



DISCONTENTEDNESS IN THE RIGHTS OF FREEDOM OF EXPRESSION: PERSPECTIVE BANGLADESH

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Abstract

The paper concentrates on the most burning issue concerning the right to 'freedom of expression' that allows human being to express their opinion without interference. Although this fundamental human right permits an individual to express and receive opinion, it is subject to certain limitations in a democratic society. The fundamental human right to freedom of expression has been accepted globally following Article 19 of the Universal Declaration of Human Rights (UDHR) and also considered in International human rights law in the International Covenant on Civil and Political Rights (ICCPR). In this paper, I do mainly focus on the discontentedness in the rights of freedom of expression in Bangladesh which is covered under Article 39 of National Constitution, and the contribution of international instruments such as UDHR and ICCPR in enforcing the right 'freedom to express' to an individual at regional and national level. Finally, this paper evaluates whether it is the external Human Right framework that is insufficient to guarantee 'right to express' in Bangladesh or the internal application process which is ineffective to protect the fundamental human rights.

Keywords: Discontentedness, Freedom of Expression, UDHR, ICCPR, Bangladesh Constitution.

Introduction:

Freedom of speech or expression is universal human rights which allow an individual to express any view or opinion in a democratic society. Bangladesh, being a democratic state, after achieving its independence in 1971, allows every citizen of the country to dispose their opinion freely in exercise of their freedom of speech under the Constitution of the People's Republic of Bangladesh. In any state, the government should allow the citizens to exercise the right to free speech and expression to animadvert on or to eulogise that government. Being a democratic country, Bangladesh (who obtained its recognition in 1971) also guarantees the right to freedom of thought and speech under Article 39 of Bangladesh Constitution.¹ However, the freedom is subject to limit in the interest of democracy and to maintain peace and security of the state. Even though the right of freedom to expression is conferred to every individual by the constitution, violation of such human rights are often experienced every day in different places in our society. The rights to

¹) Constitution of the People's Republic of Bangladesh, Art. 39 (2004)
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freedom of expression are further backed up by international human rights authorities as result of signing and ratifying the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). Despite the fact, Bangladesh is under an international obligation to protect Human Rights. The rights to freedom of expression have still been seen to be violated almost every day throughout the country. According to Universal Periodic Reports and Human Rights Watch, Bangladesh public authority and law enforcement orders were involved in extrajudicial killing, arrest without warrant, remand and torture, supporters of opposition political parties, human rights defenders, journalists and reporters.² Media, which is regarded as the key organ of democracy and promoting human rights has also been targeted victim by the government. This paper, further, focuses on the internal system of governance in Bangladesh to the protection of the right of freedom of expression in order to accelerate a democratic state.

Methodology Applied:

This paper concentrates on fundamental Human Rights of freedom of expression in Bangladesh and it is a document analysis which has been supported by primary and secondary sources in broader perspective. Sources and Materials were also derived from national and international documents, declarations, conventions and publications, to make a logical evaluation on the prospect of 'freedom of expression' in the perspective of Bangladesh.

Most of the relevant issues of this paper have been collected from textbooks, Bangladesh Constitution, Ordinances, Articles and Journals, Law reviews and reports, and also from Local Newspapers information regarding freedom of speech and expression.

Understanding past of Freedom of Expression in Bangladesh:

It is an indispensable aspect of a democratic society which should be prioritized above all to the maximum extent in order to ensure its role in democracy and political life. Having said that, It also an essential part of democracy that such extension of freedom of expression should be limited in order to protect other human rights (Huq, 2005: 79).

The fundamental right of freedom of thought and expression was recognised even before the independence of Bangladesh by the external government. Just few years before the independence, an important declaration came into place during the Pakistani Government in 1965, 'the Defiance of Pakistan Ordinance' which was launched to restrict the freedom of mass and print media. Many newspaper publishers such as The Daily Ittefaq and New Nation press were penalized for criticizing the Pakistani government at that time. Just after the liberation war, the Government of Bangladesh in 1972 formally announced the right to freedom of speech to all the citizens at large in order to establish a democratic state. Thereof, the new Constitution of Bangladesh attached the right of every citizen of freedom of speech and expression and freedom of the press. In 1973, The Printing Presses and Publication (Declaration and Registration) Act was endorsed. In 2001, The Dramatic Performance Act of 1876 was repealed and the copyright ordinance of 1962 was revised and became law in 2000. The freedom of media was also reflected while Television Network

². Universal Periodic Review: HRW Submission on Bangladesh, 16th UPR session, April - May 2013.

