
Right to Freedom of Speech and the Law of Defamation in Bangladesh: Finding a Balance

*Md. Abdur Rahman*¹

Abstract

Right to free speech is a constitutional right. Every human being can exercise this right recognized by many international instruments. But sometimes, it is seen that free speech is curtailed in the name of defamation and constitutional reasonable restrictions in Bangladesh. It cannot be run in a democratic country. In democracy, the criticism against government and its policies is also a right under free speech. The aim of this paper shows how a balance between them is drawn and examines the legality of such laws which make a conflict with freedom of speech. This paper is framed following the qualitative and quantitative method. The essential data are compiled from online journals, online newspaper articles, websites and blogs, books, editorials, judicial decisions, national statutes, international instruments etc. The findings of the manuscript are that free speech is open for all in democracy. It is protected by constitution. It should not be repressed by laws. Similarly, right to reputation must also be protected, because it covers right to life. Without reputation, life is worthless. So, it should not be harmed in the name of free speech. A balance must be drawn between them.

Keywords: Freedom of Speech, Protection of Free Speech, Harm, Defamation Law, Balance.

Chapter 1 INTRODUCTORY PART

1.1 Background

Speech is the worthy gift of Allah to mankind. A human being can impart his ideas, opinions, feelings etc to others through it.² It is such a natural

¹ The Author is a student of Bangladesh University of Professionals (BUP). Recently he has completed his LLB (Hons) degree there. He can be reached at abdurrahman1994.law@gmail.com

² All Answers Ltd, 'Freedom of Speech and Expression' *Law Teacher* (September 2020) <www.lawteacher.net/free-law-essays/constitutional-law/freedom-of-speech-and-expression-constitutional-law-essay.php?vref=1> accessed 27 September 2020.

right which is inherently acquired each human being on birth.³ Everyone can enjoy the right for his mental publication. He can exercise this right without being obstructed. This is indispensable to the progress and growth of human personality and every person should be free in his thought and conscience.⁴ At present, this right has got its place in many international documents like Article 02, 19 of UDHR, Article 19 of ICCPR, Article 10 of ECHR etc.⁵ Along with these, it is also found in the constitution of Bangladesh.

Though it is said that this right is protected by constitution, it is limited in some arenas. At this, the chance of practicing this right has been shrunk or narrow. This right is also influenced by defamation laws such as the grounds of Article 39 (2), the constitution of Bangladesh, section 171 (G), 499, 500, 501, 502 of the Penal Code 1860, section 57 of the ICT Act 2006, section 198 of the Code of Criminal Procedure 1898 etc.

In this paper, the author will try to discuss the concept and perspective of freedom of speech and its place in the defamation laws, then, try to detect the relationship between free speech and laws of defamation in Bangladesh and to find out a balance. Finally, what the scenario of freedom of speech going on in Bangladesh and its impact in Bangladesh will also be discussed.

1.2 Objectives

The aims of the research paper are to show how the right to freedom of speech is exercised by human being. It identifies the scenario of freedom of speech restricted by laws of defamation in Bangladesh. It exhibits how the balance between freedom of speech and law of defamation in Bangladesh is drawn. It finds out whether any new law is needed for making a balance between them.

1.3 Rationale (Significance) of this Research

This paper undoubtedly bears a great significance to us. It lays down how the balance is ensured between right to freedom of speech and law of defamation. It is known to all; in our country right to freedom of speech is not exercised completely owing to have some defamatory provisions in the

³ ibid

⁴ Dewan Anwarul Asif, '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' (2015) 9 (1) World Vision <<http://bv-f.org/WV-09/15.%20WV%20Final.-9.pdf>> accessed 26 September 2020.

⁵ ibid

laws of Bangladesh. On the other hand, right to freedom of speech is recognized in our constitution as well as in the many international documents. But due to have the defamatory laws, which make conflict with the recognized right, in Bangladesh. This paper focuses the scenario of them in the context of Bangladesh.

1.4 Problem Statement

This paper faces a problem regarding application of law of defamation and enforcement of fundamental right. Their implication creates a contradiction to the mind of human being. For this contradiction, people abstain themselves from enjoying the fundamental right. In the perspective of Bangladesh, we see if anyone expresses his opinion about government activities, he or she is arrested immediately. Here the laws of defamation are abused badly. Section 57 of the ICT Act 2006 is one of them. Here are recorded some practical bitter situations where free speech is not protected. The following instances give us such messages.

A criminal defamation case was initiated against some journalists for publishing the corruption of a Member of Parliament (MP) of the district of Patuakhali.⁶ Another instance is that a university teacher published a scandalous status against government about the death of a couple for road accident on his Facebook. Being outside of the country, he could not be appeared before the court. For this, the court awarded him imprisonment not exceeding 6 months for the contempt of court.⁷

The most outstanding examples were held in 2018. A citizen had been arrested for criticizing against government regarding Road Safety movement on his Facebook live. During the Road Safety movement, he tried to state that the prime minister came in power illegally. She has no mandate to continue, bank looting is done her associates, kidnapping, extra judicial killing, etc are also held in her period. It is time to be overthrown.⁸ For this comment, his three cell phones with other devices were seized. He was sent to jail under section 57(2) of ICT Act 2006. Another example is that an open-minded journalist and writer, was exiled from the country.

⁶ Reporter, 'Freedom of Expression in Bangladesh: Annual Report' *Article 19* (2017) <www.article19.org/wp-content/uploads/2018/05/FoE-Report-2017-Final-Draft-02.05.2018-no-mark-up.pdf> accessed 26 August 2020.

⁷ Court Correspondent, 'Jahangirnagar University teacher gets 3-years prison term for wishing PM Hasina's death' *BD News24* (Dhaka, 12 August 2015) 2 <<https://bdnews24.com/bangladesh/2015/08/12/jahangirnagar-university-teacher-gets-3-year-prison-term-for-wishing-pm-hasinas-death>> accessed 27 August 2020.

⁸ Ashif Islam Shaon, 'The question of Section 57' *Dhaka Tribune* (Dhaka, 10 August 2018) <www.dhakatribune.com/bangladesh/law-rights/2018/08/10/the-question-of-section-57> accessed 02 February 2021.

She opined openly against the religious sentiment. She made a blasphemous comment which was inconsistent with Islam.⁹

1.5 Research Questions

This paper seeks the answers to the following mentioned questions. The first one is, is free speech a fundamental right to all human beings? The second one is what is the relation between freedom of expression and the law of defamation? And the third one is, should the parliament enact any new law or amend the existing laws to draw a balance between the laws of defamation and the right to freedom of speech?

1.6 Hypothesis

If the parliament enact new law or amend existing law, then it may be possible to make a balance between the law of defamation and the right to freedom of speech. This initiative may play an important role to reduce the abuse of existing defamation laws and may protect fundamental right freedom of speech.

1.7 Scope of the Research

There is much scope in doing this research. This paper is going to be prepared in the context of Bangladeshi people's liberty of speech and the application of defamation laws in Bangladesh. This paper tries to focus whether these laws curtail their fundamental rights or regulate their freedom in speech. This manuscript tries to find out how these laws are used and how fundamental right 'right to free speech' is protected.

1.8 Literature review

After searching on Google scholar, the author has found the following articles which are relevant to the research title. For making the research paper unique, a short review on these articles is stated here:

Weaver and Partlett review the decision of the *Sullivan* case decision and the current expansion of eligible privilege. In their paper, they have showed how the balance between free speech and majesty in a free democratic society has switched strongly state to state in the side of free speech under constitutional, historical, and social settings. They showed us that tolerance is the way which can differ the balance of free speech and

⁹ Md. Mahmudul Hasan, 'Free speech, ban and 'fatwa': A study of the Taslima Nasrin affair' (2010) 46 (5) *Journal of Postcolonial Writing* 540-552 <www.tandfonline.com/doi/abs/10.1080/17449855.2010.517061> accessed 28 November 2021.

person's prestige. The authors did not touch Bangladeshi perspective in their paper. They just focused the case according to their state's prospect.¹⁰

Badruzzaman focuses the right to freedom of speech and right to privacy. In his dissertation, he shows how right to privacy & free speech are protected by law and what the inconsistencies of ICT Act 2013 (amended) are. He did not mention about the laws of defamation in Bangladesh and the relation of free speech with it.¹¹

Alam and Islam show how social networking websites are being illegally used in committing crimes, particularly defamation, in online environment in Bangladesh as well as Malaysia and how the legal frameworks and the outlook of judiciaries of these jurisdictions on the current matter, plays an important role here. The writer did not refer the connection of free speech and laws of defamation in Bangladesh.¹²

Khan develops the idea of the right to freedom of expression in the international Regime and argues why a government should have the power to restrict expression on the grounds and what kind of expression should be regulated and how that should be done. The writer did not assert anything about the balance of free speech and laws of defamation in Bangladesh.¹³

Kashyap examines the effectiveness of the laws governing the crimes of cyber defamation in India, the responsibilities in which the initial publishers and the Internet Service Providers (ISPs) can be made liable, and the redress and compensation are executed by judicial decisions. The

¹⁰ Russell L Weaver and David F Partlett, 'Defamation, free speech and democratic governance' (2006) 50 (1) NYLS <https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1287&context=nyls_law_review> accessed 26 August 2020.

¹¹ Mohammad Badruzzaman, 'Controversial Issues of Section-57 of the ICT Act, 2006: A Critical Analysis and Evaluation' (2016) 21 (1) IOSR-JHSS 62-71 <www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue1/Version-2/L021126271.pdf> accessed 26 August 2020.

¹² Shahin Alam and Md. Zahidul Islam, 'Offensive Statements on Social Networking Platforms with the special reference to Cyber Defamation: A Comparative Analysis between Malaysia and Bangladesh' (2015) 1 (3) Journal of Asian and African Social Science and Humanities 40-57 <www.researchgate.net/publication/330737801_Offensive_Statements_on_Social_Networking_Platforms_with_the_special_reference_to_Cyber_Defamation_A_Comparative_Analysis_between_Malaysia_and_Bangladesh_Offensive_Statements_on_Social_Networking_Platforms> accessed 26 August 2020.

