

Right to Criticize: A Barrier to Address

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Abstract:

Article 19 of the Universal Declaration is viewed as encapsulating a general freedom of expression and it is even arguable that parts of it are now accepted as customary law. Freedom of expression means to share one's opinion. So, freedom of expression and opinion is linked to several other rights. Right to criticism is one of them. Right to criticism means to criticize government with reasonable restrictions. This right is not unfettered. Human Rights instruments recognize several legitimate limitations on the exercise of the right to criticism. The practice of right to criticism in a democratic country is very important. Because in the democratic country the government is chosen by the general people and they are bound to face the questions. The opinion and criticism of the people is the mirror of the governance. In a democratic country, it is the right of the people to criticize government's immoral and unaccepted policy. But there are laws that violate the right to speech as well as right to press, by putting restriction on criticism. Almost every democratic country practices the right but in Bangladesh this right is in the trap of some laws. Constructive criticism cannot be considered as sedition or defamation. The right to criticism should be practiced for the change and betterment of the society.

Introduction:

"Dissent is the highest form of patriotism"- Thomas Jefferson.

We are living in a constitutional democratic country where rights are reserved by the constitution. So, government is accountable to the people for their any kind of activities or policies. When constitution ensures the freedom of speech and expression, it opens a door to make constructive criticism of government. Criticism with reasonable limitations cannot be sedition. In a free democratic society...those who are responsible for public administration must be always open to criticism. Criticism of government in a constructive way is the right of the general people. Democracy demands the participation of citizen in the development of the country. If government shuts the door to practice the right, it will be a mere violation of the constitution. Criticism doesn't mean to present the dark side of the government; criticism means to prove themselves and a platform to face the general people. Because for a successful government, to open the floor for constructive criticism is the best way to be accountable to the citizens.

The Right to Criticize:

Right to criticism means to criticize the policies of government in a reasonable way. "Reasonable Restriction" imposed by law is ensured in the Article 39 of the constitution of the Peoples' Republic of Bangladesh. Criticism can be considered as a wide concept including negative and positive opinion. The right of criticism as a form of freedom of expression is guaranteed for media to become a platform for people to explicit public problems and criticize the government to improve its performance. In the sense of law, criticism means the expression of thought of a citizen through media and electronics. This jurisprudence is overwhelmingly directed at regulating behavior of governments in relation

to the media, rather than in regulating the media themselves. The practice of right to criticism is the way to express one's idea or thought through any audible or visible representations made to others. The right to acquire and import ideas of others, thoughts and information about matters of common interest and the right to read and be informed includes in the freedom of expression. But this right is not fully realised by the citizen of Bangladesh because of ICT Act.

Democracy and the Right to Criticize:

In a democratic country, government is selected by the citizen. In a democratic country, government is the servant of the citizen. And citizen has the right to criticize government's policy. Criticism is like the mirror for the government. Government consists by human beings and to err is human. So, if any policy of the government seems immoral or unconstitutional towards the country, citizen will criticize the government's policy. "Good Governance" is not made with the achievements and developments. The right to criticism of the government will elicit the actual governance. Most of the countries have banned the practice of this right.

Criticism is an expression of disapproval and it can be a tool of change. Basically, criticism is practiced in democratic country. Because government is elected by the people and they are bound to face people in any disapproval expression. In Indian legal system, it is clear by the constitutional rights enshrined in part III of the constitution that the citizen can criticize the government. Bombay High Court passed an order that freedom of speech should not suffer from the threat of sedition. The ordinary citizen and the newspaper can be critical is ensured in U.S.A by the famous Sullivan case. Almost every democratic country practices the right to criticism of the government because democracy demands that. Democracy is a means for the people to choose their leaders and to hold their leaders accountable for their policies and their conduct in office. So right to criticism and constructive criticism is the way to know what the government is doing in fulfilling its duties. An unwillingness feeling works in the practice of criticism to the government. The constitution of Bangladesh ensured the freedom of expression, freedom of press. They have right to speak their mind in a reasonable restriction. This reasonable restriction means that the right is not absolute and it may be is restricted on several grounds. But still free and fair opinions have no restriction. Government cannot abolish any right declaring it as a way of defamation. ICT Act Section 57 was much more than reasonable restriction.

International Law and the Right to Criticize:

While there is freedom of expression, there is right to criticism. The Universal Declaration of Human Rights (UDHR) promotes and observes a full suite of fundamental human rights. The Organization recognizes that human rights should be ensured by the freedom of expression and criticism. And it should be applied for both online and offline. The UN countries must follow the laws which are made by the Organization. In the first Amendment of U.S constitution mentioned that, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press. So right to criticism is being exercised by the American citizens. This right is also exercised in the Iraq. Article 29 of the Constitution of the Republic of Iraq ensured the right

to express his/her opinion and publish by saying, writing, pictures or other within the law. Freedom of expression, freedom of criticism, press, and printing are guaranteed by many treaties and international charters such as Tripartite Unity Agreement and Temporary Iraqi Constitution in 1968. In India, the Supreme Court declared that, the constitution of India ensures the right to criticism. A bench of Dipak Misra J and U.U. Lalit J said, “A statement to criticize the government does not invoke an offence under sedition and Defamation law. And Section 124(A) requires proper guideline to be followed as per the earlier judgment of the Apex Court.”

