

American Police Power Doctrine: The Origin of the Reasonable Restriction Clause of the Bangladeshi Constitution

Bangladesh gained independence through a bloody war in 1971. One of the commitments of the founding fathers of Bangladesh was to ensure fundamental rights for the people of East Pakistan. However, when the framers of the Constitution started drafting, they tried to put some limitations and restrictions upon fundamental rights. The Constitution of Bangladesh guaranteed fundamental rights, but it also put reasonable restrictions on freedom of assembly, freedom of association, and freedom of speech.¹ This paper is going to focus on freedom of speech.

According to Article 39(1) of the Constitution of Bangladesh, freedom of thought and conscience is guaranteed.² Freedom of speech and press are also ensured under Article 39(a,b) of the constitution.³ On the one hand, freedom of speech is guaranteed, on the other hand, the Constitution puts reasonable restrictions upon freedom of speech imposed by law. According to Article 39 (2), “freedom of thought, conscience, and speech are subject to any reasonable restrictions imposed by law in the interests of the state, friendly relations with foreign states, decency or morality, or in relation to contempt of court, defamation or incitement to an offense”.⁴

The framers of the Constitution of Bangladesh had given many different explanations behind imposing restrictions on freedom of speech. They have provided examples from the Constitution of the Soviet Union, East Germany, Poland, and India. They justified the restrictions upon the freedom of speech by saying that the constitutions of almost every country around the world have reasonable limitations on freedom of speech. There is no country in the world that

¹ *The Constitution of Bangladesh* Article 37-39

² *Ibid* Article 39(1)

³ *Ibid* Article 39(a,b)

⁴ *Ibid* Article 39(2)

gives unlimited freedom of speech. However, one of the members of the parliament of Bangladesh argued that there were no restrictions on the Bill of Rights of the United States. Asaduzzaman Khan, one of the members of the Constitution Drafting Committee replied that it was true there was no restriction on the Bill of Rights in the American Constitution, but it had a Police Power doctrine which was used for controlling the unprotected speech of the people.⁵ This paper is going to argue that the Police Power doctrine does not deal with freedom of speech in the United States, rather it deals with maintaining public health and safety. This paper also argues that the mentality of the Constitution's writers for incorporating the Reasonable Restriction clause were shaped by their Cold War context, their colonial experience, and their changing mindset, which resulted in reasonable restrictions and limitations on freedom of speech.

Asaduzzaman Khan argued that in the United States, there was no limitation imposed upon fundamental rights of the American Constitution by the First Ten Amendments of 1791. But it was soon realized that for the maintenance of public order, for the prevention of corruption of public morals and incitement to crime, some limitations must be imposed upon the liberty of the individual. The United States Supreme Court, in interpreting the Constitution had, therefore, to invent the doctrine of the Police Power of the States. The states should have the power to impose such restrictions upon the fundamental rights for protecting the common good, public health, safety, and morals. He also said that the American Constitution was to make a balance between individual liberties and restraints so that they might not conflict with public welfare or general morality.

⁵ Md Abdul Halim (Collector and Editor), *Bangladesh Constituent Assembly Debate-1972*, Dhaka: CCB Foundation, 2014, page 260

This is true that in the United States, the states' governments had the police power for maintaining public order. However, they could not interfere with freedom of speech by using police power. Police power might deal with public order, but it did not have any relation to freedom of speech. In the United States, the movement of the people might be restricted by the state's police power, but freedom of speech could not be compromised by using this power.

Police Power Doctrine

State's Police Power came from English common law principles in early colonial America.⁶ It mandated the limitation of private rights when it was necessary for the preservation of the common good. The application of Police Power had traditionally been applied to promote public health, morals, safety, and the general well-being of the community.⁷ It enforced laws for the promotion of general welfare and regulated private rights in the public interest.

Police Power was mainly used in the United States whenever public health was in danger. After the end of the Revolutionary War, the people of Philadelphia got sick because of the spread of yellow fever.⁸ Philadelphia was isolated to control yellow fever. Framers of the United States Constitution took public health issues into their consideration. For the first time, they validated the State's Police Power for protecting the health of the citizens. "The Supreme Court, in its affirmation of this power, noted that the state had the power to quarantine for the health of the citizens. The uncontrollable nature of epidemic diseases moved the Supreme Court to uphold

⁶ Jorge E Galva, Christopher Atchison, Samuel Levey, "Public health strategy and the police powers of the state," *Public Health Rep.*120 Suppl 1(2005):20

⁷ Ibid

⁸ Whitney S. Dunscomb, "The Police Power and Civil Liberty." *Columbia Law Review* 6, no. 2 (1906): 94.

such extreme measures on the basis of the defense of the common good.”⁹ The court recognized Police Power as a means to prevent public harm if the action did not harm others.

