

**Digital Security Act in Bangladesh: The Death of Dissent and of Freedom
of Expression**

by Ananya Azad

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Supervisor: Cameran Ashraf

Assistant Professor

School of Public Policy

Central European University

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ABSTRACT

Article 19 of the Universal Declaration of Human Rights (UDHR) recognizes the Freedom of Speech as a fundamental human right. It is a principle that allows the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. The same has also been recognized in International Human Rights Law in the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states that the embodiment of these fundamental rights and their exercise carry '*special duties and responsibilities*' and are '*subject to certain restrictions*' when necessary '*for the respect of the rights or reputation of others*' or '*for protection of national security or of public order or public health and morals*'. The aforementioned justification for such subjugation of personal right is based on the principle proposed by John Stuart Mill known as the '*harm principle*' that propounds that '*the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others*'.

The fundamental principles of freedom and expression have always gone arm in arm with the due practice of rule of law and the presence of a due and just democratic society, and the same had been put into work by the founding fathers through constitutional indoctrination.

In 2018 the Government of Bangladesh passed the Digital Security Act 2018 (DSA), a controversial body of legislation. The DSA was in essence supposed to replace the existing draconian Information and Communication Technology Act; which had been used to arrest over a thousand people, as a beacon of hope and open up scope for freedom of expression on the internet. Critics have, however, come to universal recognition that the DSA is in fact, a more repressive form of the ICT Act. Several provisions within the DSA are blatantly inconsistent with the international standards of freedom of expression online.

The ICCPR provides the right to freedom of expression is fundamental but is not an absolute right. But it doesn't mean that the state can limit the right of expression without any reason. Under Article 19(3) of the ICCPR, the state may allow limitations on the rights provided for by law, in pursuit of a legitimate aim, that is deemed necessary and proportionate for maintain balance within a democratic society. In practice, however, the proposed justification has vested immense power to the Government of Bangladesh to exercise censorship and retaliation for expressions of criticisms or even initiating a debate/dialogue against their actions. Government entities are seen to operate in the manner an autocracy or a monarchy would; through the enactment of manipulative and interpretively malleable policies and laws aimed at directly disregarding the diversity of opinions and promoting surveillance and at whim label "free speech" as defamatory to political leaders or even at stages as treason.

The DSA of Bangladesh carries the scope to potentially limit and curb the freedom of expression. This thesis will examine the impacts of The DSA of Bangladesh and illustrate the manner in which it has been and could further be used to shun and control the opinions of certain groups.

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CHAPTER I

PRELIMINARY CHAPTER

a. Background of the Study (Literature Review)

Freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction.¹ The Freedom of Expression is one of the multiple fundamental rights that have been guaranteed to citizens through Article 39 of the Constitution of the People's Republic of Bangladesh reads as follows,

1. Freedom of thought and conscience is guaranteed.
2. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality or in intention to contempt of court, defamation or incitement to an offense-
 - a) The right of every citizen to freedom of speech and expression; and
 - b) freedom of the press, are guaranteed.

As we move further into the 21st century, the ways we communicate and express ourselves and the platforms on which we do the same are rapidly changing. At the beginning of the century, a very small percentage of the world had access to or proper knowledge of the Internet; now

¹ Margaret Fermin, "Freedom of Expression: Definition" (History on the Net, May 20, 2020) <<https://www.historyonthenet.com/freedom-of-expression-definition-2>> accessed January 17, 2021.

after facing a pandemic the world has restructured itself around the internet further. There are more ways to communicate now than any other time before and many different platforms beginning the Internet. This literature review examines the current status of the freedom of speech online in general with a special focus on the laws enacted by the government of Bangladesh to curb the dissenting voices in online platforms. Moreover, it demonstrates how these laws have affected the fundamental rights of the people.

Hossein Derakshan, widely regarded as a champion of the right to free speech in Iran, was nicknamed the “blogfather” due to his rampant activism. He made a striking statement in his blog about how the use of internet had changed during the six years he was imprisoned by the Iranian government and its horrific ramifications to the protection of our fundamental rights, the illusion of privacy, control and capacity of damage.² Derakshan expressed how Social Media has taken away the power of bloggers to make a voice. He provides that social media had made surveillance and manipulation of the masses easier and concluded that while surveillance was bad enough, the control that social media gave to governments and organizations was terrifying.

Lawrence Lessig in his book ‘Code and Other Laws of Cyberspace’, talks about the nature of the internet, about the possibilities it presents due to anonymity and outreach it gives to the normal citizen to have their voices heard. He explains in great depth the parameters of the internet focusing on its structure maintaining that the "architecture" of the internet is the basis of its power and as such the "architect" in this analogy would have the power to sway, manipulate and optimally control the lives of its users³; which even though it may sound brazen, this decade encompasses all of the human population. Lessig’s work gives us an

² Hossein Derakshan, “Death of Hyperlink: The Aftermath” (Medium November 10, 2015) <<https://medium.com/thoughts-on-media/death-of-hyperlink-the-aftermath-cb10ce79e014>> accessed January 17, 2021.

³ Lawrence Lessig, Code and Other Laws of Cyberspace: Version 2.0 (Basic Books 2006).

intravenous look into just how big the internet and how it has shaped and the ways it may change our lives in the future.

According to David Kaye in his book, ‘Speech Police: The Global Struggle to Govern the Internet (Columbia Global Reports)’ refers to Derakshan⁴, he adds that targeted content being fed into social media gave the autonomy that bloggers had in the last decade and presented it to governments and organizations that lobby with said governments. Kaye, goes on to pose a seemingly simple yet quiet intricate question; who controls the Internet?⁵ Kaye offers that, the internet is now the primary ground for debate. Everyone and anyone, regardless of their academic status, religion, age, culture gender, or even nationality can say anything they want, anytime they want. That having said, he then opens to the ramifications of such access in regard to his question. His book takes a look at the extent of control and its ensuing collateral of giant technological companies over manipulation of control⁶. Kaye further criticizes governments and their approach to adopt laws that in quite a literal sense, over the principal actor that entangles the entirety of the lives of their citizens and even in cases the influence exerted by and on the same government.⁷

In their book, Sullivan and Gunther, state that there are two approaches to comprehend freedom of expression, them being ‘equality of human beings’ and ‘interests of political liberty’⁸. This allows us to add structure to the questions Kaye was asking. Sullivan and Gunther’s work helps us to understand why there are limits to rights. Even the fundamental rights such as freedom of expression. Following on their tone, Gaziul Hoque brings to our attention that while some fundamental rights are inherently unlimited, the freedom of expression in Bangladesh, as per

⁴ David Kaye, *Speech Police: The Global Struggle to Govern the Internet* (New York Columbia Global Reports 2019) 1–5.

⁵ *Ibid* 10

⁶ *Ibid* 23-30.

⁷ *Ibid* 13-15;34-36;41-48.

⁸ Gerald Gunther and KM Sullivan, *Constitutional Law* (13th ed, New York: Foundation Press 1997).

Article 39 of the constitution of Bangladesh does impose several restrictions⁹. Hoque gives us a backdrop to the limitations of freedom of expression and where it comes from. Ali Riaz in his article¹⁰ uncovers what we have been building up to since we were presented with Kaye's question; Riaz lists the measures and extents that the government of Bangladesh has applied in the suppression of rights to stay in power.

In their journal article, "Privacy, Security, and Surveillance in the Global South"¹¹ the writers talk about how cyber-crime has exponentially increased in the Global South due to the recent development of the ICT sectors in the area. The writers have provided a spotlight on how different states have made approaches to tackle this new frontier and the lack thereof of such attempts. Importantly they have provided insight on how surveillance has become an issue with there being necessary surveillance to prevent crimes but in contrast, also begs the question; how much the surveillance may spill over to invasion of privacy rights of their citizens. This paper makes it apparent how political right and civil right and the corresponding legal frameworks work very differently in the west and the east. It also begins to introduce how vulnerable our rights have become; that while individually we may have gotten mediums or platforms to exercise expression, we are at a point where we need to begin realizing that anyone (governments) have more resources than us and therefore have more power as well.