¹³ Arafat Hosen Khan, 'Restrictions on Freedom of Expression: Getting the Right Balanced' (2015) 6 (6) Journal of International relations <www.iip-bd.org/wp-content/uploads/2020/03/Restrictions-on-Freedom-of-Expression.pdf> accessed 28 August 2020.

researchers did not say anything about the balance of free speech and laws of defamation in Bangladesh.¹⁴

Belnap examines the defamation's history treating it as a doctrine, the basis of universal human rights, and the query of whether the scandal of pious resolutions could proceed to allow restrictions on the human rights of free speech. The author skipped the defamation laws of Bangladesh and the constitutional rights.¹⁵

Hoque highlights the means of sharing free speech like Facebook. He praised in his dissertation that the role of social network site 'Facebook' which may be the centre of exercising freedom of thought and other fundamental rights in the digital era of Bangladesh. The writer skipped the conflict of such free speech and defamation laws in Bangladesh.¹⁶

Islam and Rahman explore the theoretical dynamics of the current contemporary issues of Bangladesh in their dissertation. The indicators of media freedom, improved by Freedom House and reporters without borders, have been analysed to realize the present contradictory issues. The authors said nothing about the right to free speech and defamation laws in Bangladesh.¹⁷

1.9 Methodological Approach

This paper is framed following the qualitative method. Depending on internet, the necessary data has been compiled for preparing this research paper. The research work is accomplished with secondary data. The necessary data are compiled from newspapers, books, editorials, articles, journals and magazines, blogs, websites, judicial decisions, international conventions and declarations, national statutes etc.

¹⁴ Amit Kashyap, 'Defamation in internet age: law & issues in India' (2016) 1 (1) IJIEMT <www.onlinejournal.org.uk/index.php/IJIEMT/article/download/68/33> accessed 27 August 2020.

¹⁵ Allison G Belnap, 'Defamation of Religions: A Vague and Overbroad Theory that Threatens Basic Human Rights' (2010) (2) BYU <<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2521&context=lawreview>> accessed 27 August 2020.

¹⁶ SM Shyful Hoque, 'Freedom of Thought and Social Networking in Bangladesh: Case Studies on Facebook' (2017) 17 (1) Banglavisian <<http://bv-f.org/VOL-17/05.%20BV%20Final.pdf>> accessed 28 August 2020.

¹⁷ Aminul Islam and Mashihur Rahman, 'A Conceptual Analysis and Understanding of Press Freedom from Bangladesh Perspective' (2016) 9 (1) Global Media Journal 1-12 <www.aiou.edu.pk/sab/gmj/GMJ%20Spring%202016/Article_3.pdf> accessed 28 August 2020.

1.10 Limitation of the Research

To prepare this paper completely, some barriers are identified to the researcher. The lack of resources relevant to the paper title is severely arisen to the researcher. It is very difficult to prepare this paper based on only web sources. The shortage of time is another barrier. It is not possible to make this paper explored broadly for the time limitation. During this progress of research, the COVID-19 pandemic is going on severely. It interrupts the work of research in many ways. For this, the relevant interviews regarding this paper cannot be held. The main problem of making this paper is the slow speediness of internet. It has interrupted the researcher and has killed valuable time.

1.11 Chapter Formation

Chapter 01 lays down about Background, Statement of the Problem, Objectives of the Study, Research Questions, Research Methodology, Literature Review, Justification/Significance of the Study, Scope and Limitation of the Study etc. Chapter 02 asserts about the theoretical framework with some clues. Chapter 03 exposes about Bangladeshi scenario what is going on here. Chapter 04 states about the relevant legal analysis, case laws, legal principles, interpretations of statutes etc. Chapter 05 deals with about the observations and findings of the author and how to solve the identified problems etc. This chapter provides a concluding remark. On the eve of ending the research, an impressive bibliography is also attached here.

Chapter 2 THEORETICAL FRAMEWORK

2.1 Definition

Free speech is the capacity to contemplate and talk freely and to get information from people without fear of restriction or repression by the government. It refers to the right to express one's opinions freely through publications or speaking or any other mode.¹⁸ Through it, people can communicate their ideas and opinions with others without governmental

¹⁸ Dheerajendra Patanjali, 'Freedom of Speech and Expression *India v America* - A study' (2010) 3 (4) India Law Journal <www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html> accessed 25 January 2020.

interference. It is the backbone of every democratic society and without this right any democracy will fall into an autocracy rapidly.¹⁹

Now it is broadly accepted that the right to free speech is the essence of free society and it must be protected always. It is secured not only by the constitution but also by various international conventions like Universal Declaration of Human Rights (UDHR), European convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR) etc.²⁰ In other words, it is treated as a right of a person to reveal opinions and ideas without interference or retaliation from the government.²¹

2.2 Short History

This concept was originated in Athens and the writings of Plato and Euripides. It can also be found in seventeenth century documents such as the 1688 English Bill of Rights which provided freedom of speech for legislators within the confines of Parliament. The legal guarantee of freedom of speech appeared in Scandinavia in the 17th century. Freedom of speech was established in France in 1789 and in the United States Constitution in 1791. Today the right to freedom of speech is recognized in almost every country.²²

2.3 Theories of Free Speech

Theories of free speech play an important role to establish free speech. There are some theories which the author has found are described below:

2.3.1 Discovery of Truth

This theory focuses John Stuart Mill's idea. The liberty of discourse necessarily guides to the finding of truth. According to theory, the variety of ideas is indispensable for discovering the truth. This theory is evaluated for free speech in two ways. The first one is that 'Any idea that is compelled to silence may be true and to refuse this would be presumed the accuracy'.²³ The second one is that 'even if the dormant idea is a blunder,

¹⁹ CK Thakker, *Basic Constitutional principles* (1st edn, Eastern Book Company 1992) 26.

²⁰ Khan (n 13).

²¹ Editor, 'Free speech' *CSUSM* <www.csusm.edu/freespeech/definitions/free-speech.html> accessed 25 January 2021.

²² Editors, 'Freedom of Speech' *History* (04 December 2017) <www.history.com/topics/united-states-constitution/freedom-of-speech> accessed 25 January 2021.

it may possess a part of truth and since the common thought on any object can merely or never include the entire truth, it is done by the different unequivocal thoughts, thus the truth may be reached'.²⁴

However, no authority can presume infallibility in its verdict. The reasoning from skepticism is not erratic itself. Rather, the difficulty is appeared with Mill's presumption that 'a diversity of ideas and their free discourse goes ahead to the finding of truth'.²⁵ This Mill's argument faced extreme criticism for its contradiction on truth and free speech since it is normally demanded that 'to prove or disprove this presumption or opinion pragmatically is not possible'.²⁶

Here Mill's theory²⁷ on 'skepticism by demanding that one cannot be ensured whether the dormant idea or thought is right or wrong'. Hence, for him, 'to deny a hearing to an idea means presuming ultimate certainty and infallibility'.²⁸

In the opinion of the researcher, this kind of free speech suits with scientific communities and universities suitably, where the disclosure of opinion is important for developing scientific, technical, theoretical, social knowledge etc.²⁹

2.3.2 Personal Development

Limitation on free speech means the narrowness of disclosing one's ideas and thoughts or publishing one's plan or opinion in online or offline medium or suppression of one's personality and its evolvment.³⁰ People need to disclose their ideas freely and listen attentively and criticize others. It is significant for improving their personalities and thoughts. For this, the disclosure of speech is needed for the intellectual and soul improvement of one's personality. It is anticipated that this kind of evaluation treats free speech as a humanitarian necessity for one's self satisfaction. Anyway, it appears to be hard to prove this kind of pragmatic demand.

²³ Devrim Kabasakal Badamchi, 'Justifications of freedom of speech: Towards a double-grounded non-consequentialist approach' (2014) 41 (09) *Philosophy and Social Criticism* 907-927 <<https://journals.sagepub.com/doi/full/10.1177/0191453714564457>> accessed 30 January 2021.

²⁴ *ibid*

²⁵ Thakker (n 19).

²⁶ Eric Barendt, *Freedom of Speech* (2nd edn, OUP 2005) 09.

²⁷ *ibid*

²⁸ *ibid*

²⁹ *ibid* 10; *See also* Khan (n 13).

³⁰ *ibid* 15.

Regarding this, Barendt commented that ‘uninterrupted free speech is conducive to private complacency or that it convinces more fundamental humanitarian necessity like adequate housing and education etc’.³¹ Here, it appears that one is needed to assert something more about the importance of free speech for human beings.³²

2.3.3 Democratic Participation

Free speech is indispensable for conducting democracy as it is essential for the political involvement of citizens. People should be conscious to constitute their ideas and observations in political difficulties. The involvement in democracy for political aims is a right of citizens. Here the government censorship infringes this right for isolating them from politics. However, it is difficult to think bona-fide political participation maintaining the instructions of government censorship.³³

This theory is discovered on various explanations of the First Amendment of the US Constitution.³⁴ Alexander Meiklejohn’s explanations in which political participation is treated as the core ingredient of democracy. For his logical explanation, the right to free speech is established to engage real participation of people in democracy.³⁵ This right must be practiced in each cultural place where people can criticize or discuss about public policies. Regarding the regulation of speech, he tried to say that the private defamatory statement done by individual is not preserved³⁶ by ‘the First Amendment’³⁷ but if the similar defamation is caused against a person who seeks the governmental position, that is safeguarded by the ‘First Amendment’³⁸ cause the act is treated as the intention of political participation. This philosophy establishes in speech that overrides the policies of the government or the formation of the constitution.³⁹ Regarding this, personal libel is subordinate to governmental control whereas political or seditious libel is not influenced.⁴⁰

³¹ *ibid*

³² Khan (n 13).

³³ Islam and Rahman (n 20).

³⁴ US Constitution 1789, First Amendment.

³⁵ *ibid*

³⁶ *ibid*

³⁷ *ibid*

³⁸ *ibid*

³⁹ *ibid*

⁴⁰ *ibid*

2.3.4 Autonomy

Here Ronald Dworkin introduced an idea based on moral liberty. He says:

People have the right not to suffer disadvantage in the distribution of social goods and opportunities, including disadvantage in the liberties permitted to them by the criminal law, just on the ground that their officials or fellow citizens think that their opinions about the right way for them to lead their own lives are ignorable or wrong. I shall call this (putative) right the right to moral independence.⁴¹

His conception of moral liberty allows people to disclose themselves freely. But this does not refer that his theory dominates the interests of listeners. The right to moral liberty acknowledges one's freedom in making one's decisions without being interrupted. Any interference based on the belief that a special path of life may be wrong or negligible is illogical.⁴²

2.4 Legal Framework

Here the author tries to build up a legal structure to perceive legal directives and understanding. The researcher tries to form a legal skeleton in accordance with legal prospect. It shows the legal directives on freedom of speech and defamation laws.

2.4.1 Freedom of Speech under Constitutional Provision with Case Laws

Freedom of speech means the practice of disclosing personal opinions or ideas with others without being interrupted. It is a constitutional right of every human being. Article 39 (2) (a) provides such right for all citizens.⁴³ To explore the nature of democracy it is one of the tools. This right is essential for the progress and growth of democracy.⁴⁴ Without it, the idea of democracy cannot be run in a country.⁴⁵

This right facilitates people to share their thoughts and criticize any governmental or political issues by publication, oral medium or any

⁴¹ Ronald Dworkin, *A Matter of Principle* (1st edn, OUP 1985) 353.