Available at <http://www.hrw.org/news/2013/04/18/universal-periodic-review-hrw-submission-bangladesh> (Accessed on 18 March 2013)

(Management and Control) Act 2002 came into place. It was also anticipated by the members of parliament that the legislation in the future may provide the commercial activities of Cable operators and distributors. It can, therefore, be said that from time to time there has been a massive development in recognizing 'freedom of speech' in Bangladesh leaving space for restriction imposed. However, there are still many areas where such freedom is not fully considered or implemented.

Freedom of speech or expression under Bangladesh Constitution:

Short after the independence and recognition of a sovereign state, on 4th November, 1972, Bangladesh adopted the Constitution of People's Republic of Bangladesh under the guidance of the *Awami League* led by Sheik Mujibur Rahman.³ Even though Bangladesh was born as a secular state, it was later replaced to Islamic state by President Ziaur Rahman Zia who abolished secularism as a fundamental principle, and changed it with the phrase "absolute trust and faith in Almighty Allah."⁴ However, the fundamental right of freedom of expression is protected by Article 39 under the Constitution of Bangladesh. Article 39(1) in Chapter-III of the Constitution guarantees the 'freedom of thought and conscience and of speech.'⁵ Besides, providing Article 39(2), such freedom of expression is Subject to 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 offense, giving the government a broad mandate to define when these rights are valid.⁶ This Article also imposes restriction on freedom to protect: (a) the right of every citizen of freedom of speech and expression and (b) freedom of the press. Following this Article, limitation can also be imposed to ensure public security against any offensive or immoral actions by legislative authority.

While the legislation entails the exercise of freedom of expression granting the freedom to press under Article 39, the concern about protection of privacy to the citizen is also addressed in section 43 of constitution. The section provides, 'every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order or public morality (a) To be secured in his home against entry, search and seizure; and (b) To the privacy of his correspondence and other means of communication.'⁷

Reasonable Restrictions on Freedom of Expression in Bangladesh Against the interest of security of the state:

The right to freedom of expression can be lawfully restricted where there is proclamation of emergency, or security of state or public life is concerned. The Constitution of Bangladesh had been passed in 1972 having no security law provisions like preventive detention and emergency provisions. However, it was soon amended to include such provisions in 1973 and the first state emergency was declared in 1974 for internal disturbance. Under Article 141A of Constitution, 'If the President is satisfied that a grave emergency exists in which the security of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he or she may issue a Proclamation of

³) The Constitution of the People's Republic of Bangladesh, passed by the Constituent Assembly of Bangladesh on the 4th Nov. 1972 and authenticated by the Speaker on the 14th Dec. 1972

⁴) James Heitzman & Robert L. Worden, Bangladesh: A Country Study 32-36, 112-17 (2d ed. 1988), available at <http://hdl.loc.gov/loc.gdc/cntrystd.bd> (last accessed on 23, April 2013)

⁵) Ibid., Constitution of the People's Republic of Bangladesh art. 39 (2004).

⁶) Ibid., art. 39(2)

⁷) Ibid., Bangladesh Constitution, Art. 43.



Emergency where the danger is imminent.⁸ Article 141B declares the suspension of fundamental rights in case of emergency, ‘While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40 and 42 shall restrict the power of the State to make any law or to take any as the state is competent to make or to take. The constitution extends further to empower the government to suspend the enforcement of any fundamental rights mentioned above by any court during the emergency.’⁹ Form the Constitution, it can be traced that, if the President believes that a crucial conditions, such as war, external hostility or internal turbulence, threaten the security or public life of the nation, he or she may declare an urgent situation. It is, therefore, understood that where urgent situation arises, it warrants the suspension of the rights established in articles 36 to 40 and 42, which includes the right to freedom of expression.

There are some specific legislations were passed in the parliament which go against the human rights norms and technically imposes restriction on fundamental rights like freedom of expression, in the greater interest of the security of the state. The Special Powers Act (SPA)1974 is one of them, which allows the authority to take special measures for prevention of certain ‘prejudicial activities’ and for conducting more speedy trial and effective punishment for serious offences.¹⁰ ‘Prejudicial Acts’ mentioned in the Act comprises a wide variety of crimes that likely to prejudice the sovereignty or defence of the State, maintenance of friendly relations with Bangladesh, security of Bangladesh or to endanger public safety or the maintenance of public order. The Special Powers Act provided greater benefit to the government in political, social and economic security of the state and which particularly prioritise those security issues rather than human rights needs of the citizens. Moreover, the Emergency Power Ordinance, 2007, and the Emergency Power Rules 2007, authorise the government to detain citizens without filing formal charges or specific complaints. Using the above legislations the government provides impunity to public authority who is often involved with the violation of human rights and freedom. It is said that the above legislations require attention from the government and review by the judiciary to be implemented in line of the International Human Rights norms to protect the right of an individual.

