

⁴⁹Ibid

⁵⁰ Ibid

⁵¹Ibid

responsibilities. We have to responsible for what we have done. We may have our own faith and beliefs. It's normal that, a mindset reflects one's faith and belief. One cannot do or say whatever he likes, in the name of exercising the right to freedom of expression. If his act or conduct attacks the interest of public and nation, it cannot be termed as fair and on the good faith.⁵²

Chapter VI

Concluding Remarks

6. Conclusion

Being a citizen of Bangladesh our right to freedom of expression is protected by constitution of Bangladesh. But it is not absolute. Absolute freedom may injure the public order, may create indecent or immoral act, and may create unexpected defamatory statement which are great disrespect to the spirit of the freedom of expression. Every person is possessed with a reason and conscience and should act towards one another in a virtue of brotherhood. We must respect others right of freedom and others right he/she can claim for. So our fundamental right of freedom of speech and expression is protected until and unless go beyond the proper restrictions imposed by the government agencies for a healthy civil society.

Restrictions given in the article 39 and other national laws and its proper interpretation say that it can meet the purpose. The purpose is to give the feel of freedom of expression to the citizen and abide by the laws regarding this. But practical implication of national laws says that it is tough to meet the real purpose of those restrictions. There should be consistency while interpreting the other laws with the Constitutions. Only implication of laws relating giving restriction upon the right of freedom speech and expression is not the main purpose. Rather it is a system of keeping check and balance between the human behavior and state affairs. While implementing these laws it may serve a better end by keeping away the political influential and personal interest.

⁵² *Abul Kalam Azad v. David Bergman* 5C LR(2017)7

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