In the United States, courts or legislatures did not define State’s Police Power exactly.¹⁰ The Constitution of the United States secured liberty for every person within its jurisdiction. It did not give people absolute freedom from all kinds of restraint.¹¹ There were manifold restraints for ensuring the common good. For example, if a person became dangerous to others, the state government could use police power to confine him. However, that does not mean that they had the legitimate power to limit freedom of speech unless it created any anarchy or disorder.

By using police power, the state government can put restrictions on the movement of individuals for public welfare. Government can exercise police power for maintaining public safety, health, and morals if certain situations reasonably demand interventions of the government.¹² By no means, oppressive interference with individual rights cannot be justified without any reason. The state government, as guardian of its people, has control of its affairs to impose conditions upon people for public safety.¹³

States’ governments can even interfere with people’s working hours by using their Police Power. Utah limited the hours of labor in all underground mines to eight hours per day.¹⁴ The Supreme Court of the United States gave power to Utah from the decision of the *Holden v. Hardy* case. Workers in Utah might work more than eight hours in cases of emergency where life

⁹ Ibid

¹⁰ Whitney S. Dunscomb, “The Police Power and Civil Liberty.” *Columbia Law Review* 6, no. 2 (1906): 95

¹¹ Edward P. Richards 3rd and Katharine Rathbun, “The role of the police power in 21st-century public health.” *Sex Transm Dis.*, 26(6) (1999):351

¹² Whitney S. Dunscomb, “The Police Power and Civil Liberty.” *Columbia Law Review* 6, no. 2 (1906): 94

¹³ Ibid, page 99

¹⁴ Ibid, page 100

or property was in imminent danger. The court also limited the hours of labor in smelting institutions for ensuring the safety of the worker's health. According to the court decision, it was reasonable and proper for the State to prevent workers from being constrained by the rules of the companies.¹⁵ For ensuring worker's safety, State government can utilize its Police Power at some point.

Police Power allows the states to pass and enforce isolation and quarantine for preventing the spread of disease.¹⁶ State government gets strong support from the courts for implementing the actions. However, The Supreme Court of the United States does not allow the intrusion of governmental force into private life except in cases where public health and interest are in danger.¹⁷ When individual rights are disregarded, Police power can get restrained. Restriction on freedom of speech is a complete violation of civil liberty. That's why Police Power is not applicable to the freedom of speech.

Any state can enact legislation for the protection and maintenance of the welfare of its citizens.¹⁸ If federal laws take precedence over those of the state, the court may give a decision in favor of the state. For example, a state's police power may be employed to ban the export of immature citrus fruits. It might be considered a violation of the free exercise of interstate commerce. However, the court, in *Sligh v. Kirkwood* (1915), upheld the measure as a legitimate police power exercise on behalf of its citizenry.¹⁹

The Decline of Police Power

¹⁵ Whitney S. Dunscomb, "The Police Power and Civil Liberty." *Columbia Law Review* 6, no. 2 (1906): 100

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Encyclopedia Britannica, "Police Power", 2019

¹⁹ Ibid

Civil liberty became a very sensitive and important issue at the end of the 20th century in the United States which led to the curtailment of Police Power. States' Police Power enforcement was firmly established at the beginning of the 20th century.²⁰ During that time, State governments could take rapid actions for preserving health, even if those actions infringed on individual freedoms. However, the latter part of the 20th century brought legal, social, and ideological transformations in American society.²¹ This change led to limiting such powers substantially. There were three main forces that restricted police powers such as the advent of civil rights jurisprudence, the rise of patient autonomy, and federal encroachment on state authority.²²

During the 1950s, the ideology of individual rights and freedom became a matter of international concern and received global attention. The Vietnam War, the fight for African American rights, and the rise of feminism brought an ideological change in society that gave importance to individual rights.²³ The Warren Court (1953–1969) strengthened its position on issues of civil liberties. Warren's Court emphasized individual rights and it reshaped the basic tenets of police power. The Warren Court substituted public health activities with fewer restrictions on constitutional rights.²⁴ The court also closely scrutinized the exercise of police power for constitutional infractions which resulted in the curtailment of Police Power. Public health actions by the police were restricted, and individual rights were ensured and broadened.