In a report by the UN General Assembly¹² the Special Rapporteur talks about censorship of freedom of speech and expression that denies specific communities the right to access and promote art and legal barriers in the form of blasphemy laws. This is an extension to what the above article proposes, simply put just because we can say it doesn't mean we should and more

⁹ Abu Nasr Md Gaziul Hoque and Asian Mass Communication Research And Information Centre (Singapur, Mass Media Laws and Regulations in Bangladesh (Singapore 1992).

¹⁰ Ali Riaz, "The Pathway of Democratic Backsliding in Bangladesh" [2020] Democratization 1.

¹¹ Syed Ishtiaque Ahmed and others, "Privacy, Security, and Surveillance in the Global South" [2017] Proceedings of the 2017 CHI Conference on Human Factors in Computing Systems.

¹² UN General Assembly, "Research Report on Artistic Freedom of Expression" (undocs.org/July 24, 2020) <<https://undocs.org/en/A/HRC/44/49/Add.2>> accessed January 19, 2021.

importantly as the Special Rapporteur elaborately draws out; that we may not be allowed to. The report enlists existing human rights law frameworks for the issue and then highlights several instances of non-compliance of the same in different regions. This report places a highlight on LGBTI issues and helps us to draw a line between the fundamental variance of reality and the mere existence of legal frameworks; regardless of whether they are national or international.

In her report “All we want to do is fit in. To be accepted. To be part of the group”: Discussing LGBTQ rights in Bangladesh, Rebecca Bowers¹³ talks with a representative from the country's LGBTIQ community. Through the report, she provides insight into the suppression of freedom of expression through the mind of a minority. The report acts as a reflection of how minority communities have had to struggle to gain small footholds in the community. She also makes an inquisition of how the legal framework of the country namely the DSA attacks and prohibits personal expressions of freedom under the blanket of protecting and conserving social and religious standards. Bowers’ work also introduces that aside from the government there are still other forces at play against minorities.

David Kaye as a Special Rapporteur for the UN General Assembly in his report¹⁴ makes a recommendation for a framework to oversee and moderate content on the internet in line with human rights. He puts out that actions of the state¹⁵ and technological companies¹⁶ directly implicate the fundamental rights of all persons on both the national and international scale.

¹³ Rebecca Bowers, "South Asia @ LSE: 'All We Want to Do Is Fit In. To Be Accepted. To Be Part of the Group': Discussing LGBTQ Rights in Bangladesh" (2018) <https://scholar.googleusercontent.com/scholar?q=cache:ku2vZrKxLWoj:scholar.google.com/+freedom+of+expression> accessed January 20, 2021.

¹⁴ David Kaye, “Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression” (United Nation General Assembly 2018) <https://freedex.org/wp-content/blogs.dir/2015/files/2018/05/G1809672.pdf> accessed January 19, 2021.

¹⁵ Ibid 4;6-8.

¹⁶ Ibid 5;9-18.

David Kaye in his other report¹⁷ addresses Contemporary restrictions on expression. He introduces existing international legal frameworks in place that provide for restrictions on personal rights and then advances to expand on the nature of their legality¹⁸. The present report is significant in the present scenario because he talks about the necessity of legitimate restrictions¹⁹ and then manages to create a sharp contrast that defines and categorizes illegitimate restrictions that may be used by states or other actors in light of the legal frameworks he lists.

As Md. Aliur presents, the very nature of the Digital Security Act 2018 prevents citizens and academics, in particular, be able to access or even express opinions or even provide information on certain matters. After Kaye's work regarding illegitimate restrictions Aliur's work provides the reflection of reality that Kaye has academically mentioned above. Aliur provides that free and unbiased journalism has been inevitably cordoned in Bangladesh. He explores the key provision of the countries legal framework and shows the negative impacts of the law, regardless of the intent that it portrays. His work gives a distinct reflection on the lack of adequate and unbiased research articles or books detailing the pitfall of the subject itself²⁰.

A report from Human Rights Watch²¹ presents extensive data and analysis of the legal framework of Bangladesh documenting abuses of law that were put into place for the protection of citizens but are categorically manipulated to be abused to shut down and remove political opposition. It also highlights that the abuse of laws is not merely relative to large political

¹⁷ David Kaye, "Promotion and Protection of the Right to Freedom of Opinion and Expression" (United Nation General Assembly 2016) <https://freedex.org/wp-content/blogs.dir/2015/files/2017/05/FOE-worldwide-report.pdf> accessed January 18, 2021.

¹⁸ Ibid 6.

¹⁹ Ibid 8-11.

²⁰ Rahman, Md. Aliur, and Harun-Or Rashid. 2020. "Digital Security Act and Investigative Journalism in Bangladesh: A Critical Analysis". CenRaPS Journal of Social Sciences 2 (2):216-36.

²¹ Human Rights Watch, "No Place for Criticism | Bangladesh Crackdown on Social Media Commentary" (2018) <

agendas but are habitually used to suppress greater development and progression by a marginal number of actors with power for personal profit. It presents cases and instances of such abuse. The report also undertakes the duty to identify, define and discuss the failures of the judicial instruments put in place to prevent the abuse of law. This report carries significance for its study and documentation of various instances of abuse. It also exposes premeditated actions of the Bangladesh government to intentionally conceal the true nature of freedom of speech in the country including submission to the UN Human Rights Committee and attempts at the creation of draconian laws to keep power at hand. It then expands to compare Bangladesh's legal framework to international standards.

Mark Lacy and Nayanika Mookherjee in their research article, 'Firing cannons to kill mosquitoes': Controlling 'virtual streets' and the 'image of the state' in Bangladesh takes a look at the historical, social and political legacies that have led to the formation of the Information and Communication Technology Act (2006) and thereafter the controversial adoption of the Digital Security Act (2018) in Bangladesh. They provide insight on the continuing intent and attempt of the state to what they refer to as the 'virtual streets' referring to the use of the internet to voice the concerns of the citizens of Bangladesh and the government's actions to control the same. They highlight the increasing trend of the government to use the aforementioned tools to exercise disciplinary power over the internet of critics of the state and or opposition. They also highlight the tendency of the state to make the use of this power publicly to create exemplary cases to act as deterrents. Lacy and Mookherjee also refer to the emergence 'digital vigilantes' coming out of the criminalization of free speech and regard them as wrongful actors with unmitigated power who are driven by personal agendas and incentives. They introduce the concept that the overall result of the incidents and abuses has created an apparent environment of fear that dissuades citizens from even thinking about wanting free speech.

In "Right to Privacy and Counter-terrorism in the Digital Age: A Critical Appraisal for Bangladesh"²², Md. Abu Bakar Siddique and Sharmin Akter talk about the ever-increasing direct integration of modern technology in our present lives. They provide that with the growth of impact of technology in our lives, the occurrences of terrorism using the same have become an unavoidable threat. This poses a definite challenge for Bangladesh due to a lack of proper laws and a distinct lack of knowledge in lawmaker and other state actors of just how information technology can be used to stage acts of terrorism. They bring out the lack of capability of the state to acquire technology that terrorists are already using and directly criticizes the state and its counter-terrorism units. Their work opens up another area in which the country lacks cybersecurity and stands a monolith of the state's attention to prosecute indiscriminately, to stay in power over actual protection of its citizens. Siddique and Sharmin also shed light on the state's actions that have sidelined human rights to invade the "right to privacy" of its citizens without proper cause showing the reader the gray area between mass digital surveillance and protection of the right to privacy that the state actors and in cases individuals in power use at whim.

David Kaye in his report, Protection of sources and whistleblowers, to the General Assembly of the United Nations, brings up every person's universal right to access to information, an essential tool for the public's participation and understanding of political affairs, democratic governance, and accountability. He mentions that in certain situations whistle-blowers go above and beyond to ensure the aforementioned right to information and in doing so deserve the strongest protection in law and practice²³. In a second report, he concludes that certain anonymity and protection are of grave importance for the proper exercise of freedom of speech

²² Md. Siddique and Sharmin Akter, "Right to Privacy and Counter-Terrorism in the Digital Age: A Critical Appraisal for Bangladesh" (2016) 21 IOSR Journal of Humanities and Social Science 64.