Section 57 of the ICT Act:

The said provision of the Act of 2013 provides that, “if any person deliberately publishes or transmits or causes to be published or transmitted in the website or in any other electronic form any material which is false and obscene and if anyone sees, hears and reads it having regard to all relevant circumstances, its effect is such as to influence the reader to become dishonest or corrupt or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the state or person or causes to her or may hurt religious belief or instigate against any person or organization, then this activity will be regarded as an offence.” Constitutionally we have the right to speech and expression. We have also right to be informed. Section 57 is closing all kinds of door to criticize them and perhaps violating constitutional rights.

11 cases had been filed against 21 journalists under Section 57 and most of the cases were related to news reports. Recently many students were arrested for posting in electronic media in against the government. Under the Criminal Procedure Code, the court can issue arrest warrant in against the journalist, writer, and publisher of any books or newspapers if they write any defamatory words in against the government. So, if anyone say any word in against the government’s policy, will be considered as defamatory words. Neither the court has defined defamation neither the stakeholders.

Government confirmed that section 57 of the Act of 2013 will not be withdrawn as they believe that it will help to control the cybercrime. Freedom of expression doesn’t mean that one can say anything in the public place. But the fact is true, and an ordinary citizen wants to criticize the fact, cannot be the violation of dignity. It cannot amount to defamation. Defamation means intentional false commence in any kind of expressing way to harm the person’s reputation. Scrutton LJ defined “a statement as a false statement about a man to his discredit.” Reputation is an asset for everyone. Nobody should be allowed to injure the reputation of a man in the name of freedom of speech and expression.

Concerns in Bangladesh:

Criticism of government is often regarded as sedition. But Supreme Court of India declared that, “A free expression of disapprobation against the ruling government's action with an intention to better the condition of the people is not treason, it had held”. In Bangladesh, there is no difference between criticism, sedition or defamation. They all mean the same. But the meaning of the words is totally different.

While there may be criticism of a person as well as of a thing, in the broad sense of the word, yet the law will not permit a man to excuse such charges on the ground that they are criticism. Right to criticism is neither absolute nor boundless. Publication of any statement or writing with an intention to humiliate the government or its activities is not permissible in the law. Rather it's a punishable offence. But criticizing about government's policy cannot be a punishable offence. A constructive criticism is necessary for the betterment, especially for the developing country.

Journalists, writers or bloggers usually write to let the people know the real truth. And readers read to be informed. The people of Bangladesh are constitutionally guaranteed with these rights. But section 57 provides ground about defamation which is to be interpreted by taking into consideration all exceptions provided in Section 499 of the Penal Code, 1860 such as fair comment, revealing the truth, publication of accusation by the Court etc. this section is very much controversial because it collapses the whole criticism system.

Political discourse, discussion of Human Rights and open rational journalism system, being important contents of the freedom, cannot be ousted merely by the fact that such exercise of freedom opposes the Government's decision on policy in a particular matter. Journalists, bloggers and readers are more affected by Section 57. It has a huge potential for violations and abuse against people who exercise freedom of expression. The section is not well defined and used in a broader sense.

After a lot of controversy government introduced new provision named The Digital Security Act, 2016. The act contains 36 sections which are almost identical to ICT Act, 2006. So, we are still there, and no changes come. But recently the cabinet has approved the draft of Digital Security Act 2018 and assured that sections 54, 55, 56, 57 and 66 of the ICT Act will be repealed. The cabinet secretary assured that, this Act is not designed to target journalists but the cases under Section 57 will continue. That means, before passing the recent act section 57 is applicable.

Conclusion:

In *Mthembi-Mahanyele v. Mail & Guardian Ltd & Another*, the Supreme Court of Appeal held that, "freedom of expression in political discourse is necessary so as to allow for robust and frank comment in the interest of keeping members of society informed about what government does." Right to criticism is a way of expressing opinions about the policies of government. Justified criticism aimed at pointing out failures of governance is a necessity in a multi-party democratic country. The freedom of speech allows the citizen to share their opinions with reasonable restrictions. So, the boundary in against of freedom of criticism violates the constitutional rights. In almost every democratic country this right has been exercised. Constructive criticism aimed at betterment of the society. These rights are recognized by the constitution of Bangladesh. So, it is high time to take necessary steps to ban these contradictory laws. As well as the support and an open playing field is necessary from the government to practice the right of criticism.