²⁰ Whitney S. Dunscomb, "The Police Power and Civil Liberty." *Columbia Law Review* 6, no. 2 (1906): 104

²¹ *Ibid*, page 104

²² *Ibid*, page 105

²³ *Ibid*

²⁴ *Ibid*

Public health measures started to decline as a consequence of the improvements in health care.²⁵ The development of medicine gradually promoted an individualized perspective of health. Patients started making decisions about which treatments were necessary for them. This led to the concept of patient autonomy.²⁶ Under this new perspective, public health lost its special status. Medical issues became a more personal matter rather than a public interest.

After the Second World War, the Police Power of the states was curtailed. However, the Bangladeshi constitution makers used this declining American Police Power doctrine as a tool to impose restrictions on free speech. Even though police power was not used to control free speech in America, the framers of the Constitution of Bangladesh looked for examples which might fit with their intention. Their intention was to impose restrictions on freedom of speech. They considered the Police Power doctrine was a good match for their intention. That's why Police Power doctrine was used as a justification in favor of their argument, although it was totally a misinterpretation of the Police Power doctrine.

Clear and Present Danger Doctrine

Though Police Power doctrine does not deal with freedom of speech, there is a 'Clear and Present Danger doctrine' in the United States that tests what kind of speech is protected and what kind of speech is restricted. All speeches are not protected under the First Amendment in the United States. If any speech incites violence, freedom of speech can be limited by the government. Bangladeshi framers of the Constitution might have considered the Clear and Present Danger doctrine instead of the Police Power doctrine in regard to the freedom of speech. Clear and Present Danger doctrine means when any individual poses an immediate and serious

²⁵ Ibid

²⁶ Ibid

threat to public safety or national security by expressing his words, the individual's freedom of speech might be limited or restricted.

The United States Supreme Court introduced this concept in the case of *Schenck v. United States* (1919). Justice Oliver Wendell Holmes stated that "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."²⁷ According to Holmes, the First Amendment to the Constitution protected no "man in falsely shouting fire in a theatre and causing a panic."²⁸ Clear and Present danger doctrine is used as a basis for determining the constitutionality of various laws. When any speech incites violence, various laws can be used for restricting certain forms of speech.

As long as the speech does not cause any violence, no restriction can be imposed on freedom of speech in the United States. The American Supreme Court will judge whether any particular speech actually causes violence or not. While the Court's doctrine of 'Clear and Present danger' imposes some restrictions on free speech, it provides a clear understanding of when and which forms of speech will be restricted. The constitution of Bangladesh states that reasonable restrictions on freedom of speech may be imposed by the law. However, the definition of reasonable restriction is not clearly stated in the Bangladeshi Constitution. Even the Supreme Court has not given any direction or doctrine by any judgment to which extent freedom of speech cannot be interfered with.

Changing Mindset of Bangali Ruling Class Elite

²⁷ Peter H. Iron, *A People's History of the Supreme Court*, New York: Penguin, 2006, page-271

²⁸ Fred D. Ragan, "Justice Oliver Wendell Holmes, Jr., Zechariah Chafee, Jr., and the Clear and Present Danger Test for Free Speech: The First Year, 1919." *The Journal of American History* 58, no. 1 (1971): 25

During Pakistan Period (1947-1971), the middle class of East Pakistan fought for ensuring freedom of speech in Pakistan. After independence, they replaced Pakistani Rulers and changed their mindset about freedom of speech. One of the key factors leading to East Pakistan's, now Bangladesh, secession from Pakistan was the desire to establish a secular democratic state. This represented a significant shift in the state philosophy, but unfortunately, the middle ruling elite in Bangladesh compromised with their ideology and commitment. They started behaving like the Pakistani rulers after the independence of the country. In Pakistan's constitution, there was a provision for the freedom of speech, but it was also noted that this freedom could be limited to maintaining public order. Sheikh Mujibur Rahman, the leader of the opposition in Pakistan at the time, criticized and asked to withdraw the Public Order clause from the constitution. He argued that the freedom of speech of the opposition parties would be curtailed under the guise of maintaining public order. He also said we knew what crimes Pakistani rulers committed in the name of the interest of Pakistan and public order.²⁹ They oppressed the people, detained people and they also utilized people for corruption, nepotism, and bribery. Sheikh Mujibur Rahman drew his attention to clause 9 of the constitution of Pakistan.³⁰ It stated, "Every citizen shall have the right to assemble peacefully and without arms, subject to any restrictions imposed by law in the interest of public order."³¹ Sheikh Mujib said wherever Pakistani rulers gave a right to the people by one clause, there would be a corresponding provision by which they took back all they gave.³²