²³ A/70/361 General Assembly. (n.d.). [online] Available at: <https://freedex.org/wp-content/blogs.dir/2015/files/2015/10/dkaye-whistleblower-report.pdf>.

in the modern world.²⁴ Following up on his report on the need for anonymity, in his book, “Speech police: the global struggle to govern the Internet” he extensively looks upon all his findings in the individual reports of how the manner in which our ascension into a digital world has dramatically changed our needs for updated protection mechanisms.²⁵

Most of the studies so far have pointed out the contours of freedom of speech online. They examined the nature and scope of freedom, particularly the balance between freedom and legitimate restrictions. Moreover, some studies have pointed out the problematic nature of the ICT Act. However, due to the relative novelty of the DSA along with the domestic atmosphere of fear generated by the act itself, the number of studies relating to this act are still meager. More studies have to be done examining specifically the provisions of DSA with an aim to find out its compatibility with the constitutional mandate as well as the international instruments, i.e. ICCPR. Studies should also focus on the pattern in which the government of Bangladesh has been misusing the provisions of the DSA to suppress the dissidents especially in difficult conditions such as the pandemic.

b. Proposed Thesis Question(s):

1. Do the provisions of the DSA pose a threat to the independent practice of freedom of expression on the internet or other media in Bangladesh? Did the repealed provisions of the ICTA such as Section 57 do the same?
2. Are the provisions of the DSA contradictory to the principles and liabilities that Article 19 of the ICCPR vests on its signatories?

²⁴ Un.org. (2020). United Nations Official Document. [online] Available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/32.

²⁵ Kaye, David. Speech police: The global struggle to govern The Internet. Columbia Global Reports, 2019.

c. Objectives of the Study

The primary objective of the study is to identify the pitfalls of the DSA in regards to the freedom of expression in Bangladesh as well as to

- To analyze and breakdown the problematic provisions of the DSA
- To compare the identified problems of the DSA and where applicable the problematic provisions of earlier laws in Bangladesh to International Standards namely the ICCPR
- To take a look at the historical examples of the abuse of the DSA
- To explain the lapses and controversies of the use of the law to sidestep fundamental rights
- To find out the possible solution to the challenges.

d. Scope of the Study

The Scope of the research, for matters of relevancy, shall be kept within specific issues.

•' Inclusion

This study shall be centrally based on the abuse and mutative use of the DSA, the difficulties that have arisen due to it, the manners in which it can be abused, the lack of academic and formal incentive to change the act. Moreover, this research intends to find out the lacuna regarding the comparative stand of the DSA as statutory legislation of Bangladesh, as a signatory to the ICCPR.

•' Exclusion

This research will confine itself within the periphery of the DSA and its predecessor (ICT Act). This indicates that the study will not delve into other laws and functions that operate independently to circumvent the practice of fundamental rights in Bangladesh.’

e. Limitation of the Study

The primary constraint in the formation of this study is the lack of material and legitimate statistics available in the matter. It is submitted again, that the lack of the same is due to the suppressive nature of the subject matter. The study will attempt, wherever possible to enter and analyze in-depth the subject.

Limited understanding of the jargons related to Act and law can play a role in the process of the document review.

f. The Rationale of the Study

The present study and its outcomes will allow readers to shed light on the state of Bangladesh and the state of its practice of democracy in the light of the statutory weapon of the Bangladesh Government. The study is also aimed at being a step taken to fill the dearth in the availability of academic material in this regard. It is intended to supplement where necessary and to create awareness of the consequences of the DSA. The writer hopes that the study will be helpful for Lawyers, Law Enforcement agencies, Judges, Academics, and above all the citizens of Bangladesh.

g. Methodology

The principal method of progression for this study is a normative approach. The writer shall identify key principles, doctrines, and bodies of knowledge to address and dissect the questions that we have at hand. The normative portion of the study allows us to open up the extensions of the problem, i.e., how much of the problem at hand we intend to tackle. The normative approach will allow for arguments, theories, or new concepts for skeletons of legislation to appear. It allows us to investigate the truths and falses of legal applications based on the law as a norm, extending to the comparison of the present application of legal jurisprudence in new settings and circumstances.

While the dissection and research of law and legal concepts do not leave any ground for forays into empirical or statistical grounds. The present study shall try to instigate and present empirical results if possible.

h. Structure of the Study

This study titled, '*Digital Security Act in Bangladesh: The death of Dissent and Freedom of Expression?*' will discuss the nature of the DSA of Bangladesh and the manner in which it affects the practice of fundamental rights in Bangladesh in contrast to international standards. This study shall consist of a total of six chapters. The first chapter will be the Preliminary Chapter. This chapter will consist of Background of the Study (Literature Review), Research

Question, Objectives of the Study, Scope of the Study, Limitation of the Study, The Rationale of the Study, Methodology, Structure of the Study, and the Bibliography.

The second chapter will be the Path to and the emergence of the DSA. In this chapter, the historical transcript for the establishment of the ICT Act, the DSA, and the position of Bangladesh in the context of the ICCPR shall be outlined

The third chapter, Dissection of the Information and Communication Technology Act, will discuss the legal provisions and the pitfalls of the ICT Act and paint a picture of the abuse of the law at the time.

The fourth chapter, Dissection of the DSA will discuss at length the problems, powers, and unconstitutionality of the various provisions of the DSA and outline historical cases of the abuse of the Act.

The fifth chapter, Narrative of Circumventions of Fundamental rights, will outline the manner in which rights have been curtailed in Bangladesh and the agents and institutions that benefit from the same.’

Lastly, there will be the Concluding Chapter that will provide the findings and some possible recommendations.

CHAPTER II

Historical Context of ICT Act and DSA and International responsibility of Bangladesh

To fulfil the needs of the digital age, The Information and Communication Technology Act, 2006 (ICT Act) was enacted by the then government of Bangladesh led by the Bangladesh Nationalist Party.²⁶ But some controversial provisions of the act made the act a subject of criticism from home and abroad. The government later introduced the DSA in 2018 but there was no change regarding the debilitating effect of the act on the exercise of freedom of speech. This chapter will analyze the historical transcript for the establishment of the ICT Act, the DSA, and the position of Bangladesh in the context of the ICCPR.

The enactment of the ICT Act

ICT Act was enacted back in 2006 the primary aim of which is to “provide legal recognition and security of Information and Communication Technology and rules of relevant subjects”.²⁷ However, the act also incorporated the infamous section 57 which was widely criticized for violating the freedom of speech online. A tribunal was instituted under section 68 of the ICT Act to try the offences committed under this act. In 2013, The government led by Awami League amended the section 57 increasing the maximum amount of punishment from ten to fourteen years. The offences were also made cognizable which means the law enforcement agency could arrest anyone without warrant. Moreover, the offences were also made non-

²⁶ Tuhin Shubhra Adhikary, ‘Bangladesh ICT Act: The trap of Section 57’ *The Daily Star* (Dhaka, 7 July 2017) <<https://www.thedailystar.net/frontpage/bangladesh-ict-act-the-trap-section-of-57-1429336>> accessed on 20 May 2021.

²⁷ The Information and Communication Technology Act, 2006, preamble.

bailable. As a result, the government used this law as an instrument of oppression against the critics of the government.

Repealing section 57 of the ICT Act and the aftermath

Following the demands from home and abroad, the government finally repealed section 57 of the ICT Act. However, it also passed DSA, 2018 at the same time. In fact, the repeal of section 57 of ICT Act had no salutary effect rather a stricter law was put in place. Section 57 was broken down into several pieces each making new sections of DSA, 2018. For example, section 25 of the DSA, 2018 penalizes the publication of anything online that tarnishes the image of the nation whereas section 28 of the same penalizes the publication of anything online which hurts the religious sentiment. Both of these were part of just one section in ICT Act, the section 57. In addition to that, the DSA, 2018 also incorporated some more restrictions which were absent in section 57 of the ICT Act. For example, in section 28, it is prohibited to make any campaign against the liberation war of Bangladesh, father of the nation, spirit of liberation war etc. Therefore, the repeal of section 57 was, in reality, rather counterproductive which installed an even harsher regime muzzling the freedom of speech.