⁴² Ronald Dworkin, 'Is there a Right to Pornography?' (1981) 1 (2) *Oxford Journal of Legal Studies* 177–212 <www.jstor.org/stable/764457> accessed 30 January 2021.

⁴³ Constitution of the People's Republic of Bangladesh 1972, art 39 (2) (a).

⁴⁴ Mahmudul Islam, *Constitutional Law of Bangladesh* (1st edn, Bangladesh Institute of Law and International Affairs 1995) 208.

⁴⁵ *Farid Ahmed v West Pakistan* (1965) PLD Lah 135.

means. It is not limited to any special arena of human interest⁴⁶ but ensures the wide practice of the right for religious, political, economic, scientific or informational ends.⁴⁷ In democracy, the responsible public administration must always be public to criticism. Any endeavour to suppress such criticism equalizes to political censorship which is deceptive.⁴⁸

Dewan Abdul Kader v Bangladesh,⁴⁹ in this case, a definition of freedom of speech was given as under:

A right to express one's own opinion absolutely freely by spoken words, writing, printing 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 thus appears to us 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 others.

Right to freedom of speech is considered as the first condition of liberty of thought, expression and belief mentioning in the features of the preamble of Bangladesh Constitution.⁵⁰ In the case of *S. Rangarajan etc. v P. Jagjivan Ram*,⁵¹ the apex court stated that right to criticize is a fundamental right. A person can openly criticize a political party.⁵²

2.4.2 Circumstances where Freedom of Expression is Limited

According to Article 39(2), some restrictions are found. These are interests of the security of the State, friendly relations with foreign states, public order, decency or morality or contempt of court, defamation, incitement to an offence.⁵³

⁴⁶ *Thomas v Collins* (1945) 323 US 516.

⁴⁷ *Douglas v Jeanette* (1943) 319 US 157.

⁴⁸ *Leonard Hector v AG of Antigua and Barbuda* (1990) 2 AC 312.

⁴⁹ (1994) 46 DLR HCD 596, p 599.

⁵⁰ Shreeparna Goswami, 'Article 19 of Constitution of India' *Law Column* (14 November 2020) <www.lawcolumn.in/article-19-of-constitution-of-india/#:~:text=Article%2019%20is%20a%20fundamental%20right%20well%20settled,incl%20Jammu%20and%20Kashmir.%20Protect%20of%20Six%20Rights%3A-> accessed 30 January 2021.

⁵¹ (1989) SCC (2) 574.

⁵² *ibid*

⁵³ Constitution of the People's Republic of Bangladesh 1972, art 39 (2).

2.4.2.1 Security of the State

State's security is arisen when an extreme and provoked form public disorder is occurred. It infringes public safety which is not engaged with any danger of the state. By disordering people, a group of people intend to overthrow the government by revolt or external invasion.⁵⁴ To prevent such crimes and for the interest of state, the government can impose reasonable restrictions such as unlawful assembly, riot affray etc. However, inciting violent crimes like murder may endanger the security of the state.⁵⁵

2.4.2.2 Public Order

This ground was added by the Constitution (First Amendment) Act 1951 to face the circumstance emerging from the Supreme Court's decision in *Romesh Thappar v The State of Madras*,⁵⁶ the Supreme Court held that public order varies from law and order and security of state.⁵⁷ It implies the meaning of public peace, safety, tranquillity etc.⁵⁸ But mere criticism of the government unnecessarily annoys public order.⁵⁹ In the interest of public order, the state may order or forbid creating excessive noises in the streets and public places or regulate the places of public discussion for the aims of practicing the freedom of speech.⁶⁰

2.4.2.3 Friendly Relations with Foreign States

The aim of the exception is to prevent libels against foreign States in the interests of saving friendly relations with them.⁶¹ This restriction was attached by the Constitution (First Amendment) Act 1951. The State can exercise its power to set reasonable limitations on the free speech if it hampers the friendly relations of state with other states.⁶²

⁵⁴ *Santosh Singh v Delhi Administration* (1973) AIR SC 1091.

⁵⁵ *Bihar v Shailabala* (1952) AIR SC 329.

⁵⁶ (AIR 1950 SC 124).

⁵⁷ *Kishori Mohan Bera v The State of West Bengal* (1972) 3 SCC 845.

⁵⁸ *Om Prakash v Emperor* (1948) AIR Nag 199.

⁵⁹ *Abdul Latif Mirza v Bangladesh* (1979) 31 DLR AD.

⁶⁰ Islam (n 44).

⁶¹ Aqa Raza, 'Freedom of Speech and Expression as a Fundamental Right in India and the Test of Constitutional Regulations: The Constitutional Perspective' (2016) 43 (2) Indian Bar Review 87-110 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2827985> accessed 28 January 2021.

⁶² Npradhan, 'Constitution of India-Freedom of speech and expression' *Legal Service India* <[www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html#:~:text=Article%2019\(1\)%20\(a.liberty%20of%20thought%20and%20expression](http://www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html#:~:text=Article%2019(1)%20(a.liberty%20of%20thought%20and%20expression)> accessed 29 January 2021.

2.4.2.4 Decency or Morality

The govt. may put reasonable limitations on free speech which undermine public morality.⁶³ It forbids the sale or distribution or exhibition of obscene words. The standard of morality alters with altering times. In the case of *Ranjit D. Udeshi v The State of Maharashtra*,⁶⁴ the court upheld the conviction of the prosecuted book seller for selling and keeping the book⁶⁵ named Lady Chatterley's Lover.⁶⁶

2.4.2.5 Contempt of Court

To enjoy the right to freedom of speech, nobody can be permitted to intervene on the administration of justice⁶⁷ or to degrade the prestige of the court even in criticizing judgment of the court⁶⁸. In the case of *Saleem Ullah v State*,⁶⁹ the Court held that a court suffers criticism for freedom of press though it is protected by constitution. In the case of *E.M.S. Namboodripad v T.N. Nambiar*,⁷⁰ the Supreme Court upheld the decision of the High Court and made him liable for the contempt of court. In another case of *M.R. Parashar v Farooq Abdullah*,⁷¹ the contempt proceedings were commenced against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for the lack of evidence.

2.4.2.6 Incitement to an Offence

This restriction was also summed up by the Constitution (First Amendment) Act 1951. The government also forbids a person from publishing any statement which incites people to commit offense.⁷² This ground allows legislation not only to penalize or repress incitement to commit serious offences. Indeed, it is not approved to provoke another to do any forbidden act penalized by law.⁷³

⁶³ *Ranjit vs Maharastra* (1965) AIR SC 881.

⁶⁴ (1965) AIR SC 881.

⁶⁵ Penal Code 1860, s 292 b (Bangladesh).

⁶⁶ *Dewan* (n 49).

⁶⁷ *Namboodripad v Nambair* (1970) AIR SC 2015.

⁶⁸ *CK Daphtary v OP Gupta* (1971) AIR SC 1132.

⁶⁹ (1992) 44 DLR AD 309, p 313.

⁷⁰ (1970) 2 SCC 325.

⁷¹ (1984) 2 SCC 343.

⁷² *Dewan* (n 49).

⁷³ *Farid* (n 45).

2.4.2.7 Defamation

If any person intentionally or knowingly publishes any imputation which harms the reputation of the person, then that is treated as defamation except the exceptions of this section.⁷⁴ Statement which is either true or false if it is published intentionally for harming the reputation of others must be defamation.

2.4.3 Existing Defamation Laws in Bangladesh

Here the laws which stand by in the present country are being used against scandalous publication. A list of such laws is attached below in brief:

2.4.3.1 False Statement in Connection with an Election

If any person intentionally publishes any true or false statement about the behaviour of candidate for affecting the result of election, then the person shall be penalized with fine.⁷⁵

2.4.3.2 Seditious

If any person publishes any disaffection or hatred against the established government through spoken or written words or signs or visible representation or any means, then the person shall be penalized life imprisonment or 3 years imprisonment or with fine.⁷⁶

2.4.3.3 Defamation

If any person intentionally or knowingly publishes any imputation which harms the reputation of the person, then that is treated as defamation except the exceptions of this section.⁷⁷ And for this the person shall be punished with imprisonment not exceeding 2 years or fine or with both.⁷⁸

⁷⁴ Penal Code 1860, s 499 (Bangladesh).

⁷⁵ *ibid*, s 171G (Bangladesh).

⁷⁶ *ibid*, s 124A (Bangladesh).

⁷⁷ *ibid*, s 499 (Bangladesh).

⁷⁸ *ibid*, s 500 (Bangladesh).

2.4.3.4 Printing or Engraving Matter Known to be Defamatory

If anyone knowingly prints any matter which is defamatory of any person, then he or she shall be punished with imprisonment not exceeding 2 years or with fine or with both.⁷⁹

2.4.3.5 Sale of Printed or Engraved Substance containing Defamatory Matter

If anyone knowingly sells or offers to sell any printed defamatory matter, then the person shall be punished with imprisonment not exceeding 2 years or with fine or with both.⁸⁰

2.4.3.6 Power to Declare Certain Publications Forfeited and to Issue Search Warrants for the Same

If any newspaper, book, document etc. containing defamatory of the president, prime minister, speaker, chief justice etc appears to the government, then the government can declare the publications forfeited and issue such warrants for the seizure.⁸¹

2.4.3.7 Punishment for Making False Statement

If any person knowingly makes a false statement, the person shall be penalized with 6 months imprisonment or with fine not exceeding Tk. 5000 under this Act.⁸²

2.4.3.8 Power to Detain Newspapers and Other Articles being Transmitted by Post

If any document is found seditious in the postal articles or in newspapers, then the authorized officer can detain those in course of transmission by post.⁸³

⁷⁹ *ibid*, s 501 (Bangladesh).

⁸⁰ *ibid*, s 502.

⁸¹ Code of Criminal Procedure 1898, sec 99A (1) (b) and Printing Presses and Publications (Declaration and Registration) Act 1973, s 20A (Bangladesh).

⁸² Printing Presses and Publications (Declaration and Registration) Act 1973, s 31 (Bangladesh).

⁸³ Post Office Act 1898, s 27B (1) (a) (i) and (ii) (Bangladesh).