²⁹ Md Abdul Halim (Collector and Editor), Bangladesh Constituent Assembly Debate-1972, Dhaka: CCB Foundation, 2014, page 305

³⁰ Ibid 309

³¹ Ibid 317

³² Ibid

However, when Bangladesh gained independence under Sheikh Mujib's leadership, he and his party urged to include the same restriction clause such as the Public Order clause in the Bangladeshi Constitution. One of the opposition members of the parliament reminded Sheikh Mujib's stance on the public order clause and pointed out that his party is now adopting the same clauses they had once criticized about Pakistan's constitution. Almost all parliamentarians of the Awami League argued that in every country, there was some sort of limitations on freedom of speech. That's why they were also imposing some limitations. According to them, this was not unfair at all. Unlimited freedom of speech was not good for society.³³ They simply forgot that they had fought for freedom of speech during the Pakistan period.

In 1962, Ayub Khan, the former president of Pakistan, presented a constitution that had fundamental rights with restrictions. Sheikh Mujibur Rahman demanded in the Constituent Assembly of Pakistan to withdraw the restrictions imposed upon fundamental rights. He said, "Today the Muslim League and the United Front Party are in power, but tomorrow some other party may assume the control of the executive power of the country, and they may or may not show respect to these fundamental rights because ample powers have been given to the government to violate these provisions of fundamental rights. Such a government may curtail the rights of the people and restrict their provision whereby the government of the day cannot encroach on the fundamental rights of the inhabitants of that country."³⁴

However, Ayub Khan didn't remove the restriction clause in the name of maintaining public order and ensuring security in Pakistan. It is an irony that the constitution Sheikh Mujib

³³ Md Abdul Halim (Collector and Editor), Bangladesh Constituent Assembly Debate-1972, Dhaka: CCB Foundation, 2014, page 315

³⁴ Ibid, page 214

and his party offered to the people of Bangladesh in 1972 failed to meet the demands that Mujib himself had made earlier.

Dr. Kamal Hossain was the chairman of the Constitution drafting committee. He was a prominent lawyer. During the Pakistani Era, he always advocated ensuring the freedom of speech. After establishing Bangladesh, he also looked for some clauses which helped them to justify the limitation of free speech. He said, “Freedom of speech is meaningless without restrictions. We only impose reasonable restrictions in the interest of public health and public order. If this restriction is removed, it will be meaningless.”³⁵ In the United States, the state government can use its police power for maintaining public health and public order. However, they can’t limit freedom of speech to uphold public order. It was certainly not unknown to Dr. Kamal Hossain. He misinterpreted and manipulated ‘Public Order’ concept to fitting the restriction clause with freedom of speech.

Impact of the Cold War

Cold War politics not only formed Bangladesh but also shaped Bangladeshi Constitution. The War of 1971 was fought in the backdrop of rapprochement between the United States and China.³⁶ Pakistan served as a key intermediary between the United States and China, while the Soviet Union was aligned with India. Nixon administration had given China tacit approval to attack if India intervene in East Pakistan. Nixon’s government viewed foreign policy through the lens of the Cold War. His agenda was to exploit the growing differences between China and the Soviet Union. He looked for ways to establish contact with China. President Yahya Khan of

³⁵ Ibid, page 253

³⁶ Ankit Agarwal, “The United States and the Indo-Pakistani War of 1971: A Critical Inquiry.” *Indian Journal of Asian Affairs* 27/28, no. 1/2 (2014): 21.