Scope of freedom of speech under International Covenant on Civil and Political Rights

Bangladesh has signed and ratified the International Covenant on Civil and Political Rights (ICCPR) on 2000.²⁸ ICCPR states that “everyone shall have the right to hold opinions without interference; the right to freedom of expression which includes the right to freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in

²⁸ Muhammad Ekramul Haque, ‘The Bangladesh Constitutional Framework and Human Rights’ 2011(22) Dhaka University Law Journal.

writing, or in print, in the form of art or through any other media of their choice’’.²⁹ However, restrictions or limitations on freedom of expression are permissible under ICCPR.³⁰ But the authority must show that such restrictions are provided by law and are necessary for respect of the rights or reputations of others; or for the protection of national security, public order, public health, or morals.³¹

The UN Human Rights Committee in its General Comment no. 34 on the right to freedom of expression said that nowadays the exchange of ideas does not always happen in traditional mass media but a new global network has been established.³² The state parties should ensure freedom in these media as well.³³ Regarding the restrictions, it said that Restrictions can only be applied for the purposes prescribed in article 19(3) and there must be a direct relationship between the restriction and the specific need on which they are given.³⁴ Moreover, laws restricting the right to freedom of expression will not only have to comply with the specific restrictions provided in article 19(3) but also have to be compatible with the provisions, aims and objectives of the Covenant.³⁵

Law must be formulated with such precision that an individual can regulate his or her conduct accordingly.³⁶ It must include that extent of guidance that enables the law enforcement agency to distinguish between prohibited expressions and which are allowed.³⁷ While invoking any ground of restriction, the state must show the precise nature of the threat and the necessity and proportionality of the action taken.³⁸

²⁹ ICCPR, art 19(1)

³⁰ ICCPR, art 19(3)

³¹ *ibid*

³² UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34.

³³ *ibid*

³⁴ *ibid*

³⁵ *ibid*

³⁶ *De Groot v The Netherlands* communication No. 578/1994,

³⁷ UN Human Rights Committee, General Comment no. 34.

³⁸ *Shin v. Republic of Korea*, communication No. 926/2000,

Bangladesh, as a signatory to the ICCPR, is under obligation to ensure that all these conditions are fulfilled before restricting the freedom of speech under any ground. It must make the restrictive clause clear enough, show the necessity and proportionality of such restriction and compatibility of the restriction with the objectives of the ICCPR.

Position of the international law in interpreting the fundamental rights

In addition to the constitutional obligations, Bangladesh has obligations under international human rights law.³⁹ Bangladesh is a dualist country which means that international law does not directly apply in the country unless they are legislated in the domestic law. However, the Supreme Court of Bangladesh has on several occasions declared the applicability of international law, particularly in defining the fundamental rights of the citizens. The Appellate Division of the Supreme Court in *Hussain Muhammad Ershad v Bangladesh*⁴⁰ held that the national courts shall not disregard the international obligations undertaken by the country, and when the domestic laws are either fuzzy or contain nothing, the national courts should follow the principles incorporated in the international instruments. Again, it was held in *Bangladesh National Women Lawyers Association v Bangladesh*⁴¹ that the court can look into international conventions and covenants as an aid to interpretation of the provisions of Part III to determine the rights implicit in the fundamental rights which are not directly enumerated in the Constitution. Therefore, international law, though not directly applicable, can be resorted to when there is a vacuum in the domestic law as well as to interpret the provisions of fundamental rights.

³⁹ Muhammad Ekramul Haque, 'The Bangladesh Constitutional Framework and Human Rights' 2011(22) Dhaka University Law Journal 55, 68.

⁴⁰ *Hussain Muhammad Ershad v Bangladesh* (2001) 21 BLD (AD).

⁴¹ *Bangladesh National Women Lawyers Association v Bangladesh* (2009) 14 BLC 694.

Concluding remarks

The ICT Act was enacted in 2006 by the Bangladesh Nationalist Party. It was bolstered as a weapon of silencing the dissidents by the amendment of section 57 in 2013. Thereafter, till 2018, section 57 was constantly being used against the critics of the government. The government then abolished in 2018 by enacting the DSA. However, the DSA was just an elaborate form of section 57 of the ICT Act. The provisions of DSA are in direct violation of the international obligations undertaken by Bangladesh. Bangladesh, as a signatory, to the ICCPR must respect the freedom of speech of the citizens.

CHAPTER III

Analysis of the section 57 of the ICT Act

The ICT Act was enacted in 2006 by the Bangladesh Nationalist Party, the then ruling party of Bangladesh. The current government led by Bangladesh Awami League amended section 57 in 2013, making it a more draconian law.⁴² Thereafter, in 2018, the government enacted the new “DSA, 2018” scrapping section 57 of the ICT Act.⁴³ This chapter will analyze the provisions of the ICT Act and specifically the now repealed section 57 and the ways in which they were misused at the time.

Analysis of relevant provisions

Section 57 of the ICT Act was the most controversial provision of the Act. Renowned constitutional expert Dr. Shahdeen Malik commented on the section saying it would pull the country towards the medieval age and also requested the government to scrap the provision.⁴⁴

The original section provided:

- 1) If any person deliberately publishes or transmits or causes to be published or transmitted in the website or in electronic form any material which is fake and obscene or its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, or causes to deteriorate or creates the possibility to deteriorate law and order, prejudice

⁴² Tuhin Shubhra Adhikary (n 26)

⁴³ Tashmia Sabera, ‘All that is wrong with the Digital Security Act’ *The Daily Star* (Dhaka, 9 March 2021) < <https://www.thedailystar.net/law-our-rights/news/all-wrong-the-digital-security-act-2057321>> accessed on 20 May 2021.

⁴⁴ Star Online Report, ‘Amended ICT law to take country towards medieval age’ *The Daily Star* (Dhaka, 7 September 2013) < <https://www.thedailystar.net/news/amended-ict-law-to-take-country-towards-medieval-age>> accessed on 20 May 2021.

the image of the State or person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity of his will be regarded as an offence.

(2) Whoever commits offence under sub-section (1) of this section, he shall be punishable with imprisonment for a term which may extend to ten years and with fine which may extend to Taka one crore.

It can be seen that the maximum punishment under this section was ten years, with a fine extending to one core. There was also no scope for arrest without a warrant. The current Awami League government made an amendment to the section 2013.⁴⁵ This amendment increased the punishment from maximum ten years to seven years minimum and fourteen years maximum.⁴⁶ It also made the crime under section 57 cognizable and non-bailable by amending section 76 of the act. Since the crime was made cognizable, the law enforcement agency got the power to arrest without a warrant.

The provision prescribed punishment for publishing anything that is obscene and is likely to corrupt the readers, viewers or listeners. The act does not provide any definition of what is regarded as obscenity. According to the oxford dictionary, obscene means “offensive or disgusting by accepted standards of morality and decency.”⁴⁷ Even in the definition of oxford dictionary, the obscenity of anything depends on the accepted standard, which varies across different cultures. What’s accepted perfectly normal in a particular society may be considered obscene in another society. This provision left the citizen confused as to what does obscene even mean. One of the requirements of the rule of law is that the law should be precise enough to enable citizens to regulate their conduct beforehand.⁴⁸ Otherwise, the citizens won’t be able

⁴⁵ Tuhin Shubhra Adhikary (n 1)

⁴⁶ M Ehteshamul Bari and Pritom Dey, ‘The Enactment of Digital Security Laws in Bangladesh: No Place for Dissent’ (2019) 51(4) The George Washington journal of international law and economics 595.

⁴⁷ Oxford Advanced Learner’s Dictionary, 8th edition

⁴⁸ *Bangladesh v Bangladesh Legal Aid and Services Trust* (2016) 8 SCOB 1.

to distinguish between permissible and prohibited acts and will be at the mercy of the law enforcement agency.

The provision also penalised the publication of anything which prejudices the image of the state or person or hurts religious belief. Firstly, the phrase “image of the state” of the state is vague and uncertain. Simply criticizing the prime minister or any minister for their activities can be put under this phrase and be penalized. In a democratic society, people should be able to criticize the prime minister and other ministers. Secondly, hurting religious beliefs has also been penalized. This provision bars the scope of any constructive criticism of any religious doctrine which is directly contradictory to the right to freedom of speech. It should come as no surprise that being a predominately Muslim country, this provision has been rarely used against hate speech and violence directed against minority Hindu, Christian, Buddhist or Adivasi communities.⁴⁹ Several bloggers and activists have been arrested for criticizing Islamic doctrine. While the constitution envisaged a society where all the religious groups will be treated equally, the government seemed to have patronized one particular religious group. Such unequal treatment of different religious groups along with the restriction on criticism of religious ideologies directly conflicts with the secular mandate of the constitution. The preamble of the constitution specifically states that “high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution.”