Contempt of Court

A lawful restriction on the freedom of speech and expression can be imposed where such freedom exceeds the fair limit which is amount to contempt of court. The primary legislation regulating contempt of court in Bangladesh was found back to 1926. The Act, however, gives no legal definition of contempt and responsibility rested upon the court to define what contempt is. Bangladesh Constitution in its Article 39 clearly endorses freedom of speech, expression and the press but imposes certain limitation on ground of Contempt of Court. The law of contempt of court aims to preserve the integrity and administration of justice. A recent conviction has been brought against ‘*Amar Desh*’, editor, Mr. Mahmudur Rahman, and other reporters for contempt of court which raised a heated debate between the need to preserve public confidence in judicial organs and the right of the media to criticise

⁸) Ibid., Art. 141A

⁹) Ibid., Art. 141B

¹⁰) Special Powers Act, 1974 (Act XIV of 1974), Code of Criminal Procedure (CRPC), Bangladesh.

Available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=&id=462 (Accessed on 24, April 2013)



them.¹¹ The Court classified ‘*Amar Desh*’ case into a category of contempt offence called ‘scandalising the court’ under the jurisdiction given by 1926 Act. It was believed by the judicial institutions that the publication by ‘*Amar Desh*’ Newspaper was a criticism of the court or imputation of bias or partiality which would erode public confidence and undermine judicial authority.¹² From the perspective of the judiciary, when the court is criticised publicly and accused of bias or political influence, what is at stake is not just the individual reputation of a particular judge but the collective reputation of the judiciary as an institution.¹³ Moreover, being a democratic state, respect for human rights and media freedom in Bangladesh is growing day by day. It should also be noted that, to draw a fair balance between the right of the press to criticise judiciary and the law of contempt to limit such freedom to strength public confidence, the 1926 Contempt Act required urgent reform in a democratic state like Bangladesh. An assumption was therefore made in application of the law of contempt of court, a fair balance should be drawn between the freedom of expression and the need to maintain the authority of the court’ as illustrated in *Moinul Hossen v Sheikh Hasina Wazed*¹⁴. Hence, the doctrine of Contempt should provide a clear definition of contempt and procedural safeguards which would be compatible with international human rights standards to resolve confusion between media freedom and judicial integrity.

Defamation to any offence

According to Section 499 of the penal code, ‘whoever by words either spoken or intended to be read, or by signs or by visible representations, made or published any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person’¹⁵ the following exceptions are not defamation: first, where an imputation of anything concerning a person which is true and for public good. Second, any expression or opinion is made in good faith to respect the conduct of a public servant in the discharge of public functions. Third, any expression in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character. Fourth, it is not a defamation to publish a substantially true report of the proceedings of a court of justice, or the result of any such proceedings. Fifth, any expression in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a court of justice. Sixth, it is not defamation to express an opinion in good faith respecting the merits of any performance which its author has submitted to the judgement of the public. Seventh, it is not defamation where censure passed in good faith by person having lawful authority over another. Eighth, to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation. Ninth, imputation made in good faith by person for protection of his or other’s interests. Lastly, it is not defamation where a caution is made for good of person to whom conveyed or for public good. However, the right to freedom of speech and expression guaranteed by article 39 of Bangladesh does not permit a right to incite people to commit offence.

¹¹) ‘The Daily Star’ Newspaper, ‘Gagging free speech or protecting judicial integrity?’, 25th August, 2010, available at: <http://archive.thedailystar.net/newDesign/news-details.php?nid=152087> (Accessed on 2nd May, 2013)

¹²) Ibid.

¹³) Ibid.

¹⁴) *Moinul Hosein v Sheikh Hasian Wazed* (2001)53 DLR 138

¹⁵) The Penal Code of Bangladesh, 1860, section. 499.

Violation of decency or morality

The law of Bangladesh provides valid restriction on the freedom of speech and expression to ensure decency or morality in the society. The term ‘morality or decency’ is not defined explicitly but has wider meaning and varies time to time and place to place.¹⁶ The penal code of Bangladesh also contains provisions regarding the violation of decency and morality, ‘a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, dangers or annoyance to persons who may have occasion to use any public right.’¹⁷ Section 292 of penal code prohibits any sells, lets to hire, distributes, advertises, exhibits or in any manner puts into circulation to public, of any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object.¹⁸ Also, the penal code declares that whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.¹⁹