Pakistan became the key intermediary between the United States and China. That's why the United States supported Pakistan, while the Soviet Union supported Bangladesh. The U.S. government viewed Pakistan as an important ally in the Cold War and provided military aid to the Pakistani government during the war. The Soviet Union provided military assistance to Bangladeshi guerrilla fighters. The conflict eventually led to the creation of an independent Bangladesh. Because of the questionable role of the U.S. government in the war, Bangladeshi framers of the Constitution willingly wanted to avoid following the American constitution in making of Bangladeshi Constitution. Though the people of Bangladesh wanted to create a democratic country, the framers of the constitution had to look at the constitutions of the communist countries for guidance. They closely studied the constitutions of the Soviet Union, East Germany, Poland, and Yugoslavia and did not discuss much about the constitution of the United States. They only took the American Police Power doctrine into their consideration as it fitted with their intention for incorporating the reasonable restriction clause in the constitution.

Bangladeshi Politicians considered the United States as an imperial power. Bangladesh fought against neo-colonial power, Pakistan. The US supported that colonial power. The US supported Pakistan by providing a lot of arms and ammunition. Those weapons were used to kill the unarmed people of Bangladesh. One of the most brutal massacres in history was carried out by the Pakistan military. When Bangladesh got its independence, it promised that Bangladesh will always stand by the freedom-seeking countries and avoid the imperialist countries. So, when the Constitution of Bangladesh was being drafted, the framers of the Constitution of Bangladesh very consciously avoided the Constitution of the United States.

It was really an irony that the aspirations of the people of Bangladesh were to create a secular and democratic country, but they avoided following the most democratic country and its

constitution. In contrast, the United States as a democratic country had to support Pakistan which was ruled by a military dictator because of the Cold War politics.

Colonial Experience

The colonial experience was a driving factor in incorporating the reasonable restriction clause in the Bangladeshi Constitution. Before Pakistan, the people of East Bengal (Later East Bengal became East Pakistan) had fought for a long time against the British Colonial government for ensuring their civil liberty. However, the British government violated people's right to civil liberty by using various repressive laws. After creating Bangladesh as an independent country, the middle class of Bangladesh realized from their colonial experience that they would need to have the controlling power of civil liberty in their hands for maintaining public order. That's why they incorporated the reasonable restriction clause in the constitution so that they might enact laws when the situation demands.

Historians of Indian nationalism usually argued that sedition law was introduced into the Indian Penal Code by the British.³⁷ The sedition act was an adaptation of English law to Indian conditions. In England, sedition means acts done or words spoken with a seditious intention.³⁸ A seditious intention, according to English law means an intention to bring into hatred or contempt or to excite disaffection against the government.

The British government used Sedition Act as a way of controlling student revolutionaries as well as nationalists.³⁹ Sedition Act became unusable in British common law, except in a few

³⁷ Janaki Bakhle, "Savarkar (1883–1966), Sedition and Surveillance: The Rule of Law in a Colonial Situation," *Social History* 35, no. 1 (2010): 51.

³⁸ A. K. Mukherjee, "THE FEDERAL COURT AND THE LAW OF SEDITION IN INDIA," *The Indian Journal of Political Science* 5, no. 1 (1943): 96

³⁹ Janaki Bakhle, "Savarkar (1883–1966), Sedition and Surveillance: The Rule of Law in a Colonial Situation," *Social History* 35, no. 1 (2010): 55.

cases. While sedition had a long history in Britain, it gained a new phase of life in British India. Sedition law was widely used in India to arrest and convict revolutionary nationalists.⁴⁰

When the British left India, two independent countries, India and Pakistan emerged. For controlling political opponents, the government of Pakistan passed a law called Preventive Detention. This law was a tool for repressing the dissenting speech of political opponents as well as ordinary people. By using this law, the government was able to detain its opponents without trial. The British government in India also used this law since 1818. When Indian nationalists started the anti-British movement, they also opposed these laws. However, when they gained independence, they adopted these colonial laws as a tool to control their political opponents. Detention without trial was generally a wartime provision. However, after World War II, many authoritarian governments in the world used this type of law as a weapon for controlling people.⁴¹ Successive governments in Pakistan violated the citizen's fundamental rights by practicing this law.

The people of East Pakistan had protested against the Preventive Detention Act from the very beginning of Pakistan. The successive government of Pakistan denied and suppressed people's agitation and kept detaining people without any trial. However, when the people of East Pakistan liberated themselves, Bangladeshi framers of the constitution realized that acts like preventive detention or sedition act would be necessary to maintain public order. That's why they want to make room for this kind of law within the Constitution using the reasonable restriction clause. They didn't realize that this kind of restriction clause might allow the government to pass such a law which will result in the violation of the freedom of speech.