The punishment under this section was imprisonment ranging from seven to fourteen years with one core taka fine. This punishment was utterly excessive, considering the nature of the

⁴⁹Katatare Prajapati Collective, ‘Free speech in Bangladesh: Behind the arrests and crackdown on dissenters is a controversial law’ *Scroll.in* (India, 16 August 2018) < <https://scroll.in/article/890343/how-bangladeshs-section-57-allows-the-state-gag-free-speech-in-the-name-of-law-and-order>> accessed on 20 May 2021.

crime described. The punishment must always be proportionate to the crime sought to be prevented.⁵⁰ For example, according to the Penal code, the punishment for obscenity is three months imprisonment⁵¹; the punishment for defamation is two years imprisonment⁵²; the punishment for hurting religious belief is two years imprisonment⁵³. The same crimes, if done, online could be punished with 14 years' imprisonment under the ICT Act. Although it's true that online platforms have reached much wider than the traditional print media or circulation, the imposition of seven to eight times punishment because of using a particular medium of communication is hugely disproportionate and discriminatory.

Contradiction with the constitutional mandate

Freedom of speech is essential to any functional democracy.⁵⁴ The constitution Bangladesh has declared in its preamble that democracy is one of the four fundamental principles of the constitution. The constitution, therefore, guarantees the right to freedom of speech. It states that everyone will have the right to freedom of speech and expression subject to any reasonable restriction.⁵⁵ The constitution provides some grounds for the sake of which the restrictions can be imposed, including the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement.⁵⁶ However, restrictions must not be arbitrary and excessive. It must also fulfil the test of proportionality and necessity.⁵⁷ The restriction must be so much as may be necessary for the

⁵⁰ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012)

⁵¹ The penal Code, s 292

⁵² Ibid, s 500

⁵³ Ibid, s 295A

⁵⁴ Islam (n 11)

⁵⁵ Constitution of the People's Republic of Bangladesh, art 39.

⁵⁶ ibid

⁵⁷ *Virendra Ojha v State of Uttar Pradesh* AIR 2003 All 102.

sake of ensuring the above-mentioned grounds. When there are two options available, the least restrictive one shall always be chosen.⁵⁸

Section 57 of the ICT Act is too broad and vague to put a wide range of activities under its rubric and thus effectively goes beyond the permissible restrictions as mentioned in the constitution. For example, the phrases like “image of the state” have given wide power to the state to infringe on the legitimate exercise of the freedom of speech. In the presence of such scope to brand a wide range of activities as a punishable offense, the right to freedom of speech loses all its trappings.

The misuse of the law

Between 2006 and 2013, 426 complaints were filed under the ICT Act and only in a few cases, there were any arrests or prosecution.⁵⁹ However, things took a sharp upward turn after the amendment of 2013. There were only three cases filed in 2013, followed by 33 in 2014, 152 in 2015, 233 in 2016, 568 in 2017 and 676 in 2018.⁶⁰ Between 2013 and April 2018, the police submitted 1271 charge sheets, most of them under section 57 of the ICT Act.⁶¹ This shows that the reason behind the 2013 amendment was to turn this act into a stronger weapon to crush on the dissidents. Md Nazrul Islam Shamim, the special public prosecutor of the Cyber Tribunal, said that the prosecution could not prove 65 to 70 percent of cases filed under section 57.⁶² He

⁵⁸ *Vladimir Velichkin v Belarus*, Communication No. 1022/2001, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).

⁵⁹ David Bergman, ‘No Place for Criticism: Bangladesh Crackdown on Social Media Commentary’ (*Human Rights Watch* 2018) <<https://www.hrw.org/report/2018/05/09/no-place-criticism/bangladesh-crackdown-social-media-commentary>> accessed on 2021.

⁶⁰ Md Sanaul Islam Tipu, ‘Cybercrime: Most accused go unpunished’ *The Dhaka Tribune* (Dhaka, 5 January 2021) <<https://www.dhakatribune.com/bangladesh/2021/01/05/most-of-cybercrimes-accused-go-unpunished>> accessed on 20 May 2021.

⁶¹ *ibid*

⁶² Ashif Islam Shaon, Two-thirds of cases filed under Sec 57 do not see the light of day | *Dhaka Tribune* (Dhaka, 22 September 2017) <<https://www.dhakatribune.com/bangladesh/law-rights/2017/09/22/two-thirds-cases-filed-sec-57-not-even-go-trial>> accessed on 20 May 2021.

further said “some cases are totally fabricated and are filed to harass people. Most of these cases are settled out of court”.

Although this 70% of cases did not culminate into conviction, the accused were arrested and harassed for a long time. Thereby, the objective of the government was achieved, which was to muzzle the dissenting voices. To simply put, using the power to arrest without a warrant, the law enforcement agency could arrest anyone whom the government deemed a threat regardless of however legitimate their activities were. Moreover, since the offence under section 57 of the ICT Act was non-bailable, the arrestee could not easily get bail and therefore had to be incarcerated for a long time. This tactic proved useful for the government. It could harass the dissidents even without proving the charge brought against them.

The first victim of the amendment were the secular bloggers. Four bloggers, Asif Mohiuddin, Subrata Adhikari Shuvo, Moshir Rahman Biplob and Rasel Parvez.⁶³ They were arrested in April 2013 for charges brought under section 57 of the ICT Act for allegedly making “derogatory contents about Islam and Prophet Muhammad (SM)”.⁶⁴ These were the first instances where the government used the ICT Act to harass secular bloggers. Since the country is a Muslim majority country, it was an attempt by the government to seek approval of a huge chunk of the population and also to show the necessity of this draconian law by throwing the secular blogger under the bus.

Mahmudur Rahman, the acting editor of Daily Amar Desh, was arrested on 11 April 2013 under section 57 of the ICT Act for ‘publishing fake, obscene or defaming information in electronic form’.⁶⁵ Mahmudur Rahman published articles exposing corruption scandals

⁶³ Court Correspondent, ‘Blogger Asif Mohiuddin gets bail’ *bdnews24* (Dhaka, 27 June 2013) <<https://bdnews24.com/bangladesh/2013/06/27/blogger-asif-mohiuddin-gets-bail>> accessed on 20 May 2021.

⁶⁴ Ibid.

⁶⁵ Staff Correspondent, ‘Confusion over case against Mahmudur’ *bdnews24.com* (Dhaka, 12 Apr 2013) <<https://bdnews24.com/bangladesh/2013/04/12/confusion-over-case-against-mahumudur>> accessed on 20 May 2021.

involving high-profile ruling party politicians including the Prime Minister and her family members.⁶⁶ He published in his newspaper a written transcript of what was a leaked conversation between Justice Nizamul Huq, then chairman of Bangladesh's International Crimes Tribunal and a Belgium-based Bangladeshi legal expert.⁶⁷ The leaked conversation showed that the government was intervening in the justice delivery process of the tribunal.⁶⁸ It drew the ire of the government and the government was quick to dispatch the ICT Act in order to arrest him. He was severely tortured in custody and sustained an injury on his limbs inflicted by iron nails and electricity.⁶⁹ Mahmudur Rahman was a critic of the government and was constantly writing against the high-profile members ruling party. The government, therefore, used the ICT Act to prevent him from continuing his activism.

Mr. Adilur Rahman Khan, Secretary of Odhikar, was arrested on 10 August 2013 for a charge brought under the section 57 of the ICT Act for publishing “false images and information and disrupting the law and order situation of the country.”⁷⁰ His human rights organization, Odhikar, made a list of 61 people who died in a crackdown on a gathering by the Islamic group called Hefazot-E-Islam.⁷¹ The government disputed the number of casualties and used the ICT Act in a bid to silence Mr. Adilur Rahman Khan and his organization.

Dilip Roy, a member of a left-wing opposition party arrested under section 57 of the ICT Act on 27 August 2016 for a Facebook post.⁷² The post allegedly started with “I can't label a dog

⁶⁶ Front Line Defenders, ‘Ongoing Harassment of Adilur Rahman Khan’ (*Front Line Defenders*) < <https://www.frontlinedefenders.org/en/case/ongoing-harassment-adilur-rahman-khan>> accessed on 20 May 2021.