2.4.3.9 Power of Superior Courts to Punish Contempt of Court

The apex court can exercise the same jurisdiction, power, authority etc in the light of the same procedure in contempt of courts subordinate to it as it exercises in this regard.⁸⁴ For this offence, imprisonment not exceeding 6 months or with fine not exceeding to Tk. 2000 or with both may be imposed.⁸⁵

2.4.3.10 Power to Prohibit Certain Dramatic Performances

If any play or pantomime or other drama etc. is found in public place with a scandalous or defamatory nature, then the government can prohibit such performances.⁸⁶

2.4.3.11 Publication of False or Obscene or Defamatory Statement in Electronic Form

If any person intentionally publishes any false or obscene or defamatory statement in electronic form and for this if anyone is dishonest or is hurt or may be hurt religious belief or is provoked against any person or organization, then this activity will be considered as an offence. And for such offences, anyone can be penalized with maximum 14 years or minimum 7 years imprisonment or with fine Tk. 1 crore or more.⁸⁷

2.4.3.12 Publication, Broadcast, etc of Information in Website or in any Electronic Format that hurts the Religious Values or Sentiment

If any person willingly publishes anything in any electronic form which hurts religious sentiment or values or provokes against any person, then such act of the person shall be an offence. And for such offences, the person shall be punished with imprisonment not exceeding 5 years or with fine not exceeding taka 10 lac or with both. And for the repetition, he shall be penalized with imprisonment not exceeding 10 years or with fine Tk. 20 lac or with both.⁸⁸

⁸⁴ Contempt of Court Act 1971, s 10 (Bangladesh).

⁸⁵ *ibid*, s 12.

⁸⁶ Dramatic Performance Act 1876, s 3 (Bangladesh).

⁸⁷ Information and Communication Technology Act 2006, s 57 (Bangladesh).

⁸⁸ Digital Security Act 2018, s 28 (Bangladesh).

2.4.4 Defences of Defamation Law in Bangladesh

The Penal Code 1860 prescribes some defence about defamation. These can protect the publishers in some exceptions. These are stated here:

Firstly, statement which is true and can bring blessing for society or people, if published, then it will not be defamation. *Secondly*, if the statement is published in good faith showing respect to the defamed person who is discharged from his public functions, then that will not be defamation. *Thirdly*, the statement will not be defamation if it is disclosed in good faith showing honour to the defamed person answering any public question. *Fourthly*, the publication of true court's proceedings for establishing justice is not defamation. *Fifthly*, the statement will not be defamation if it is revealed in good faith showing respect the merits of cases which have been tried by court of justice. *Sixthly*, the statement is not defamation if it is asserted in good faith keeping honour the merits of any performance which its author has submitted to the judgment of the public. *Seventhly*, the commentary on another character is not defamation if it is made in good faith for saving the person for public interest. *Eighthly*, statement is not defamation if it is disclosed a caution in good faith for public interest.⁸⁹

Chapter 3

BANGLADESHI SCENARIO: APPLICATION OF LAWS

Bangladesh is such a country where democracy is run. In a democratic country, the fundamental right protected by constitution facilitates lots of amenities to its citizens. But the pragmatic scenario is not same as constitution has said. Right to free speech is a constitutional right which is enjoyed by all without being interrupted. Here the author tries to show the practical on-going situations of free speech in Bangladesh and tries to give a transparent idea how the scenario is described in national, international instruments and case laws.

⁸⁹ Tahmidur Rahman, 'Defamation Law in Bangladesh and regarding its offences and remedies' *Tahmidur Rahman* (20 October 2019) <<https://tahmidurrahman.com/defamation-law-in-bangladesh/>> accessed 30 January 2021.

3.1 Pragmatic Cases where Freedom of Expression is Curtailed applying Defamation Laws

A list of cases about free speech and defamation laws in Bangladesh is given below for the realizing how the laws are used against this right and how it is curtailed. The case list is given here:

Case- 01: An editor of *Amar Desh* was physically assaulted for his defamatory comments about the prime minister and her niece. A recording of the incident showed that police was stood by while he was being attacked.⁹⁰ Here right to free speech is not protected though constitution guarantees this right.

Case- 02: During the quota protest and road safety movement, a report made by Dhaka Metropolitan Police (DMP) official shows that about 100 social media accounts were blocked for spreading the provocative content of the movement. Many of them were arrested, detained, and disappeared for the movement.⁹¹ Here right to free speech, right to law, right to life etc are also violated. These activities repress the enjoyment of free speech.

Case- 03: Recently an Act named the Digital Security Act 2018 has been enacted to decrease cybercrimes. This law has been criticized badly. The concerned people opine that freedom of speech is suppressed and penalized. This is inconsistent with article 39 (2) of the constitution.⁹² This law is also unconstitutional. This should be repealed.

Case- 04: A report shows that the government often intervenes in internet communications and sometimes filters or blocks access and internet services. The period of election, Road Safety Movement, Quota Movement (QM) etc are the best instances of Bangladesh.⁹³ Right to information and free speech are also the constitutional rights. They should not be dominated by the government.

Case- 05: A newspaper correspondent of *New Nation*, was arrested for publishing an erroneous status on his Facebook wall. He uploaded a photograph of the Chittagong Metropolitan Police Commissioner in lieu of the Bhola superintendent of police. For this, his bail was cancelled.⁹⁴ This was

⁹⁰ Editorial Team, '2018 Country Reports on Human Rights Practices' *US Department of State* (2019) <www.state.gov/reports/2018-country-reports-on-human-rights-practices/bangladesh/> accessed on 29 January 2021.

⁹¹ ibid

⁹² ibid

⁹³ ibid

happened mistakenly. The editor was unnecessarily harassed in the name of defamation whereas free speech is guaranteed by constitution.

Case- 06: A politician was arrested for his Facebook status and derogatory remarks posted concerning Prime Minister.⁹⁵ The editor of *Daily Prothom Alo* was also arrested from Khulna for publishing a report about the sale of drugs. He claimed that the local parliament member is engaged with a drug dealer of Khulna.⁹⁶

Case- 07: The chief leader of BNP was arrested for her derogatory comments on the Father of Nation Sheikh Mujibur Rahman. She asserted openly that ‘Bangabandhu Sheikh Mujibur Rahman did not work for independence. He worked in favour of independence for being Pakistan’s prime minister. The Awami League government was plundering the country day by day in the name of development’.⁹⁷ She was again arrested for such offensive words. She expressed openly that ‘Sajeeb Wazed Joy, son of prime minister, belongs to \$300 million in a bank account’.⁹⁸ In democracy, an opposition leader does have the right to criticize the governmental activities. For the criticism, the chief leader should not be harassed in the name of defamation whereas right to free speech is protected by constitution.

Case- 08: The BNP vice chairman was also arrested for his defamatory comments. He revealed openly that Sheikh Hasina’s condition will be worse than her father’s. None will be left to mourn for her death like her father.⁹⁹ His bail was cancelled and sent him to prison. As an opposition party leader, he can criticize constructively. His comments can be

⁹⁴ Editorial Team, ‘2019 Country Reports on Human Rights Practices’ *US Department of State* (11 March 2020) <www.state.gov/reports/2019-country-reports-on-human-rights-practices/bangladesh/> accessed 29 January 2021.

⁹⁵ Reporter, ‘Freedom of Expression in Bangladesh: Annual Report’ *Article19* (2017) <www.article19.org/wp-content/uploads/2018/05/FoE-Report-2017-Final-Draft-02.05.2018-no-mark-up.pdf> accessed 26 August 2020.

⁹⁶ *ibid*

⁹⁷ Sumaiya Binte Shams, ‘Derogatory comments on Bangabandhu: Police fail to submit probe report’ *Dhaka Tribune* (Dhaka, 19 March 2018) <www.dhakatribune.com/bangladesh/court/2018/03/19/probe-report-khaleda-zia-april-17> accessed 28 January 2021.

⁹⁸ Reporter, ‘Comment on Joy: Defamation case filed against Khaleda’ *The Daily Star* (Dhaka, 15 May 2016) <www.thedailystar.net/politics/comment-joy-defamation-case-filed-against-khaleda-1224157> accessed 28 January 2021.

⁹⁹ Nawaz Farhin Antara and Anwar Hussain, ‘Giasuddin Quader Chowdhury denied bail in defamation case’ *Dhaka Tribune* (Chittagong, 22 November 2018) <www.dhakatribune.com/bangladesh/court/2018/11/22/court-denies-giasuddin-quader-chowdhury-s-bail-in-defamation-case> accessed 28 January 2021.

investigated or asked for the sufficient proof. But they arrest them by exercising power.

Case- 09: The former editor of *Daily Manab Kantha* was also arrested for hurting public religious sentiment. He published a scandalous status on his Facebook wall about his illusion with Hindu Goddess of learning Saraswati.¹⁰⁰ Another political leader was also arrested cancelling his bail and sent to prison for his scandalous comments to a women journalist named Masuda Bhatti. He commented on a TV program that she is a characterless woman.¹⁰¹ Nowadays, Facebook or social media is a popular means to share information or to clamour against the anti-fundamental right based activities. It should not be curtailed because the core information of the incident can be open through this medium. At this, everything is clear to all.

Case-10: Another aged participator of Road Safety Movement was brutally arrested for criticizing against government regarding movement on his Facebook live. During the movement, he stated that ‘the prime minister came in power illegally. She has no mandate to continue, bank looting is done her associates, kidnapping, extra judicial killing etc are also held in her period. It is time to be overthrown’.¹⁰² For his comment, his three cell phones with other devices were seized. He was sent to jail under section 57 of ICT Act 2006.¹⁰³ An open-minded female writer and journalist was also exiled from her country. She opined openly against the religious sentiment. She made blasphemous comments which were inconsistent with Islam.¹⁰⁴ Right to life and free speech are the constitutional right. For enjoying the right, if punished, then none will write against injustice or crimes. The female journalist could be punished in another way; she was banished whereas her constitutional right is violated.

3.2 Free Speech: Case Laws

Here the author tries to relate free speech with some distinguished national and international judicial precedents. Here some case decisions are given:

¹⁰⁰ Reporter, ‘Jurno sued for hurting religious sentiment’ *The Daily Star* (Dhaka, 30 January 2018) <www.thedailystar.net/city/jurno-sued-hurting-religious-sentiment-1527361> accessed 28 November 2021.

¹⁰¹ Reporter, ‘Barrister Mainul sent to jail’ *The Daily Star* (Dhaka, 03 September 2019) <www.thedailystar.net/city/barrister-mainul-hosein-sent-to-dhaka-jail-in-defamation-case-1794910> accessed 28 November 2021.

¹⁰² Shaon (n 8).

¹⁰³ Information and Communication Technology Act 2006, s 57 (2).

¹⁰⁴ Hasan (n 9).