⁴⁰ Ibid

⁴¹ Rashid Rahom, "Authoritative Regime and Repressive Act: Pakistan Experience," Tottow Talash, vol-2, pp-120.

The outcome of the ‘Reasonable Restriction Clause’

The reasonable restriction clause of the constitution gave the opportunity to the Bangladeshi government to pass laws that could restrict freedom of speech. The Special Power Act of 1974 was a legitimate example that was introduced as a means of controlling political dissent and maintaining public order. This law was enacted in 1974 under the presidency of Sheikh Mujibur Rahman. Once Sheikh Mujib criticized oppressive laws like Special Power Act during the Pakistan period. Now his government enacted this repressive law for limiting freedom of Speech and Press by using the reasonable restriction clause of the constitution.⁴²

According to the Special Power Act, if someone was regarded to be a threat to public safety or security, the government had the right to arrest them and hold them without trial for up to six months.⁴³ This act had been applied to imprison journalists, activists, and other people who criticized the government or its policies. According to the law, the government was free to prohibit any content that it deemed to be harmful to the public interest.⁴⁴

Awami League was the largest and most powerful political party in East Pakistan during the Pakistan period. Sheikh Mujib was the leader of this party. Bangladesh gained independence under the leadership of the Awami League. During the Pakistan period, this political party launched movements for the withdrawal of all repressive laws in Pakistan. Leaders of this party presented a bill in the Assembly in 1958 for the repeal of the Security of Pakistan Act, 1952.⁴⁵

⁴² Md Jahid Hossain Bhuiyan, "Preventive detention law in Bangladesh: A review," *The Daily Star*, January 5, 2008.

⁴³ Section 3, The Special Power Act, 1974.

⁴⁴ Md Jahid Hossain Bhuiyan, "Preventive detention law in Bangladesh: A review," *The Daily Star*, January 5, 2008.

⁴⁵ Ibid

However, the same party, on being in power after the liberation of Bangladesh enacted the Special Powers Act, 1974 in order to materialize their heinous political interest.⁴⁶

Along with the Special Powers Act, recently the present Prime Minister Sheikh Hasina (2008 to present) of Bangladesh is now trying to control digital platforms and social sites. Her government passed the Digital Security Act (DSA) in 2018. The goal of this law is to control people's voices on social sites and digital platforms. Though the DSA was enacted to ensure digital security and identification, various provisions of the Act are being used to suppress the freedom of expression of the people.

Freedom of expression has been guaranteed as a fundamental right under Article 39 of the Constitution of Bangladesh. However, the same Article imposes restrictions upon freedom of speech which allows the government to enact the Digital Security Act in 2018. The provisions of the law are very vague. If any person is involved in making any kind of propaganda regarding the spirit of liberation or religion, such person shall be punished with 10 years' imprisonment.⁴⁷ These vague and wide terms bring a negative effect on the freedom of expression.⁴⁸ The Digital Security Act hinders the implementation of many fundamental rights, including freedom of speech, and freedom of movement.

Conclusion

Historians only portrayed the creation of Bangladesh as a consequence of Cold War politics. However, not only the Cold War context created Bangladesh but also it shaped the Constitution of Bangladesh. The aspiration of the Bangladeshi people was to establish a liberal democratic

⁴⁶ Ibid

⁴⁷ Julian Rafah, "A case against the Digital Security Act 2018," *The Daily Star*, April 7, 2023

⁴⁸ Ibid

country. However, the Cold War led Bangladeshi framers of the constitution to follow several communist countries' constitutions rather than democratic ones like the United States.

Bangladeshi Constitution's writers eventually got several examples of the restricted practice of free speech from communist countries. This led to making Bangladesh a less democratic country. Moreover, Colonial and Pakistani semi-colonial experiences shaped the mindset of the Bangladeshi Framers of the Constitution and made them realize that for running the government they should have the controlling power over people's freedom of speech which resulted in the reasonable restriction upon freedom of speech in the constitution.