⁶⁷ Bari and Dey (n 46)

⁶⁸ *ibid*

⁶⁹ Front Line Defenders (n 66)

⁷⁰ OMCT, ‘Release Adilur Rahman Khan, Secretary of Odhikar and a member’ (*OMCT*, 18 August 2013) < <https://www.omct.org/en/resources/urgent-interventions/release-adilur-rahman-khan-secretary-of-odhikar-and-a-member-of-omct-general-assembly>> accessed on 20 May 2021

⁷¹ Bangladesh: ICJ demands government drop cybercrime charges against Nasiruddin Elan and Adilur Rahman Khan (*International Commission of Jurists*, 10 January 2014) < <https://www.icj.org/bangladesh-icj-demands-government-drop-cybercrime-charges-against-nasiruddin-elan-and-adilur-rahman-khan>> accessed on 20 May 2021.

⁷² Bergman (n 59)

Awami League, because it would be ashamed to be labeled as such...”.⁷³ It was claimed to constitute a threat to the prime minister and an insult to Sheikh Mujibur Rahman, the founder of Bangladesh Awami League and defamation to Bangladesh Awami League.⁷⁴ He was arrested remained in prison for three months.⁷⁵

On 5 August 2018, Shahidul Alam, a photographer and activist, was picked up by 30-35 men in cloth from his residence. The charge was brought against him under Section 57 of the ICT Act following an interview given by him in Al Jazeera regarding the road safety protest. He criticized the government’s response to the protest and also the role of the student wing of the ruling party for beating the journalist covering the protest.⁷⁶

Therefore, the fear that the broad provisions of section 57 would be susceptible to misuse and arbitrariness was not unfounded. From 2013 to 2018, The government has misused the ICT Act time and again to serve its own interest. It has arrested the secular bloggers for ingratiating themselves with the Islamic organizations. It has also arrested the critics of the government whenever it felt threatened by their criticism. In short, the ICT Act has been used by the government according to its whims, disregarding the sacred right of free speech.

Concluding remarks

Section 57 of the ICT Act was completely inconsistent with the constitutional mandate of free speech, democracy and secularism. The vague provision was used to harass the opposition. The

⁷³ ibid

⁷⁴ ibid

⁷⁵ ibid

⁷⁶ ‘Bangladesh: Activist faces 14 years in jail for media interview: Shahidul Alam’ (*Amnesty International*, 7 August 2018) < <https://www.amnesty.org/en/documents/asa13/8905/2018/en> > accessed on 20 May 2021.

secular bloggers were also targeted under this section. Although the section has been abolished, its essence lives on through the enactment of the DSA in 2018.

CHAPTER IV

Dissection of Digital Security Act, 2018 and its unconstitutionality

According to the Digital 2021 report for Bangladesh shows, the total population of Bangladesh is 165.5 million in January 2021⁷⁷, and 47.61 million people are using the internet till January 2021⁷⁸. The number of internet users increased by 7.7 million between 2020 and 2021⁷⁹. There were 45 million social media users in Bangladesh, which is increased by 9 million between 2020 and 2021⁸⁰. According to World Economic Forum Report, Bangladesh was ranked 112 out of 139 nations on a Network Readiness Index⁸¹. Also, Global Cybersecurity Index mentioned in their report that “Bangladesh does not have specific regulation and compliance requirement pertaining to cybersecurity.”⁸² The Information Communication Technology Act (ICT) of 2006 was found to be substantially inadequate in addressing digital security and data security concerns⁸³. This ICT had the potential to be abused in many ways and until 2018, this ICT act harassed innocent people because it was fragile and vague⁸⁴.

⁷⁷ Simon Kemp, ‘Digital 2021: Bangladesh’ (*Datareportal*, 11 February 2021)

<<https://datareportal.com/reports/digital-2021-bangladesh#:~:text=There%20were%2047.61%20million%20internet,at%2028.8%25%20in%20January%202021>> accessed 21 May 2021

⁷⁸ *ibid*

⁷⁹ *ibid*

⁸⁰ *ibid*

⁸¹ Silja Baller, Soumitra Dutta, and Bruno Lanvin, ‘World Economic Forum, The Global Information Technology Report 2016’ (*World Economic Forum*)

<http://www3.weforum.org/docs/GITR2016/WEF_GITR_Full_Report.pdf>

⁸² International Telecommunications Union, ‘Global Cybersecurity Index & cyberwellness profiles, 2015’, <https://www.itu.int/dms_pub/itu-d/opb/str/D-STR-SECU-2015-PDF-E.pdf>

⁸³ Bangladesh Information Communication Technology Act, 2006, available at (https://www.icnl.org/research/library/bangladesh_comm2006/)

⁸⁴ Bangladesh: New Digital Security Act is attack on freedom of expression (*Amnesty International*, 12 November 2018) <<https://www.amnesty.org/en/latest/news/2018/11/bangladesh-muzzling-dissent-online/>> accessed 22 May 2021.

This chapter will critically analyze the DSA on the basis of Bangladesh's obligations & accountability in accordance with international human rights standards; basically, in the case of freedom of expression, how the DSA conflicts with national and international law and the flaws in the DSA will be discussed and reviewed in detail. The right to freedom of expression is protected by several international human rights instruments that bind states, and Bangladesh is one of the member states, particularly Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). As a result, Bangladesh bound to respect and guarantees the right to freedom of expression as hold in Article 19 of the ICCPR.

How the act came into force

The proposed DSA was first introduced in Parliament in April 2018. In May, Bangladesh's Minister of Law, Justice and Parliamentary Affairs assured the proposed DSA would be amended in consultation with the journalist community because they have received widespread criticism of the crackdown of freedom of expression and freedom of the press. On 22 May, the Editor's Council highlighted their concerns for freedom of expression, but the committee didn't address the issues and recommended to process the Bill. The Editors Council rejected the draft DSA on 17 September 2018 because it did not change the eight sections of the recommended Act. On 30 September, the Editor Council had a meeting with the government, and they suggested that the bill should be changed before the President signed it into an Act. However, on 8 October 2018, the President signed the bill without any change, and the Act came into force.

The law has failed to uphold the guarantee of freedom of expression and freedom of the media in the Constitution of Bangladesh 39 (2)⁸⁵ A and B; also, it violates the international treaty⁸⁶. In 2018, the Bangladesh government promised to repeal the strict Information Communication and Technology Act, especially in Article 57, which was used to curb freedom of expression in the country. But the government of Bangladesh introduced the DSA (DSA) instead of repealing the previous ICT. Basically, they introduce the new draconian law in the name of cybersecurity.

The DSA is more restrictive of the controversial Section 57 of the older ICT Act. Several provisions, both in ICT law and the DSA, are inconsistent with the international standards of freedom of expression online. These include broad content-based restrictions. Under the DSA, no one has the right to criticize the government, the liberation war and religion. If anyone does such things, they will be arrested and subjected to non-bailable penalties for prison sentences from 3 to 14 years (DSA 2018)⁸⁷. The government has also blocked about a dozen websites, social media sites and blogs on which it has identified potential blasphemy (Freedom of the Net 2018).

The Government of Bangladesh enacted this act in the name of cybercrime is unconstitutional under the Constitution's provisions and in conflict with international law. This DSA contains are wide and vague definitions for key terms, which is quite problematic and vulnerable and also it creates a wide range of cybercrime offence. For instance, "propaganda or campaign against the Liberation War, the Father of the Nation"⁸⁸, "posting offensive content"⁸⁹, "cyber-

⁸⁵ The Constitution of the People's Republic of Bangladesh (<http://bdlaws.minlaw.gov.bd/act-367.html>)

⁸⁶ Bangladesh: New Digital Security Act is attack on freedom of expression (*Amnesty International*, 12 November 2018) <<https://www.amnesty.org/en/latest/news/2018/11/bangladesh-muzzling-dissent-online/>> accessed 22 May 2021.

⁸⁷ Digital Security Act, 2018 (<https://www.cirt.gov.bd/wp-content/uploads/2020/02/Digital-Security-Act-2020.pdf>)

⁸⁸ Bangladesh Digital Security Act, 2018, s 21

⁸⁹ Bangladesh Digital Security Act, 2018, s 24

terrorism⁹⁰”, and “defamation⁹¹”, “National Anthem or National Flag⁹²” etc. Remarkably, it has “extra-territorial application⁹³”.