Violation of public order

The fundamental rights to freedom of expression given to the citizens of a democratic state may sometimes violate public order. Any kind of speech or way of expression that disturbs public tranquillity or public peace may amount to violation of public order. Any communal disturbance, protest and strike that cause violence in public regime are offence against public order. In the same way, any expression or utterance made with the deliberate intention to offend the religious feelings of any group of people is regarded as violation of public order, since law imposes a restriction on the right of freedom of expression to protect public disorder. Section 295A of Bangladesh penal code in this regard provided, ‘whoever, deliberately and maliciously by words, either spoken or written, or by physical representation insults or attempts to insult religious feelings of any community, shall be punished with imprisonment maximum of two years.’²⁰ In the case of Shamsuddin Ahmed and others vs. State, the intention of the publication was to make the real Muslims aware of the false interpretation given by the so-called half-educated and preachers of Islam. However, the allegation does not come within the ambit of the offence of section 295A of Penal Code against the petitioners.²¹ Again, in section 298, ‘whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture or places any object in the sight of that person, shall be punished with imprisonment for a term, or with fine, or with both.’²² Following clause 99(a), (b), (c), (d), (e), and (f) of the Code of Criminal Procedure, Bangladesh, the government may cease the publications or newspaper if it contains anything subversive of the state or provokes an uprising or anything that causes enmity and hatred among the citizens or undermine religious beliefs.²³ Under clause 108, a magistrate can seek an undertaking from a person who has made an attempt to express anything seditious, criminal intimidation or

¹⁶) BCDJC (Bangladesh Centre For Development, Journalism and Communication) (2003); *Madhyam* (Bangladesh Media Directory); BCDJC; Dhaka.

¹⁷) *Ibid.*, Bangladesh penal code, Chapter XIV, section. 268.

¹⁸) *Ibid.*, section 292

¹⁹) *Ibid.*, section 294

²⁰) *Ibid.* sections 295A was inserted by section 2 of the Criminal Law (Amendment) Act. 1927 (Act No. XXV of 1927).

²¹) Shamsuddin Ahmed and other vs. State and another, 52 DLR 497.

²²) *Ibid.* Penal Code, section 298.

²³) The Code of Criminal Procedure, Bangladesh, 1898, Clause 99.



defamation or create class-conflict.²⁴ Since 1990 there has been long protest by *Jamaat-e-Islam* (a religio-political group of Bangladesh) and other religious groups in Bangladesh for passing the 'Blasphemy law' to protect defamatory remark on religious beliefs (Ahmed, 2007). In this regard in 1993, the Secretary General of the *Jamaat e Islami*, Motiur Rahman Nizami, (who is currently on trail for War Crime, genocide, and crime against humanity), introduced a 'blasphemy bill' in the Parliament which proposed to include two more sections beside section 295A of the Bangladesh Penal Code: Section 295B and Section 295C to create new offences of 'insult to the Koran' and 'insult to the Prophet', respectively carrying maximum sentences of life imprisonment and death.²⁵ However, it was never passed in the parliament. On the other hand, the continuance of religious offences in different part of the country was invoking national concern about the necessity of blasphemy law in Bangladesh. By 1993, blasphemy related prosecutions had been seen to be rising: as Section 99A CrPC was invoked to proscribe book verses from Sufi mystic Lalon Fakir. A case was brought to the court to ban publication of an Ahmadiya community book regarding *Islam e Nabuat*, in continuous circulation for 40 years.²⁶ In this case, a private lawyer sought declaration from the High Court that Ahmadiyas were non-Muslims. However, the High Court ruled that Bangladesh Constitution does not confer an authority to Government to decide who is Muslim and who is not. The case of Taslima Nasreen²⁷ soon brought religion to the national stage, Taslima Nasreen, was a writer and one of controversial protagonist in Bangladesh, her publication of *Lajja* (Shame), a novel set in the backdrop of anti-Hindu riots in Bangladesh just after the demolition of the *Babri Mosque*. The novel illustrates how, in situations of religious conflict, gender oppression can intensify (Nasreen, 1993: 6-30). One harrowing scene portrays the rape and forcible conversion to Islam of the daughter, Nilanjana, in a chilling depiction of what religious fanaticism can do.²⁸ *Lajja* was banned by the Bangladeshi government on the ground that it might 'hurt the existing social system', and the *Jamaat-e-Islami*, claimed that it would 'hurt the religious sentiments of the people'.²⁹ As the controversy escalated to national concern, Nasreen further made aggressive comments in interview to India's *The Statesman* newspaper, where she allegedly called for revision of the Quran to ensure women's rights. As a result of her publication, Nasreen, receiving death threats and strikes from religious groups, and she eventually fled into exile and has never returned (Alam, 1998: 430). Another case, in 1995, Humayan Azad's book *Naari* (Woman) was banned by the government because of chapters analysing religious doctrine that imposed chauvinism on women. While the gist of Azad's critique was similar to Nasreen's, he confronted the issue by taking the government to court. The ban was finally lifted after a five-year legal battle which Azad won in High Court.³⁰

²⁴) The Code of Criminal Procedure, Bangladesh, 1898, Clause 108.