Primary sources:

1. Halim, Md Abdul (Collector and Editor). *Bangladesh Constituent Assembly Debate-1972*. Dhaka: CCB Foundation, 2014.
2. *Schenck v. United States*, 249 U.S. 47, 1919
3. *Brandenburg v. Ohio*, 395 U.S. 444, 1969
4. Bhuiyan, Md Jahid Hossain, "Preventive detention law in Bangladesh: A review," *The Daily Star*, January 5, 2008.
5. Rafah, Julian, "A case against the Digital Security Act 2018," *The Daily Star*, April 7, 2023
6. *The Constitution of Bangladesh*.
7. *Bangladesh Special Power Act, 1974*.

Secondary sources:

1. নজরুল, আসিফ. সংবিধান বিতর্ক ১৯৭২: গণপরিষদের রাষ্ট্রভাবনা, ঢাকা: প্রথমা প্রকাশন, ২০২২. (Nazrul, Asif. *Constitution Debate 1972*. Dhaka: Prothoma Publication, 2022.
2. Hoque, Ridwanul. *Judicial Activism in Bangladesh: a golden mean approach*. London: Cambridge Scholars Publishing, 2011.
3. Islam, Mahmudul. *Constitutional law of Bangladesh*. Dhaka: Mullick Brothers, 2012.

4. Basu, Subho. *Intimation of Revolution: Global Sixties and Making of Bangladesh*. Cambridge: Cambridge University Press, 2023.
5. Raghavan, Srinath. *A Global History of Creation of Bangladesh*. Cambridge: Harvard University Press, 2013.
6. Bass, Garry J. *The Blood Telegram: Nixon, Kissinger and a Forgotten Genocide*. New York: Alfred A. Knopf, 2013.
8. Irons, Peter. *A People's History of the Supreme Court*. New York: Penguin, 2006.
9. S.C. Sen, S.C. "The Constitution of Bangladesh, and a short constitutional history." *Law and Politics in Africa, Asia, and Latin America*, vol-7, no-3 (1974): 257-273.
9. Begum, Afroza. "Disrespecting constitutional safeguards for fundamental rights in Bangladesh: a bird's eye view from the Indian context." *Journal of Indian law institute*, vol-49, no-1 (2007): 3-27
10. Huda, Tagbir. "Fundaments rights in search of constitutional remedies: the emergence of public law compensation in Bangladesh." *Australian Journal of Asian Law*, 2020, vol 21 no. 2 (2020): 27-46
11. রাহম, রাশেদ. "কর্তৃত্ববাদী রাষ্ট্র ও দমনমূলক আইন: পাকিস্তানের অভিজ্ঞতা (১৯৪৭-১৯৫৮)" *তত্ত্ব তাল্লাশ*, দ্বিতীয় সংখ্যা, পৃষ্ঠা ১১০-১৫৩ (Rahom, Rashid. "Authoritative Regime and Repressive Act: Pakistan Experience." *Tottow Talash*, vol-2 (2020): 110-153
12. Haque, Muhammad Ekramul. "The Bangladesh Constitutional Framework and Human Rights." *Dhaka University Studies*, Part-F, Volume-22, Issue 1, (2011): 55-78
13. Galva, Jorge E. Atchison, Christopher. and Levey, Samuel. "Public health strategy and the police powers of the state." *Public Health Rep*.120 Suppl (2005): 15-45.
14. Dunscomb, Whitney S. "The Police Power and Civil Liberty." *Columbia Law Review* 6, no. 2 (1906): 90-110.
15. Richard 3rd, Edward P. and Rathbun, Katharine. "The role of the police power in 21st-century public health." *Sex Transm Dis*. 26(6), (1999):345-365.
16. Encyclopedia Britannica, "Police Power", 2019.
17. Ragan, Fred D. "Justice Oliver Wendell Holmes, Jr., Zechariah Chafee, Jr., and the Clear and Present Danger Test for Free Speech: The First Year, 1919." *The Journal of American History* 58, no. 1 (1971): 20-40.
18. Agarwal, Ankit. "The United States and the Indo-Pakistani War of 1971: A Critical Inquiry." *Indian Journal of Asian Affairs* 27/28, no. 1/2 (2014): 21-42
19. Bakhle, Janaki. "Savarkar (1883-1966), Sedition and Surveillance: The Rule of Law in a Colonial Situation," *Social History* 35, no. 1 (2010): 48-65.
20. Mukherjee, A.K. "The Federal Court and the Law of Sedition in India," *The Indian Journal of Political Science* 5, no. 1 (1943): 90-105.