Freedom of expression and liability under International law

Freedom of expression is the right to communicate one’s opinions and ideas without fear of government censorship. As it is stated in the ICCPR, “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights.....”⁹⁴ Freedom of expression is one of the most important fundamental rights, notwithstanding that human rights are universal and indivisible. It is one of the essential foundations of democracy, and it is important for the development and protection of other human rights. The right to freedom of expression is protected by several international human rights instruments that bind states, and Bangladesh is one of the member states, particularly Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). As a result, Bangladesh is bound to respect and guarantees the right to freedom of expression as held in Article 19 of the ICCPR.

“Even The international covenant on Economic, Social and Cultural Rights (ICESCR) under Article 15(3), International Convention on the Elimination of All Forms of Racial Discrimination on Human Rights (ICERD) under Article 5(d), (vii) and (viii), Convention on the Rights of the Child (CRC) under Article 12 and 13, American Convention on Human Rights

⁹⁰ Bangladesh Digital Security Act, 2018, s 27

⁹¹ Bangladesh Digital Security Act, 2018, s 29

⁹² Bangladesh Digital Security Act, 2018, s 21

⁹³ Digital Security Act, 2018 s 3(1)

⁹⁴ ICCPR <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (last accessed 20 January 2020)

(ACHR) under Article 13, European Convention on Human Rights (ECHR) under Article 10 has been identified the freedom of expression in the covenant. All of these treaties and covenants are concerned with freedom of expression.’’

General comment No 34⁹⁵, adopted by the UN Human Rights Committee in September 2011, clarifies that Article 19 of the International Covenant on Civil and Political Rights (ICCPR) protects all kinds of expression, including all forms of electronic and internet-based expression⁹⁶. It raises the protection of Human Rights and it is concerned with freedom of expression, freedom of press, interpretation of freedom of opinion, the right to access to information, freedom of political right and its restrictions.⁹⁷ As a member state of ICCPR, Bangladesh must consider the context of information technology developments⁹⁸. The UN Human Rights Committee (HR committee) is the treaty body of independent experts who monitor the state's compliance with the ICCPR.’

International Covenant on Civil and Political Rights

The right to freedom of expression is expressed in Article 19 of the International Covenant on Civil and Political Rights (ICCPR. Article 19 of the ICCPR includes the right not only to express opinions and ideas, but also to receive information.⁹⁹

Article 19 states:

⁹⁵ CCPR/C/GC/3, adopted on 12 September 2011

⁹⁶ Ibid, para 12

⁹⁷ Wolfgang Benedek and Matthias C. Kettmann, Freedom of Expression and The Internet, ISBN 978-92-871-7702-5 © Council of Europe, December 2013, (<https://rm.coe.int/prems-167417-gbr-1201-freedom-of-expression-on-internet-web-16x24/1680984eae>)

⁹⁸ Ibid, para 17

⁹⁹ General Comment No. 34

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

Meanwhile, the right to freedom of expression is fundamental but is not an absolute right. But it doesn't mean that the state can limit the right of expression without any reason. Under Article 19(3) of the ICCPR¹⁰⁰ the state may allow limiting the rights:

- Provided for by law,
- In pursuit of a legitimate aim,
- Necessary and proportionate in a democratic society.

These are the grounds on which Bangladesh could legitimately limit freedom of expression. However, the state has not balanced these legitimate aims with its obligations under the ICCPR to respect individuals' human rights as a member state of ICCPR Bangladesh doesn't follow the instructions of the convention.

¹⁰⁰ International Covenant on Civil and Political Rights
(<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>)

The Freedom of Expression is one of the multiple fundamental rights that have been guaranteed to citizens through Article 39 of the Constitution of the People's Republic of Bangladesh reads as follows,

1. Freedom of thought and conscience is guaranteed.
2. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality or in intention to contempt of court, defamation or incitement to an offense-
 - (a) the right of every citizen to freedom of speech and expression; and
 - (b) freedom of the press, are guaranteed.

It is important to mention that Article 20 (2) of the International Covenant on Civil and Political Rights (ICCPR) states:

'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

Article 20 (2) of the ICCPR contains the central and most comprehensive international standard that should guide hate speech's legal control. This article sets out the right to be free from incited to discrimination, hostility, or violence due to advocating national, caste or religious hatred prohibited by law.

The UN Human Rights Council (HRC) recognized that the “same rights that have people have offline must also be protected online in 2012.¹⁰¹” “The HR Committee has also made clear

¹⁰¹ HRC Resolution 20/8 on the Internet and Human Rights, A/HRC/RES/20/8, June 2012

that limitations on electronic forms of communication or expression disseminated over the internet must be justified according to the same criteria as non-electronic or offline communications as set out above.¹⁰²’’

Analysis of the Digital Security Act

DSA is divided into nine chapters. According to the draft of DSA-2018, sections 54, 55, 56, 57 and 66 of the previous Information Communication and Technology Act (ICT) will be abolished as soon as this law comes into force. Section 57 of the repealed ICT Act states that, ‘if a person intentionally publishes or broadcasts something on a website or in any other electronic format, which may be read, seen or heard by someone considering it to be false and obscene or related, Defamation, degradation of law and order, tarnishing the image of the state and the individual, or hurting religious sentiments, or inciting a person or organization with such information, would be considered a crime¹⁰³.’ The maximum sentence for this crime is 14 years and the minimum is 7 years and a maximum fine of Tk 1 crore for this crime. The government has very cleverly divided this provision under into sections 25, 28, 29 and 31 of the new DSA.

There are some limited forms of expression as protected under international law, while others create unusually broad limits on expression. Specially the most problematic sections are 8,21,25,28,29,31,32,43 and 53. For example, section 28 doesn’t have a clear and precise definition of crime which is a scope of being misused to criminalize free expression. There are even sections that limit expressions protected by international law, while others define additional broad restrictions.

¹⁰² General Comment No. 34, op cit., para 43.

¹⁰³Information Communication and Technology Act (ICT) 2006, (https://www.icnl.org/research/library/bangladesh_comm2006/)

Chapter 1, section 4 of this act take step on ‘Extra territorial application of the Act¹⁰⁴.’ Under this law, if a person commits a crime outside Bangladesh, a case will be filed against him/her and (s)he will be arrested as soon as he returns to the country. According to ARTICLE 19, ‘section 4 is overboard since it would be lead to the extraterritorial application of provisions, which are in breach of international human rights law¹⁰⁵.’ So, the ARTICLE 19 gave a recommendation that “The domestic provisions adopted should be applied externally when a genuine and significant connection can be placed between the services in the issue and the country seeking to apply its laws in this way”¹⁰⁶.

Section 25¹⁰⁷ prohibits any person from broadcasting or publishing information on a website or any other electronic format that is intentionally offensive or intimidating. It would be an offence to disclose any information in the whole or partially distorted form to tarnish the state's image or reputation. But there is no exact definition of crime or tarnishing the image of the state or religious sentiments. The vague language of the section allows for its dictatorial application against criticism and dissenting voices. This section is extensive, and there is scope for misapplication. The concept of ‘false information’ and ‘offensive’ content is not clear here.

¹⁰⁴ 4. “Extra territorial application of the Act.—(1) If any person commits any offence under this Act beyond Bangladesh which would be punishable under this Act if committed in Bangladesh, the provisions of this Act shall be applicable in such manner as if he had committed such offence in Bangladesh. (2) If any person commits any offence within Bangladesh under this Act from outside of Bangladesh using any computer, computer system, or computer network situated in Bangladesh, the provisions of this Act shall be applicable to the person in such manner as if the whole process of the offence had been committed in Bangladesh. (3) If any person commits any offence beyond Bangladesh under this Act from inside of Bangladesh, the provisions of this Act shall be applicable in such manner as if the whole process of the offence had been committed in Bangladesh.”

¹⁰⁵ Bangladesh: Digital Security Act 2018, November 2019, Legal Analysis, [Bangladesh-Cyber-Security-act-2018-analysis-FINAL.pdf](#)

¹⁰⁶ Bangladesh: Digital Security Act 2018, November 2019, Legal Analysis

¹⁰⁷ 25. “Transmission, publication, etc. of offensive, false or threatening data information.—(1) If any person, through any website or any other digital medium,— (a) intentionally or knowingly transmits, publishes or propagates any data-information which he knows to be offensive, false or threatening in order to annoy, insult, humiliate or malign a person; or (b) publishes or propagates or abets to publish or propagate any information, as a whole or partly, which he knows to be propaganda or false, with an intention to affect the image or reputation of the country, or to spread confusion, then such act of the person shall be an offence. (2) If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 3 (three) years, or with fine not exceeding Taka 3 (three) lac, or with both. (3) If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for a term not exceeding 5(five) years, or with fine not exceeding Taka 10 (ten) lac, or with both.”