3.2.1 *Tinker v Des Moines Independent Community School District*¹⁰⁵

In this case, it is seen that several people were ceased after the denial of removing ‘black armbands’ which were being put on in the Vietnam War. The Court held that the school could not forbid pupils from putting on armbands. They were inactive in putting on armbands. They were not aggressive and did not harm the rights of others. In the circumstances, their conduct was under the protection of the Free Speech Clause of the First Amendment.¹⁰⁶

3.2.2 *New York Times v Sullivan*¹⁰⁷

In this case, a libel action was arisen against the Times for disseminating an ad with preposterous content. By proclaiming such speech safeguarded even if false, the Court took an indispensable step away from an earlier pattern of deciding First Amendment cases by balancing harms and benefits. In this case, the Court ruled that ‘balancing the value of truth or further harmful effects against that of safeguarding free speech was not proper way to save free speech’.¹⁰⁸

3.2.3 *S. Rangarajan v P. Jagjivan Ram*¹⁰⁹

In this case, it is said that everyone can exercise his fundamental right to express his opinion on any issues of state. The open criticism of government policies and operations cannot be a ground for restraining expression. Intolerance is as much hazardous to democracy as to the person himself.¹¹⁰

3.2.4 *Romesh Thappar v State of Madras*¹¹¹

In this case, the Supreme Court held that freedom of press is treated as a part of freedom of speech and expression. Freedom of Speech and Press are the foundation of all democratic organizations. Without them, free

¹⁰⁵ (1969) 393 US 503 pp 504-507. See Cory M Daige, ‘Freedom of Speech in the Technological Age: Are Schools Regulating Social Media?’ (2012) 11 (2) Connecticut Public Interest Law Journal <<https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2018/10/11.2-Freedom-of-Speech-in-the-Technological-Age-Are-Schools-Regulating-Social-Media-by-Cory-M.-Daige.pdf>> accessed 30 January 2021.

¹⁰⁶ *ibid*

¹⁰⁷ (1964) 376 US 254.

¹⁰⁸ *ibid*

¹⁰⁹ (1989) SCC (2) 574.

¹¹⁰ *ibid*

¹¹¹ (1950) SCR 594.

political discussion, public education, proper functioning of the process of Government etc. are not possible.¹¹²

3.3 Free Speech under National and International Instruments

Here the legal directives on free speech are given. How these laws introduce free speech is showed below referring the statutes.

3.3.1 Universal Declaration of Human Rights 1948

Everybody exercises the right to freedom of opinion and expression without intervention. He can seek information and share with others through any media.¹¹³

3.3.2 International Covenant on Civil and Political Rights 1966

All people can exercise the right to hold opinions and freedom of expression without interventions. Here 5 restrictions are imposed. These are national security, reputation of others, public health, moral and public order.¹¹⁴

3.3.3 African Charter on Human and Peoples' Rights 1981

All can practice the right to express and disclose his opinions under the law and can exchange information with each other.¹¹⁵

3.3.4 European Convention of Human Rights 1950

All can enjoy the right to freedom of expression and can disclose his opinions and can receive and share information and ideas with others without government's intervention. For democracy, the govt. can impose reasonable conditions or penalties which are essential.¹¹⁶

3.3.5 American Convention on Human Rights 1969

Every person can exercise the right to hold opinions and freedom of expression without interventions. Here 5 restrictions are imposed. These

¹¹² ibid

¹¹³ Universal Declaration of Human Rights 1948, art 19.

¹¹⁴ International Covenant on Civil and Political Rights 1966, art 19.

¹¹⁵ African Charter on Human and Peoples' Rights 1981, art 9.

¹¹⁶ European Convention of Human Rights 1950, art 10.

are national security, reputation of others, public health, moral and public order.¹¹⁷

3.3.6 Constitution of the People's Republic of Bangladesh 1972

Every person can freely express their thoughts and speech and opine openly in any manner.¹¹⁸ Right to freedom of speech and expression is guaranteed by the constitution. Under this article, the government can impose reasonable limitations on certain arenas which bring blessing to democracy.

3.4 Principles of First Amendment from Supreme Court in favour of Free Speech

The US Supreme Court delivered some principles in various cases favour of free speech. These principles protect the right to free speech. The brief of such principles is given beneath:

3.4.1 Protection of Political Speech and Advocacy

Political speech and advocacy are safeguarded by First Amendment. It saves the right of any person to engage in political speech and advocacy. In 1966, a newspaper editor was convicted for publishing an election-day editorial that sought to persuade people to vote in a particular way. The Court held that the First Amendment exists to protect the free discussion of governmental affairs.¹¹⁹

3.4.2 Protection of False Speech and Speech

The 'First Amendment' saves false speech and speech which criticizes public figures. In the year of 1964, the Supreme Court set aside the verdict of its subordinate court and delivered its judgment in the side of the defamed public official. The court ruled that public officials must prove whether the speakers intentionally lied or spoke with dishonour not.¹²⁰ Speech that is not defamatory is safeguarded even if the speaker knows it is false if it does not create specific harm.¹²¹

¹¹⁷ American Convention on Human Rights 1969, art 13.

¹¹⁸ Constitution of the People's Republic of Bangladesh 1972, art 39 (2) (a).

¹¹⁹ *Mills v State of Alabama* (1966) 384 US 214, p 218.

¹²⁰ Writer, 'First Amendment Principles' *Newamericadotorg.S3.Amazonaws* (2019) <https://newamericadotorg.s3.amazonaws.com/documents/First_Amendment_Principles_2019-FINAL_Interactive_O0JA9oV.pdf> accessed on 30 January 2021.

¹²¹ *United States v Alvarez* (2012) 567 U S 709, pp 727-729.

3.4.3 Defence against Government's Attempt

The amendment defends against government's efforts to target speech based on its content. The constitution restricts the government's ability to codify laws. The Court explained that the government's capacity to put content-based encumbrance on speech raises the spectre. The government can successfully run certain notions from the plaza or bazaar.¹²² This Amendment also safeguards against government endeavour to implement prior limitations on publications. The Supreme Court has set aside government's attempt to censor speech prior to publication.¹²³ In the year of 1963, the Court stated that the system of previous limitations of free speech is appeared to this Court enduring a bulky conjecture against its constitutional legality and further stated that the government cannot prescribe the certain publications if it is found objectionable something without a prior judicial determination, then such publications may lawfully be banned.¹²⁴

3.4.4 Hindrance to Make Laws

The 'First Amendment' states that Congress shall not make laws which can restrict the freedom of speech. This principle establishes when the free speech is shared in the public places or in internet. The Supreme Court held that the most essential place for sharing information or exchanging opinions is cyberspace.¹²⁵ As Congress continues its important oversight of online platforms, Congress must not legislate in ways that would threaten free expression in online because it proceeds its indispensable oversight of internet platform.¹²⁶

3.5 Relation between Free Speech and Defamation Laws in Bangladesh

If it is clearly observed the present scenario of Bangladesh about the application of defamation laws, it is generally said that the relationship between free speech and defamation laws in Bangladesh is not satisfactory. In many cases, it is seen that the defamation laws are abused in many cases. Here the researcher tries to show some arenas where these

¹²² *Simon & Schuster, Inc v Members of New York State Crime Victims Bd* (1991) 502 US 105, p 116.

¹²³ American Convention on Human Rights 1969, art 13.

¹²⁴ *Bantam Books, Inc v Sullivan* (1963) 372 U S 58, p 70.

¹²⁵ *Packingham v North Carolina* (2017) 137 S Ct 1730, p 1735.

¹²⁶ *ibid*

laws are being misused day by day. The most prominent ways of defaming others are recorded here in short:¹²⁷

3.5.1 Political Purpose

After winning in the election, most political parties file a lot of cases against their opposed party. In this regard, they misuse this law to harass them so that they cannot stand against their path.¹²⁸

3.5.2 Self Interest

It is severally seen that some leaders cannot be honest due to their greediness. They utilize their face value to gain self-profit. If any weakness of other leaders or information is leaked, they promptly provoke to lodge a suit under defamation laws and they pretend to be honest. Thus, they become very popular.¹²⁹

3.5.3 Concealing Corrupted Activities

It is frequently seen in newspapers that the government employees and political leaders file suits against reporters and editors to conceal their such loathsome activities. They take the advantage of this law and they are harassing their enemy day by day and hyping general classes of people in many ways.¹³⁰

3.5.4 Taking Amenities of the Law

It is recognized that law always helps the rich people. In our surroundings it is appeared that the rich people of the society take privileges from this law. They sometimes use this law to take revenge against their opponent.¹³¹

3.5.5 Utilizing as a Tool to Threaten Others

Section 57 of the Information and Communication Technology Act 2006 is a tool to provide amenities for them. They often threat others if any

¹²⁷ Munmun Saha, 'Section 57 of ICT Act: A threat to the freedom of expression through the suit of defamation' (2017) 22 (11) IOSR Journal of Humanities and Social Science 24-27
<www.iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue11/Version-1/D2211012427.pdf>
accessed 30 January 2021.

¹²⁸ *ibid*

¹²⁹ *ibid*

¹³⁰ *ibid*

¹³¹ *ibid*

contradictory issue is found. The convicted person can be penalized 14 years imprisonment or with fine TK. 1 crore.¹³² Most experts criticize this law badly. They comment that this is a trap for the victim.¹³³

Chapter 4

LEGAL ANALYSIS OF DEFAMATION LAWS AND FREEDOM OF SPEECH

The right to freedom of speech is a fundamental right which is guaranteed by many national and international instruments and many case laws. Similarly, this right is limited in those instruments in some certain grounds. It is a matter of regret that these grounds are being misused day by day though these were incorporated for the interest or protection of state. Some political and religious leaders abuse these grounds. They are committing different kinds of illegal activities, for not to be leaked the activities they misuse these grounds like defamation. The punishment is kept high in laws. For it, people frighten to express their opinions, which are ensured by constitution. On the other hand, the exceptions of defamation mentioned in section 499 of the Penal Code 1860¹³⁴ are also abused. It is time the government amended the ambiguous limitations on the freedom of speech against the right to free speech and drew a balance between free speech and defamation laws.¹³⁵

4.1 Abuses of Restrictions of Freedom of Speech

Sedition is an outstanding example of limiting the freedom of speech. Section 124A of Penal Code 1860¹³⁶ is used to maintain peace and harmony throughout the country. Nowadays it is being misused by the political and religious leaders to curtail the right of freedom of speech.¹³⁷

Another abusive restriction is defamation. It is a crime under section 499 and 500 of Penal Code 1860¹³⁸ and section 57 of ICT Act¹³⁹. Most political

¹³² *ibid*

¹³³ *ibid*

¹³⁴ Penal Code 1860, s 499 (Bangladesh).

¹³⁵ Kabir Dhamija, 'Freedom of Speech and Expression: Exigency for Balance' *Latest Laws* (15 May 2020) <www.latestlaws.com/articles/freedom-of-speech-and-expression-exigency-for-balance/> accessed 02 February 2021.

¹³⁶ Penal Code 1860, s 124A (Bangladesh).

¹³⁷ *ibid*

¹³⁸ Penal Code 1860, ss 499 and 500 (Bangladesh).