²⁵) Ahmed, Rumi (30 September 2007), "[Chronology of Major Blasphemy Cases in Bangladesh \[1972-2007\]](http://rumiahmed.wordpress.com/2007/09/30/chronology-of-major-blasphemy-cases-in-bangladesh-1972-2007/)", (last visited 3rd May 2013). Available at: <http://rumiahmed.wordpress.com/2007/09/30/chronology-of-major-blasphemy-cases-in-bangladesh-1972-2007/>

²⁶) Anjuman a Ahmadiyya v Bangladesh, DLR (1993) 185

²⁷) Nurul Alam, Officer in Charge, Motijheel Police Station v Taslima Nasrin, Complaint Case No. 1315 of 1994.

²⁸) Taslima Nasreen, *Lajja* (New Delhi: Penguin India, 1993), ch. 5; Ali Riaz, *Voice and Silence: Contextualising Taslima Nasreen* (Dhaka: Ankur Prakashami, 1995), pp. 6-30.

²⁹) Jamaat-e-Islami, cited in Riaz, op. cit., p. 24; and Shamsul Alam, 'Women in the Era of Modernity and Islamic Fundamentalism: The Case of Taslima Nasreen of Bangladesh', *Signs* 23 (1998) 429-461, p. 430.

³⁰) Humayun Azad and others v Secretary, Ministry of Home Affairs and others, 20 Writ Petition No. 2553 of 1995.



The current Prime Minister of Bangladesh, Sheikh Hasina, during her interview with BBC has firmly rejected the demand for a new anti-blasphemy law to punish those who defame Islam and Prophet Muhammad (S). The Prime Minister said existing laws were sufficient to punish anyone who attempted to insult religion. She also added, “This country is a secular democracy. So each and every religion has the right to practice their religion freely and fair. But it is not fair to hurt anybody’s religious feeling. Always we try to protect every religious sentiment.”³¹

Recent Violation of fundamental right to freedom of expression in Bangladesh

A very recent violation of freedom of speech or expression can be seen in the murder case of a blogger, Ahmed Rajib Haider. Rajib Haider, was better known by his online identity as *Thaba Baba*, was claimed as one of the main stream activists of Shahbagh protest against war criminals, and was stabbed to death in Dhaka on 15th February 2013.³² The last status updated in his blog around 3pm on Friday, he urged everyone to boycott all institutions controlled or funded by *Jamaat-e-Islami*. Many blogger and general people termed it as the output of Shahbagh protest while other claiming this murder as an outcome of his personal online blog containing ‘anti-Islamic activities’ like objectionable comments and ill motivated funs against Islam. Some of the online activists had branded the slain blogger Ahmed Rajib Haider as an atheist who they said should have been resisted. One of them commented “It is a duty of all Muslims to kill those atheists”.³³ Furthermore, leaders at the rally from pro-Islamic groups termed the bloggers as ‘atheists’ and demanded their capital punishment’ for making derogatory comments on Islam and Prophet Muhammad (S).³⁴

The restriction on the right of freedom of expression can be drawn in another recent case where law enforcers arrested three bloggers, Russel, Shuvo, and Biplop, for placing defamatory comments about Islam and Prophet Muhammad (S) on the internet.³⁵ Hours after the arrest, they were placed on a seven day remand for making such disparaging comments against Islam. The news of the arrest sparked strong criticism of the government on the social media, right groups online, and political activists describing it as ‘an attack in freedom of speech and an insult to democracy’ and as ‘sad and shameful action’. One of the bloggers, Abu Mustafiz, said the government has arrested them as they had been writing about Government’s ‘dubious role’ over the *Gonojagoron Mancha*³⁶ (an agitation against war criminals). The Law Minister of Bangladesh, Shafique Ahmed told journalists that the government is planning to toughen the laws to punish those hurting the religious sentiment of the people. Considering the one side of the coin, freedom of Bloggers to express their thoughts is a human rights issue protected universally (Cornwall, 2011: 499), and on the other side, any interference by a person with the right to religion of others is an offence. Now, the

³¹) ‘The Daily Star’ Newspaper, ‘Hasina rejects blasphemy law’, April 08, 2013 (last visited, 4th May 2013), available at: <http://www.thedailystar.net/beta2/news/hasina-rejects-blasphemy-law/>

³²) bdnews24. (2013, February 15). Shahbagh protester killed. Retrieved March 19, 2013, from bdnews24.com: <http://bdnews24.com/bangladesh/2013/02/15/blogger-murdered-in-dhaka> (Accessed on 4th May 2013)

³³) TazaKhoror. (2013, February 27), [Was Blogger Rajib Killed For His Blog And Comments??](http://tazakhobor.com/politics/2875-blogger-rajiib-was-killed-for-his-blog-and-comments). Retrieved March 19, 2013, from tazakhobor.com: <http://tazakhobor.com/politics/2875-blogger-rajiib-was-killed-for-his-blog-and-comments> (Accessed on 5th May 2013)

³⁴) The Independent, 20th February 2013. http://www.theindependentbd.com/index.php?option=com_content&view=article&id=156511:islamic-groups-demand-death-penalty-to-shahbagh-bloggers&catid=132:backpage&Itemid=122 (Accessed on 5th May 2013)

³⁵) ‘The Daily Star’ Newspaper, ‘Three bloggers arrested’, April 3, 2013.

³⁶) Ibid, April 3, 2013.

fact to consider is whether the state implied proper balance to impose restriction on the freedom of bloggers or not.

Bangladesh has recently launched a crackdown on Internet sites for “hurting religious feelings” in the majority-Muslim nation amid protests by Islamic groups against “atheist anti-Islam” bloggers. Giasuddin Ahmed, vice chairman of the country’s telecommunications regulator, told AFP at least two websites had been blocked and authorities have also removed 10 other blog posts for “spreading hatred, provoking social disorder and hurting religious feelings of the people”³⁷. Blocking websites and removing blogs could be regarded as the restriction on freedom of media.

As far as the law is concerned, the bloggers have the right of freedom of expression conferred by Article 39 of Bangladesh constitution, but restriction should be imposed on blogger’s freedom where their expression offends religious belief. The debate concerning Islam in the above cases of bloggers that is Islamic law restricts one’s freedom of expression guaranteed in a democratic society. It is understood that this is a grave misunderstanding by the bloggers, and people with the same belief. Because, Islam does not restrict the right of a person to have freedom of expression, but it disregards any expression that dishonour the aspects of Islam and other respected religious groups.

Impact of UDHR in Bangladesh

Beside a domestic obligation to secure the protection of freedom of expression to its citizens, Bangladesh has also ratified a number of international agreements at the United Nations (U.N.). As Bangladesh became a member of the United Nations on 17th September 1974,³⁸ it must be willing and able to promote human rights and fundamental freedoms recognized by the U.N. Charter.³⁹ The adoption of the Universal Declaration on Human Rights (UDHR) was recognised as a great achievement and an authoritative interpretation of the UN Charter. The UN Charter, while mentioning human rights does not itself elaborate a detailed bill of rights that would provide an explanation as to the definition of human rights. Therefore, many commentators consider the Declaration is arguably an authoritative interpretation of the meaning of human rights as prescribed within UN Charter (Rehman, 2003: 57). As the Declaration did not purport to have legally binding authority, it appeared as a great achievement of international community to provide explicitly detail meaning of human rights. Its main purpose is to provide a generally accepted catalogue of inalienable rights of human being instead of providing enforceable machinery (Humphrey, 1967: 39-56). Although UDHR includes both categories of civil, political, economic, social and cultural rights, it could not be transformed into a legally binding agreement for two main reasons: firstly, ideological dispute between the western and communist states over the priorities of the two sets of rights meant that agreement could not be reached over their inclusion in a single legally binding instrument. Secondly, the methods of implementing the two categories of rights were considered to be divergent, while it was thought that civil and political rights could progressively and programmatically be implemented with some immediacy, depending upon the resources available to the state (Davidson, 2004: 1-2). Bangladesh has recognized

³⁷) Ibid, April 4, 2013.

³⁸) U.N., List of Member States (2005), [http:// www.un.org/Overview/unmember.html](http://www.un.org/Overview/unmember.html) (Accessed on 5 May, 2013)

³⁹) U.N. Charter, art. 55(c). Members “pledge themselves to take joint and separate action” to achieve the economic, social, civil, and political principles outlined in Article 55 [promoting respect and observance of human rights without distinction as to race, sex, language, or distinction].

the importance of this seminal document to its social development, modelling its constitution after the UDHR.⁴⁰

The drafters of Bangladesh constitution following the provisions of UDHR recognized most of the fundamental human rights and freedoms. Following the Universal Declaration of Human Rights, adopted in 1948, Article 19 provides 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’.⁴¹ The Declaration in its Article 2 states, ‘everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs.’⁴² Therefore, Bangladesh, being a member of United Nation, is expected to promote the guidelines of human rights protected by the UDHR where necessary to give effect in its domestic legislation.