¹³⁹ Information and Communication Technology Act 2006, s 57 (Bangladesh).

and religious leaders, government and non-government office holders utilize this law if their weakness or fault is leaked or published. In Bangladesh, the judicial system and court proceedings are very critical. To avoid mental stress, many people are silent. As a result, the concerned people become successful in their target.¹⁴⁰

4.2 Misuses of Right to Freedom of Speech

Freedom in expressing opinions and sharing with others is ensured by constitution. It is a fundamental right of every citizen. It is a matter of sorrow that some people abuse this right to be successful in their heinous act. In Bangladesh, it is seen that most people publish or sell obscene photos, private information etc to harm the reputation of others. Specially to be popular or to hold the chair of post, many political leaders or government authorities express such information thinking it as their right. They use this provision against their enemy to degrade morality or reputation.¹⁴¹

4.3 Judicial Decisions

The Supreme Court raises question against Section 57 of ICT Act 2006.¹⁴² The court issued a rule to the concerned authority, why the section is not declared unconstitutional. In the petition, it was mentioned that the section is inconsistent with the constitutional provision of freedom of expression. It is also asserted that the said section has been created following the Indian ICT¹⁴³ laws which have already been declared unconstitutional.¹⁴⁴

In the case of *Subramanian Swamy v Union of India, Ministry of Law & others*,¹⁴⁵ the superior court held that the utterance of defamation was decriminalized when the constitutional legality of the inconsistent provisions was upheld.¹⁴⁶ After giving the verdict, it is observed by some prominent legal experts that defamation should not be decriminalized, unbridled powers entrusts particularly to the political leaders and

¹⁴⁰ *ibid*

¹⁴¹ *ibid*

¹⁴² *Romesh* (n 111).

¹⁴³ *ibid*

¹⁴⁴ Reporter, 'HC questions legality of Section 57' *The Daily Star* (Dhaka, 01 September 2015) <www.thedailystar.net/country/hc-questions-legality-section-57-136120> accessed 02 February 2021.

¹⁴⁵ (2016) AIR SC 2728.

¹⁴⁶ *Subramanian Swamy v Union of India, Ministry of Law & others* (2014) Writ Petition (Criminal) No 184 <http://supremecourtindia.nic.in/outtoday/wr18414p-2014_10_30.pdf> accessed 02 February 2021.

corporations who intend to manipulate in accordance with their choice which can unnecessarily hassle general people.¹⁴⁷

Shreya Singhal v Union of India,¹⁴⁸ is the prominent verdict in the arena of free speech. In the case, section 66A¹⁴⁹ was extremely criticized for its opacity and its chilling impact on speech was struck down for the inconsistency. The Court explained that the embargo against the publication of statement of a computer resource or a communication device which causes disturbance or difficulty did not cover any reasonable exceptions to the enjoy the right to freedom of speech.¹⁵⁰

4.4 Legality of Section 57 of ICT 2006

This section contains ‘harm the prestige of the state’ which is contradictory with the constitution. The word ‘state’ mentioned in the said section is too broad. It covers all members of parliament and all statutory public authorities. Here, any person seeks defamatory remedies in favour of state. This section is also unconstitutional because it is unable to comply with article 39 of the constitution. It infringes the right to criticize against government on internet arena. For this section, the role of media in society is being shrunk day by day.¹⁵¹

4.5 Legality of Sections 499-500 of PC 1860

These sections do not constitute a ‘reasonable limitation’ on speech. Here truth is not considered a defence. One is prosecuted for defamation though he speaks truth. Under the first exception to section 499, truth may be a defence if the statement was made for the public good. Moreover, one may be prosecuted for a statement about the death whereas article 39 (2)¹⁵² allows limiting speech in the benefit of saving the personal interest in the reputation of the deceased.¹⁵³

¹⁴⁷ Shivi, ‘Defamation laws and judicial intervention: a critical study’ (2016) ILI Law Review <<http://ili.ac.in/pdf/paper10.pdf>> accessed 02 February 2021.

¹⁴⁸ (2015) AIR SC 1523.

¹⁴⁹ Information and Communication Technology Act 2000, s 66A (Bangladesh).

¹⁵⁰ Unnati Tripathi, ‘Case Comment on *Shreya Singhal v Union of India*’ (2018) 2 (1) Parag Agrawal 952 <www.cusb.ac.in/images/cusb-files/2020/el/law/w2/case_comment_viii_sem.pdf> accessed 02 February 2021.

¹⁵¹ Ariza Binte Ahmed, ‘Defamation laws of Bangladesh: a threat to democracy’ *LCLS South* <<http://cls-south.com/ariza-binte-ahmed/%3E>> accessed 02 February 2021.

¹⁵² Constitution of People’s Republic of Bangladesh 1972, art 39 (2).

¹⁵³ Aparna Viswanathan, ‘Seven Reasons Why Criminal Defamation Should Be Declared Unconstitutional’ *The Wire* <<https://thewire.in/law/seven-reasons-why-criminal-defamation-should-be-declared-unconstitutional>> accessed 02 February 2021.

4.6 Defamation Laws on Internet in Other Countries

Here the researcher tries to show the legal instruments or statutes in other countries regarding defamation. This may be followed by the law makers of Bangladesh. The defamation laws in online of other countries are focused below:

In India, publishing false or scandalous information in online is considered as an offense under section 66A of ICT Act 2000.¹⁵⁴ The Supreme Court found this provision inconsistent with freedom of speech. To protect free speech, this provision has been repealed by the court.¹⁵⁵

In Malaysia, the government enacted Anti Fake News Act 2018¹⁵⁶ to suppress and penalize the social media and cybercrimes. But this Act curtails the freedom of media. That is why, the govt. abolished the new law for facing extreme criticism of country people.¹⁵⁷

Kenya enacted the Computer Misuse and Cybercrimes Act 2018¹⁵⁸ to impose criminal charges for bringing against persons who intentionally publish erroneous and fictitious information. After the excessive protest of country people, the government repealed the provision of the Act. Cause that provision was inconsistent with freedom of speech.¹⁵⁹

In the Philippines, the Cyber Prevention Act 2012¹⁶⁰ containing the anti-free speech provision which was also criticized for the violation with freedom of speech. The government enforced the Act repealing the said section.¹⁶¹

¹⁵⁴ Information and Communication Technology Act 2000, s 66A (India).

¹⁵⁵ Shaon (n 8).

¹⁵⁶ Anti-Fake News Act 2018 (Malaysia).

¹⁵⁷ *ibid*

¹⁵⁸ Computer Misuse and Cybercrimes Act 2018 (Kenya).

¹⁵⁹ *ibid*

¹⁶⁰ Cyber Prevention Act 2012 (Philippines).

¹⁶¹ *ibid*

Chapter 5

FINDINGS AND SUGGESTIONS

The author attempts to put the answer of the research's queries. In this chapter, the author has inserted his observations here. Here how a balance is drawn is showed. The necessity of enacting new laws to find a balance is recommended repealing the previous contradictory laws with the right to freedom of speech.

5.1 Findings

The author has found the answers to the research questions. Here the answers are recorded below:

Free speech is a fundamental right to all human beings. It is recognized by national and international instruments. The constitution itself guarantees its protection. Every human being can enjoy its right, but one must be remembered that his enjoyment is not the reason of harming to enjoy another right.

The relation between free speech and defamation laws is not satisfactory. It often makes contradiction. The nature of freedom of speech and expression is to disclose or broad the ideas and opinions of people whereas defamation laws shrink their such right because most people intentionally harm the reputation of others in the name of free speech. Adversely, some people abuse the laws in the name of reputation to suppress the free speech so that their weakness or corruption cannot be come out to general people. The relation between them has already described elaborately in chapter 04.

The parliament must amend the defamation laws, particularly section 57 of Information and Communication Technology Act 2006. It creates violation badly with constitution and represses badly the media freedom. Section 499 of Penal Code 1860 also infringes the right to freedom of speech. Under this section defamation is criminalized but the infringement of reputation is a civil crime. It is codified from common law. Here this is inconsistent with constitutional provisions of article 39 (2) (a). The parliament should also amend the said section. It should be decriminalized, and it should be included in civil law.¹⁶²

The recent occurrences held in Bangladesh shows that criminal defamation represses free speech and humiliates public attraction. It creates a conflict on whether defamation should be decriminalized or not. Critics contend

¹⁶² Saha (n 127).

that it should only be civil. It is time to abolish such criminal defamation.¹⁶³

The Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) summoned states to exclude criminal defamation stating that the citizens of a state are being prosecuted and harassed by this law. Freedom of expression is a basic right ensured by constitution whereas defamation laws suppress this right. Section 499 of the Penal Code 1860 and section 57 of the Information and Communication Technology Act 2006 are unable to impose reasonable limitations on speech. Moreover, defamation is a civil wrong. Normally it should not be criminalized. It is high time to set up civil responsibility for defamation.¹⁶⁴

Similarly, the Constitution imparts reasonable limitations on free speech which does not influence state's security, ethics, morality etc. Right to media freedom is not protected yet. In many places, it is seen that the media is still limited to telecast any news that goes against government. On the other hand, it is seen that commercial advertisements are being telecast nowadays which go against ethics and morality.¹⁶⁵

In one word, the practice of free speech is limited if it uses against government or political leaders' activities. But in other sides, it is seen that in the name of free speech many people or organizations are doing lots of activities which are against the restrictions of free speech. So, it is said that the restrictions of free speech are also misused in many ways. It should also be amended. To draw a strong balance between freedom of speech and defamation laws in Bangladesh, the parliament must repeal the contradictory laws first, then it can enact new laws excluding the loopholes.¹⁶⁶

5.2 How to Balance between Freedom of Speech and Laws of Defamation in Bangladesh?

One of the significant duties of any country's government is to maintain the balance between different fundamental rights exercised by the people of the country. The basic rights are many guaranteed by the constitution.

¹⁶³ Tasmiah Nuhya Ahmed and Md. Shahnewaj, 'Defamation: A civil wrong or a criminal offence' *The Independent BD* (02 August 2018) <www.theindependentbd.com/printversion/details/160470> accessed 02 February 2021.

¹⁶⁴ *ibid*

¹⁶⁵ Editor, 'Freedom of speech and expression-analyze and illustrate' *Lawyers Jurists* <www.lawyersnjurists.com/article/freedom-speech-expression-analyze-illustrate/> accessed 02 February 2021.

¹⁶⁶ *ibid*

The government should check the balance of enjoying these rights. Sometimes, people infringe the right of others to enjoy their rights. This is very contradictory because such enjoying rights harm to enjoy the rights of others. For say example, someone publishes a scandalous statement claiming that it is his right, but this right can bring harm to enjoy the rights of other people like right to reputation. So, drawing a strong balance between them is very essential to ensure the practice of the rights of all classes of people. If such a balance is not drawn, then the judicial organ will be fallen in trouble. As a result, the conflict between these rights will have continued. Here right to reputation or right to life and freedom of expression etc will be in a critical situation. They will make conflict frequently.