Impact of ICCPR in Bangladesh

Bangladesh is a signatory to the International Covenant on Civil and Political Rights (ICCPR) that was adopted by the General Assembly in 1966, and activated on 23 March 1976.⁴³ The International Covenant on Civil and Political Rights expands the ideologies and a principle laid out in UDHR and is legally binding on all states that have signed and ratified its provisions.⁴⁴ When a state becomes a party to the ICCPR, it is under an obligation to guarantee to all individuals in its territory or under its jurisdiction, without any jurisdiction, all the rights protected in the ICCPR (Fottrell, 2002: 485-500). The member state also undertakes to adopt legislative and other measures to give effect to the rights recognised in the ICCPR. Under article 2(1) of the Covenant, state parties undertake the following obligation: ‘each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status’⁴⁵. Thus, the rights contained in the Covenant are owed to individuals within a state’s territory or jurisdiction and not collectives of individuals or legal body such as corporations, charitable organizations, or other similar legal foundations. All the individuals whether citizens or non-citizens, are on equal footing as far as they are the subjects of the relevant civil and political rights guaranteed by the ICCPR.⁴⁶

Following Article 2(2) of the Covenant, ‘States are required to take the necessary legislatives or other measures to give effect in their domestic law to the rights recognized in the ICCPR. Each state has an obligation to formally establish the legal framework necessary

⁴⁰) Habib Zafarullah & Mohammad Habibur Rahman, Human Rights, Civil Society and Nongovernmental Organizations: The Nexus in Bangladesh, 24 Hum. Rts. Q. 1011, 1014 (2002).

⁴¹) General Assembly of the United Nations (1948-12-10). “[Universal Declaration of Human Rights](#)”, article. 19

⁴²) UDHR. Art. 2

⁴³) Office of the U.N. High Commission for Human Rights, Status of Ratifications of the Principal Human Rights Treaties (2004) (stating that Bangladesh acceded to the ICCPR on December 6, 2000), [http:// www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf)

⁴⁴) International Covenant of Civil and Political Rights, Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171

⁴⁵) ICCPR, Article,2(1)

⁴⁶) Ibid, Scott Davidson, pp. 3-4.

to secure civil and political rights'⁴⁷. According to Article 2(3), 'States are also expected to provide effective remedies to those whose rights have been violated'. Such remedies may either be general remedies or remedies specially designed to redress violations of rights protected by the ICCPR (Kumar, 2006: 351). Article 5 (1) provides that the Covenant must not be interpreted as allowing any state, group or person to engage in any activity that aimed at the destruction of any right or freedom recognized in this Covenant. On the other hand, Article 5(2) prevents a State from using the covenant as a basis for denying or limiting other rights, whether guaranteed by domestic or international law.

The fundamental rights of freedom of expression in Bangladesh are also guaranteed by Article 19 of the ICCPR⁴⁸: (1) everyone shall have the right to hold opinions without interference; (2) 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 choice⁴⁹; (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subjected to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) to respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals.⁵⁰

The Covenant through its Article 28 establishes the institutional mechanism to enforce the rights; Human Rights Commission (HRC) to supervise state parties' obligations under the ICCPR. Article 40 provides that State parties are expected to submit reports to the Committee on the measures which they have adopted to give effect the rights recognised in the Covenant, and progress made in the enjoyment of those rights within their jurisdiction. Accordingly, Article 41 of ICCPR, the Covenant allows States to declare at any time their recognition of the competence of the Committee to receive and consider inter-state communication that the states concerned is not fulfilling its obligation under the Covenant.

Most of the civil and political rights under the ICCPR have been guaranteed in the constitution of Bangladesh as fundamental rights. Bangladesh has entered and signed the ICCPR on December 6, 2000, and therefore, undertaken binding obligation to guarantee the rights protected by it. Accession to the ICCPR requires the government of Bangladesh to regularly report to the Human Rights Commission on the progress in promoting its responsibilities under the ICCPR.⁵¹ The Special rapporteurs may visit and report on Bangladesh where the commission suspects a violation.⁵² However, Bangladesh has not signed the Optional Protocol I to the ICCPR, which would impose greater accountability by enabling individuals to file complaints for violations of the ICCPR, including violations of Article 19, at the United Nations.