Right to reputation covers right to life¹⁶⁷ that is also guaranteed by the constitution. Without reputation, life is in vain. Nobody should be permitted to harm the reputation of a person in the name of free speech.¹⁶⁸ This liberty is enjoyable if it will not have any scandalous content or if it will not bring harm to reputation of others. If something is found defamatory statement which is not true, then the publisher will not be protected by the constitutional rights.¹⁶⁹ In the case of *Swami Ramdev v Juggernaut books Pvt. Ltd & Others*,¹⁷⁰ the Court explained that the name and fame of a person cannot be immolated or offered for enjoying another right to freedom of speech. Both should be adjusted since any kind of compensation cannot restore the reputation which has been lost. In another case of *Subramaniam Swamy v Union of India*,¹⁷¹ the petitioner contended that section 499 of PC curtails the constitutional right of free speech. Imposing reasonable limitations applies to save the interest of state, not for any individual. Defamation is a civil wrong, it should not be criminalized. The said section should be abolished. The court interpreted nicely referring the case of *Board of Trustees of the Port of Bombay v Dilip Kumar Raghvendra Nath Nadkarni and others*.¹⁷² In this case the court explained that the word 'life' does not imply the existence of beast. Life without reputation is worthless. Reputation adds grace to human being which makes his life happy that may be ruined for the injustice. In another case *Umesh Kumar v State of Andhra Pradesh and another*,¹⁷³ the court opined

¹⁶⁷ Constitution of the People's Republic of Bangladesh 1972, art 32.

¹⁶⁸ *Gertz v Robert Welch, Inc* (1974) 418 US 323.

¹⁶⁹ *Saxena v Chief Justice* (1996) AIR SC 2481.

¹⁷⁰ (2018) Delhi High Court, CM(M) 556.

¹⁷¹ (2014) Writ Petition (Criminal) 184. See (2016) 7 SCC 22.

¹⁷² (1983) SCR (1) 828.

¹⁷³ (2013) 10 SCC 591.

that the right to reputation is involved in the individual right of human beings.¹⁷⁴

The Court experimented the importance of both the rights and then perceived the necessity for drawing a balance between them. The Court finally upheld the constitutional legality of criminal defamation. The court interpreted that the right to free speech does not provide that one defames the other. Both the rights are fundamental. These should be harmonized.¹⁷⁵

In the famous case of *Morrison v Ritchie and co.*,¹⁷⁶ the defendant printed a statement that a woman had given birth twins though she was got wed a few months ago. The court penalized him explaining that the statement was scandalous because it harmed the reputation of the woman. Here right to freedom of speech did not protect the defendant.¹⁷⁷ In another case named *D.P. Chaudhary v Kumari Manjulata*,¹⁷⁸ the defendant disseminated that a girl (17) fled with her boyfriend. Subsequently, it came to know that she went to be appeared in her night classes. The court held him liable for derogatory publication and penalized him. Here it is clear that right to free speech fails to protect the defendant.¹⁷⁹

It is time to amend the existing defamation laws in Bangladesh following other countries. For drawing a balance between them, freedom of expression should be liberal more. In this regard, some restricted grounds may be repealed from the constitution, Information and Communication Technology Act, the Digital Security Act and Penal Code. At the same time, everyone should be careful about the reasonable grounds as prescribed in the defamation laws. One should not violate the grounds. Right to freedom is a fundamental right. But one must keep in mind that man's reputation is not defamed by enjoying such rights. From personal aggression or revenge to others, this right should not be exercised. Then, it is possible to bring a balance between them.

¹⁷⁴ Jismin Jose, 'Case summary on Subramanian Swamy vs. Union of India, Ministry of Law & others' *Law Times Journal* (10 March 2019) <<http://lawtimesjournal.in/subramanian-swamy-vs-union-of-india-ministry-of-law-ors/>> accessed 02 February 2021.

¹⁷⁵ *ibid*

¹⁷⁶ (1902) SLR 39 432.

¹⁷⁷ Siddharth sharma, 'Defamation' *Legal Service India* <www.legalserviceindia.com/legal/article-1607-defamation.html> accessed 02 February 2021.

¹⁷⁸ (1997) AIR Raj 170.

¹⁷⁹ Vivek Singh, 'Case Briefs' *Lawctopus* (02 January 2015) <www.lawctopus.com/academike/case-briefs/> accessed 02 February 2021.

5.3 Suggestions

To bring a balance between right to freedom of speech and law of defamation in Bangladesh, here the author would like to recommend some initiatives. If these are implemented, a positive outcome will come. My suggestions are noted here in brief:

Firstly, the punishment for cyber defamation needs to be reduced as it has been given on the discussion on the matter of fact. *Secondly*, article 39 (2) of the Constitution must not be used as an excuse to offend the government interests and as a tool of opposition repression.¹⁸⁰ *Thirdly*, fundamental rights and relevant provisions from defamation law should be reviewed by the courts applying harmonious interpretation if necessary. *Fourthly*, in the case of section 57 of Information and Communication Technology Act 2006 it should be repealed as it is contradictory to people's fundamental rights.¹⁸¹

Fifthly, no person should not be penalized under section 499 of Penal Code 1860, if it is not proved the defamation beyond a reasonable doubt analysing all the ingredients of this offence. Apart from, the statement which defames must be checked whether it had any falsity or not and it was not made intentionally or not and it harms the reputation or not.¹⁸²

Sixthly, the freedom of media should be protected. It is the platform by which people can share their expression. It helps people to implement their rights. It should not be unnecessarily limited except the logical and legal exceptions.¹⁸³

Seventhly, the National Human Rights Commission in Bangladesh (NHRCB) should play an insignificant role here. It can form establish a dynamic and active Sub-Committee to trace infringement of free speech and make sure that breaching free speech is given priority as a fundamental right involving on the security of news reporters.¹⁸⁴

Eighthly, the parliament can review the neighbour countries' laws regarding defamation and free speech. How they have balanced these two

¹⁸⁰ Saha (n 162).

¹⁸¹ Raphael Cohen Almagor, 'Speech, Media, and Ethics: The Limits of Free Expression' (2005) Palgrave <<https://link.springer.com/book/10.1057%2F9780230501829>> accessed 02 February 2021.

¹⁸² Reporter (n 6).

¹⁸³ Clear Ias Team, 'Defamation in India – IPC Section 499/500 vs Freedom of Speech' *Clearias*, (03 April 2019) <www.clearias.com/defamation-freedom-speech/> accessed 30 January 2021.

¹⁸⁴ *ibid*

contradictory rights can be visited. In this paper, it is described early that the other countries have amended their defamation laws which made a conflict with free speech. Bangladesh should also amend such conflicting laws.¹⁸⁵

5.4 Concluding Remarks

John Milton said that ‘Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.’¹⁸⁶

The right to freedom of speech is not yet entirely free in Bangladesh. The government of Bangladesh must prioritize maximum freedom of speech to readily make sure the basic rights. As Bangladesh is a democratic country, it should have ensured the fundamental rights like right to free speech. Free speech creates chances of sharing and criticizing against the government’s policies and activities. If this right is protected, citizens can participate in democracy by expressing their opinions and thoughts which is the idealism of democracy. Right to equality before law is also ensured. The political leaders and government leaders and others should not use defamation laws against the opposition parties. They should think that it is a democratic country. Here everyone has this right to criticize and express his ideas and plans. In one word, the balance between free speech and defamation laws should always be maintained. Here, the government should not use the restrictions unnecessarily to take its privileges whereas nobody should express something scandalous which is false can bring harm to the reputation of others in the name of free speech.¹⁸⁷

REFERENCES

Legislations

- Anti-Fake News Act 2018 (Malaysia).
- Code of Criminal Procedure 1898 (Bangladesh).
- Computer Misuse and Cybercrimes Act 2018 (Kenya).
- Constitution of the People’s Republic of Bangladesh 1972.
- Contempt of Court Act 1971 (Bangladesh).

¹⁸⁵ Saha (n 162).

¹⁸⁶ John Milton, *Areopagitica* (1st edn, John W Hales Ed 1875) 50.

¹⁸⁷ Editor, ‘The right to freedom of speech and expression is not totally liberal in a democratic country like Bangladesh’ (*Lawyers Jurists*) <www.lawyersjurists.com/article/the-right-to-freedom-of-speech-and-expression-is-not-totally-liberal-in-a-democratic-country-like-bangladesh/> accessed 03 February 2021.

- Cyber Prevention Act 2012 (Philippines).
- Digital Security Act 2018 (Bangladesh).
- Dramatic Performance Act 1876 (Bangladesh).
- Information and Communication Technology Act 2006 (Bangladesh).
- Penal Code 1860 (Bangladesh).
- Post Office Act 1898 (Bangladesh).
- Printing Presses and Publications (Declaration and Registration) Act 1973 (Bangladesh).
- US Constitution 1789.

International Instruments

- African Charter on Human and Peoples' Rights 1981.
- American Convention on Human Rights 1969.
- European Convention of Human Rights 1950.
- International Covenant on Civil and Political Rights 1966.
- Universal Declaration of Human Rights 1948.

Cases

- Abdul Latif Mirza v Bangladesh (1979) 31 DLR AD.
- Bantam Books, Inc v Sullivan (1963) 372 U S 58, p 70.
- Board of Trustees of the Port of Bombay v Dilip Kumar Raghvendra Nath Nadkarni and others (1983) SCR (1) 828.
- Bihar v Shailabala (1952) AIR SC 329.
- CK Daphtary v OP Gupta (1971) AIR SC 1132.
- Dewan Abdul Kader v Bangladesh (1994) 46 DLR HCD 596, p 599.
- Douglas v Jeanette (1943) 319 US 157.
- D.P. Chaudhary v Kumari Manjulata (1902) SLR 39 432.
- E.M.S. Namboodripad v T.N. Nambiar (1970) 2 SCC 325.
- Farid Ahmed v West Pakistan (1965) PLD Lah 135.
- Gertz v Robert Welch, Inc (1974) 418 US 323.
- Kishori Mohan Bera v The State of West Bengal (1972) 3 SCC 845.
- Leonard Hector v AG of Antigua and Barbuda (1990) 2 AC 312.
- Mills v State of Alabama (1966) 384 US 214, p 218.
- Morrison v Ritchie and co. (1902) SLR 39 432.