The compliance with International Obligations of Bangladesh Government

Since the accession to the UDHR and ICCPR, UN Special rapporteurs visited Bangladesh concerning several universal periodic reports made over the violation of

⁴⁷) ICCPR, Article, 2(2)

⁴⁸) International Covenant on Civil and Political Rights (1966), art 19, 6 ILM 368, 374 (1967) (herein after ICCPR)

⁴⁹) Ibid., art. 19(2)

⁵⁰) Ibid., art.19(3)

⁵¹) Ibid, art. 40, 999 U.N.T.S. at 181-82.

⁵²) Ibid. ICCPR, art. 41, 999 U.N.T.S. at 182-83.

international human right norms such as on freedom of religion or belief in 2000⁵³, violation against women in 2001⁵⁴, on the right to Food in 2002⁵⁵, ethnic minorities in 2006, and Housing and Water and Sanitation in 2009⁵⁶. The newly elected Government in Bangladesh under Awami-league party, Prime Minister Sheikh Hasina, returned to democratic rule in 2009, made strong commitments to address a number of serious human rights problems including extrajudicial executions, custodial torture, and impunity for members of the security forces etc. Human Rights Watch in its letter provided that the Awami League and its allies have a unique opportunity and the responsibility to address major human rights problems that had been ignored by successive governments.⁵⁷ The Government of Bangladesh after UPR in 2009, prioritised transforming the National Human Rights (NHRC) Commission into the primary institution that oversees human rights implementation in Bangladesh. The National Human Rights Commission Act 2009 empowers the NHRC to exercise its investigative power *suo moto* (own discretionary power) to probe into any alleged violation of human rights.⁵⁸ However, Brad Adams, Asia director of Human Rights Watch, said “this government came to power promising the end of extrajudicial killings, a liberal environment for activists and critics, and an independent judiciary. But the government no longer seems to even be trying to achieve these goals.”⁵⁹

Conclusion:

From the overall discussion, it can be reiterated that the Constitution of Bangladesh provides freedom of speech and expression to a certain limit that does not affect the peace and security of the state, ethics, morality, public order and public safety. However, there are still many areas where the government of Bangladesh still lacks to fulfil the obligations it has taken under national and international authority in ensuring freedom of expression to establish better democracy. Media and Press which are considered as key element of democracy to ensure the exercise of freedom of expression were regularly constrained by public authority in Bangladesh. Again, the government of Bangladesh is failing to draw a fair balance between the right to freedom of expression and other human rights equally guaranteed by the Constitution and International Covenant. Furthermore, many commercial advertisements by taking the advantage of freedom of speech and expression, are telecasting advertisements which are offensive on ethics and moral ground.

⁵³) <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsA-E.aspx>, Report. [A/55/280/Add.2](#) (Accessed on 25 April, 2013)

⁵⁴) Ibid., Report [E/CN.4/2001/73/Add.2](#)

⁵⁵) Ibid., Report [E/CN.4/2004/10/Add.1](#)

⁵⁶) Ibid., Report [A/HRC/15/55](#)

⁵⁷) Human Rights Watch, *Letter to PM Sheikh Hasina with Recommendations to Improve Human Rights in Bangladesh*, January 29, 2009, (last visited 26 April, 2013)

<http://www.hrw.org/news/2009/01/29/letter-pm-sheikh-hasina-recommendations-improve-human-rights-bangladesh>

⁵⁸) Human Rights Council, ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21’, Working Group on the Universal Periodic Review (Sixteenth session) Geneva, 22 April-3 May 2013, at 4

⁵⁹) Human Rights Watch, [Bangladesh: Government Backtracks on Rights](#), February 1, 2013. (last visited 26 April 2013), <http://www.hrw.org/news/2013/02/01/bangladesh-government-backtracks-rights>

The notion of freedom of expression has real impact on political and parliamentary debate: the new encouragement and glorification of terrorism offenses, and even more clearly the extension of the communal hatred offense to cover religious groups, were strongly resisted by reference to general free speech principles.

Hence, our observation would say that there is a substantial difference in the systems of governance, enforcements processes and mechanisms in the protection of human rights in Bangladesh. So, we believe, the concept of freedom of speech and expression is not well defined or fully covered in Bangladesh constitution to ensure greater protection of human rights in a democratic state like Bangladesh. We, therefore, believe, it is the internal factors, such as good governance, accountability of executives, removal of impunity, impartial judicial order, freedom of media and press that may bring changes in Bangladesh to provide wider protection of freedom of expression. Finally, we would like to conclude by stating that Bangladesh requires international cooperation and guidelines to improve the protection of the right to freedom of expression to the highest standard and compliances with the international obligations to ensure governments transparency in democratic society.

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