- M.R. Parashar v Farooq Abdullah (1984) 2 SCC 343.
- Namboodripad v Nambair (1970) AIR SC 2015.
- New York Times v Sullivan (1964) 376 US 254.
- Om Prakash v Emperor (1948) AIR Nag 199.
- Packingham v North Carolina (2017) 137 S Ct 1730, p 1735.
- Ranjit D. Udeshi v The State of Maharashtra (1965) AIR SC 881.
- Ranjit vs Maharastra (1965) AIR SC 881.
- Romesh Thappar v The State of Madras (AIR 1950 SC 124).
- Saxena v Chief Justice (1996) AIR SC 2481.
- Shreya Singhal v Union of India (2015) AIR SC 1523.
- Saleem Ullah v State (1992) 44 DLR AD 309, p 313.
- Santosh Singh v Delhi Administration (1973) AIR SC 1091.
- Simon & Schuster, Inc v Members of New York State Crime Victims Bd (1991) 502 US 105, p 116.
- S. Rangarajan etc. v P. Jagjivan Ram (1989) SCC (2) 574.
- Subramanian Swamy v Union of India, Ministry of Law & others (2016) AIR SC 2728.
- Swami Ramdev v Juggernaut books Pvt. Ltd & Others (2018) Delhi High Court, CM(M) 556.
- Tinker v Des Moines Independent Community School District (1969) 393 US 503 pp 504-507.
- Thomas v Collins (1945) 323 US 516.
- Umesh Kumar v State of Andhra Pradesh and another (2013) 10 SCC 591.
- United States v Alvarez (2012) 567 U S 709, pp 727-729.

Books

- Barendt E, *Freedom of Speech* (2nd edn, OUP 2005).
- Dworkin R, *A Matter of Principle* (1st edn, OUP 1985).
- Islam M, *Constitutional Law of Bangladesh* (1st edn, Bangladesh Institute of Law and International Affairs 1995).
- Thakker CK, *Basic Constitutional principles* (1st edn, Eastern Book Company 1992).

<<http://lawtimesjournal.in/subramanian-swamy-vs-union-of-india-ministry-of-law-ors/>> accessed 02 February 2021.

- Kashyap A, 'Defamation in internet age: law & issues in India' (2016) 1 (1) IJIEMT <www.onlinejournal.org.uk/index.php/IJIEMT/article/download/68/33> accessed 27 August 2020.
- Khan A H, 'Restrictions on Freedom of Expression: Getting the Right Balanced' (2015) 6 (6) Journal of International relations <www.iip-bd.org/wp-content/uploads/2020/03/Restrictions-on-Freedom-of-Expression.pdf> accessed 28 August 2020.
- Patanjali D, 'Freedom of Speech and Expression *India v America* - A study' (2010) 3 (4) India Law Journal <www.indialawjournal.org/archives/volume3/issue_4/article_by_dhee_rajendra.html> accessed 25 January 2020.
- Raza A, 'Freedom of Speech and Expression as a Fundamental Right in India and the Test of Constitutional Regulations: The Constitutional Perspective' (2016) 43 (2) Indian Bar Review 87-110 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2827985> accessed 28 January 2021.
- Saha M, 'Section 57 of ICT Act: A threat to the freedom of expression through the suit of defamation' (2017) 22 (11) IOSR Journal of Humanities and Social Science 24-27 <www.iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue11/Version-1/D2211012427.pdf> accessed 30 January 2021.
- Shivi, 'Defamation laws and judicial intervention: a critical study' (2016) ILI Law Review <<http://ili.ac.in/pdf/paper10.pdf>> accessed 02 February 2021.
- SM Hoque S, 'Freedom of Thought and Social Networking in Bangladesh: Case Studies on Facebook' (2017) 17 (1) Banglavisian <<http://bv-f.org/VOL-17/05.%20BV%20Final.pdf>> accessed 28 August 2020.
- Weaver R L and Partlett D F, 'Defamation, free speech and democratic governance' (2006) 50 (1) NYLS <https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1287&context=nyls_law_review> accessed 26 August 2020.

Newspaper Articles

- Ahmed T N and Shahnewaj M, 'Defamation: A civil wrong or a criminal offence' *The Independent BD* (02 August 2018) <www.theindependentbd.com/printversion/details/160470> accessed 02 February 2021.
- Correspondent C, 'Jahangirnagar University teacher gets 3-years prison term for wishing PM Hasina's death' *BD News24* (Dhaka, 12 August 2015) 2 <<https://bdnews24.com/bangladesh/2015/08/12/jahangirnagar-university-teacher-gets-3-year-prison-term-for-wishing-pm-hasinas-death>> accessed 27 August 2020.
- Nawaz Farhin Antara and Anwar Hussain, 'Giasuddin Quader Chowdhury denied bail in defamation case' *Dhaka Tribune* (Chittagong, 22 November 2018) <www.dhakatribune.com/bangladesh/>

[court/2018/11/22/court-denies-giasuddin-quader-chowdhury-s-bail-in-defamation-case](#)> accessed 28 January 2021.

- Npradhan, 'Constitution of India-Freedom of speech and expression' *Legal Service India* <[www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html#:~:text=Article%2019\(1\)%20\(a.liberty%20of%20thought%20and%20expression\)](http://www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html#:~:text=Article%2019(1)%20(a.liberty%20of%20thought%20and%20expression)> accessed 29 January 2021.
- Shaon A I, 'The question of Section 57' *Dhaka Tribune* (Dhaka, 10 August 2018) <www.dhakatribune.com/bangladesh/law-rights/2018/08/10/the-question-of-section-57> accessed 02 February 2021.
- Shams S B, 'Derogatory comments on Bangabandhu: Police fail to submit probe report' *Dhaka Tribune* (Dhaka, 19 March 2018) <www.dhakatribune.com/bangladesh/court/2018/03/19/probe-report-khaleda-zia-april-17> accessed 28 January 2021.
- Reporter, 'Barrister Mainul sent to jail' *The Daily Star* (Dhaka, 03 September 2019) <www.thedailystar.net/city/barrister-mainul-hosein-sent-to-dhaka-jail-in-defamation-case-1794910> accessed 28 November 2021.
- —, 'Comment on Joy: Defamation case filed against Khaleda' *The Daily Star* (Dhaka, 15 May 2016) <www.thedailystar.net/politics/comment-joy-defamation-case-filed-against-khaleda-1224157> accessed 28 January 2021.
- —, 'HC questions legality of Section 57' *The Daily Star* (Dhaka, 01 September 2015) <www.thedailystar.net/country/hc-questions-legality-section-57-136120> accessed 02 February 2021.
- —, 'Journo sued for hurting religious sentiment' *The Daily Star* (Dhaka, 30 January 2018) <www.thedailystar.net/city/journo-sued-hurting-religious-sentiment-1527361> accessed 28 November 2021.

Internet Materials and Others

- Ahmed A B, 'Defamation laws of Bangladesh: a threat to democracy' *LCLS South* <<http://lcls-south.com/ariza-binte-ahmed/%3E>> accessed 02 February 2021.
- Almagor R C, 'Speech, Media, and Ethics: The Limits of Free Expression' (2005) Palgrave <<https://link.springer.com/book/10.1057%2F9780230501829>> accessed 02 February 2021.
- All Answers Ltd, 'Freedom of Speech and Expression' *Law Teacher* (September 2020) <www.lawteacher.net/free-law-essays/constitutional-law/freedom-of-speech-and-expression-constitutional-law-essay.php?vref=1> accessed 27 September 2020.
- Clear Ias Team, 'Defamation in India – IPC Section 499/500 vs Freedom of Speech' *Clearias*, (03 April 2019) <www.clearias.com/defamation-freedom-speech/> accessed 30 January 2021.

- Dhamija K, ‘Freedom of Speech and Expression: Exigency for Balance’ *Latest Laws* (15 May 2020) <www.latestlaws.com/articles/freedom-of-speech-and-expression-exigency-for-balance/> accessed 02 February 2021.
- Editor, ‘Freedom of speech and expression-analyze and illustrate’ *Lawyers Jurists* <www.lawyersjurists.com/article/freedom-speech-expression-analyze-illustrate/> accessed 02 February 2021.
- Editor, ‘Free speech’ *CSUSM* <www.csusm.edu/freespeech/definitions/free-speech.html> accessed 25 January 2021.
- Editors, ‘Freedom of Speech’ *History* (04 December 2017) <www.history.com/topics/united-states-constitution/freedom-of-speech> accessed 25 January 2021.
- Editorial Team, ‘2018 Country Reports on Human Rights Practices’ *US Department of State* (2019) <www.state.gov/reports/2018-country-reports-on-human-rights-practices/bangladesh/> accessed on 29 January 2021.
- —, ‘2019 Country Reports on Human Rights Practices’ *US Department of State* (11 March 2020) <www.state.gov/reports/2019-country-reports-on-human-rights-practices/bangladesh/> accessed 29 January 2021.
- Goswami S, ‘Article 19 of Constitution of India’ *Law Column* (14 November 2020) <www.lawcolumn.in/article-19-of-constitution-of-india/#:~:text=Article%2019%20is%20a%20fundamental%20right%20well%20settled,including%20Jammu%20and%20Kashmir.%20Protection%20of%20Six%20Rights%3A-> accessed 30 January 2021.
- Rahman T, ‘Defamation Law in Bangladesh and regarding its offences and remedies’ *Tahmidur Rahman* (20 October 2019) <<https://tahmidurrahman.com/defamation-law-in-bangladesh/>> accessed 30 January 2021.
- Reporter, ‘Freedom of Expression in Bangladesh: Annual Report’ *Article 19* (2017) <www.article19.org/wp-content/uploads/2018/05/FoE-Report-2017-Final-Draft-02.05.2018-no-mark-up.pdf> accessed 26 August 2020.
- Sharma S, ‘Defamation’ *Legal Service India* <www.legalserviceindia.com/legal/article-1607-defamation.html> accessed 02 February 2021.
- Singh V, ‘Case Briefs’ *Lawctopus* (02 January 2015) <www.lawctopus.com/academike/case-briefs/> accessed 02 February 2021.
- Tripathi U, ‘Case Comment on *Shreya Singhal v Union of India*’ (2018) 2 (1) *Parag Agrawal* 952 <www.cusb.ac.in/images/cusb-files/2020/el/law/w2/case_comment_viii_sem.pdf> accessed 02 February 2021.
- Viswanathan A, ‘Seven Reasons Why Criminal Defamation Should Be Declared Unconstitutional’ *The Wire* <<https://thewire.in/law/seven-reasons-why-criminal-defamation-should-be-declared-unconstitutional>> accessed 02 February 2021.
- Writer, ‘First Amendment Principles’ *Newamericadotorg.S3.Amazonaws* (2019) <<https://newamericadotorg.s3.amazonaws.com/documents/First-Amendment-Principles-2019-FINAL-Interactive-OOJA9oV.pdf>> accessed on 30 January 2021.