This clause is dangerous in the case of freedom of expression. In the case of freedom of expression, this section is dangerous because it is difficult for many to verify what is false information and what is true information. So, anyone could be arrested for sending false information on the social media platform.

Section 28¹⁰⁸ states, it would be an offense for a person or group to intentionally attack religious sentiments or religious values electronically. But there is no mention of what religious values mean. Also, there is no mention of which religion cannot be criticized. This is an important question because only this section is being abused the most. This section is only being used to arrest atheists and Hindus and secularists. While Muslims have the right to criticize other religions, other religions' followers do not have the right to criticize Islam. It is very easy to defeat the opponent by this section and so it is. Even if one criticizes Islamic fundamentalism, there is a possibility of arrest. The punishment will be 7 years imprisonment and/or a fine of up to 10 Lac TK (11774.13 EU) and re-offending punishment will be up to 10 years jail and/or fine up to 20 Lac TK (23548.27 EU). Article 19 of the ICCPR guarantees the right to free expression, even General comment No 34 on the right to freedom of expression interdict of lack of respect of religion¹⁰⁹.

¹⁰⁸ 28. ‘‘Publication, broadcast, etc. of information in website or in any electronic format that hurts the religious values or sentiment.—(1) If any person or group willingly or knowingly publishes or broadcasts or causes to publish or broadcast anything in website or any electronic format which hurts religious sentiment or values, with an intention to hurt or provoke the religious values or sentiments, then such act of the person shall be an offence. (2) If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 5 (five) years, or with fine not exceeding Taka 10 (ten) lac, or with both. (3) If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for a term not exceeding 10 (ten) years, or with fine not exceeding Taka 20 (twenty) lac, or with both.’’

¹⁰⁹General comment No. 34 Article 19: Freedoms of opinion and expression (<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>)’

Section 29¹¹⁰ states, if a person commits an offense under Section 499 of the Penal Code (1860)¹¹¹ relating to defamation on a website or in any other electronic format, (s)he shall be punished. This Provision has been made for imprisonment for three years and a fine of Rs 5 lakh or both for providing defamatory information but the definition of crime in the Penal Code is very childish, so anyone can be a gripper if (s)he criticizes influential people. It is incompatible with international standards on freedom of expression and also it is founded criminal defamation, whether online or offline.

Section 31 states, “Offence and punishment for deteriorating law and order, etc. (1) If any person intentionally publishes or transmits anything in website or digital layout that creates enmity, hatred or hostility among different classes or communities of the society, or destroys communal harmony, or creates unrest or disorder, or deteriorates or advances to deteriorate the law-and-order situation, then such act of the person shall be an offence¹¹².” This section is too wide, which is not an international standard; and key terms are not clear and undefined such as ‘adversity’, ‘law and order’.

Chapter 6 of the DSA provides a huge range of offences, including expression offences and computer crimes. ARTICLE 19 identified that the act is duplicating existing speech offences under criminal law¹¹³. In this chapter, the contains of the speech offences are vague.

¹¹⁰ 29. “Publication, transmission, etc. of defamatory information.—(1) If any person publishes or transmits any defamatory information as described in section 499 of the Penal Code (Act XLV of 1860) in website or in any other electronic format, he shall be punished with imprisonment for a term not exceeding 3 (three) years, or with fine not exceeding Taka 5 (five) lac, or with both. (2) If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for a term not exceeding 5 (five) years, or with fine not exceeding Taka 10 (ten) lac, or with both.”

¹¹¹ The Penal Code 1860, (ACT No. XLV OF 1860 (<http://bdlaws.minlaw.gov.bd/act-11/section-3540.html#:~:text=Whoever%20by%20words%20either%20spoken,except%20in%20the%20cases%20hereinafter>))

¹¹² “(2) If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 7 (seven) years, or with fine not exceeding Taka 5 (five) lac, or with both. (3) If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for a term not exceeding 10 (ten) years, or with fine not exceeding Taka 10 (ten) lac, or with both.”

¹¹³ ARTICLE 19 – Free Word Centre, 60 Farringdon Rd, London EC1R 3GA – www.article19.org, 2500 Page, 15 of 19 ([Bangladesh-Cyber-Security-act-2018-analysis-FINAL.pdf](http://www.article19.org/~/media/Files/2018/04/Bangladesh-Cyber-Security-act-2018-analysis-FINAL.pdf))

The above sections describe different types of punishment for crimes. According to the proposed law, it would be a crime to launch or support any kind of campaign against Bangladesh's liberation war, the spirit of the liberation war or the father of the nation through digital means¹¹⁴. The offense carries a maximum sentence of 14 years imprisonment or a maximum fine of Tk 1 crores (approx. 3,00,000 EURO) or both. In other words, if someone opposes the ideology that the government carries, there is a possibility of arrest. This clause is a strategy to stop the criticism of the government. This section conflicts with the Constitution of Bangladesh, as violates Article 9 of the ICCPR. The misuse of this section and section 28 has increased so far.¹¹⁵ In this event, the definition of Liberation War is widely board and it is natural that every person is different, and their way of thinking and reading history will not be the same. Apart from that, where there is still a lot of debate about the history of the country, so people's expression will be different. It is totally incompatible with the international law and it must be repealed.

The most discussed section 32¹¹⁶ states, if a person transmits or assists in the transmission or storage of highly confidential or confidential data of a government-semi-government, autonomous or statutory body through the computer, digital device, computer network, digital

¹¹⁴ 21. “Punishment for making any kind of propaganda or campaign against liberation war, spirit of liberation war, father of the nation, national anthem or national flag.—(1) If any person, by means of digital medium, makes or instigates to make any propaganda or campaign against the liberation war of Bangladesh, spirit of liberation war, father of the nation, national anthem or national flag, then such act of the person shall be an offence. (2) If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 10 (ten) years, or with fine not exceeding Taka 1 (one) crore, or with both. (3) If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for life, or with fine of Taka 3 (three) crore, or with both.”

¹¹⁵ Two years since coming into force, Bangladesh’s Digital Security Act continues to target human rights defenders and suppress free speech (<https://www.frontlinedefenders.org/en/statement-report/two-years-coming-force-bangladeshs-digital-security-act-continues-target-human>)

¹¹⁶ 32. “Offence and punishment for breaching secrecy of the Government.— (1) If any person commits or abets to commit an offence under the Official Secrets Act, 1923 (Act No. XIX of 1923) by means of computer, digital device, computer network, digital network or any other digital means, he shall be punished with imprisonment for a term not exceeding 14 (fourteen) years, or with fine not exceeding Taka 25 (twenty five) lac, or with both. (2) If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for life, or with fine not exceeding Taka 1 (one) crore, or with both.”

network or any other electronic means through the illegal entry. In that case, it will count as a computer or digital crime. This offence will be judged under the Official Secrets Act, 1923. But this section is too wide, it is interfering with the expression of journalists, academics, writers.

The provisions that DSA contain are wide and vaguely defined, which is quite problematic and vulnerable. The Act gives the authority to the investigating officer the power to enter, physically search suspects, seize any equipment or material that can be suspicious and arrest suspects without a warrant. The Human Rights Committee held that “pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party¹¹⁷”. And the DSA prescribes that online crime is not only cognisable but also non-bailable, which is incompatible with article 9(3) of the ICCPR.

‘Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.’

Until 8 October 2020, more than five hundred people have been charged under its provisions since the law was enacted. The law allows the government to order the removal and blocking of any information or data as needed, providing a wide range of opportunities for policy critics or those who share information about human rights abuses in the country to be silenced. This

¹¹⁷ HUMAN RIGHTS AND ARREST, PRE-TRIAL DETENTION AND ADMINISTRATIVE DETENTION, Chapter 5, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers (<https://www.ohchr.org/documents/publications/training9chapter5en.pdf>)

allows the authorities to monitor the offensive form without asking for data from service providers and other intermediaries without a warrant obtained by the court. Furthermore, 14 of the 20 provisions of punishment under the Act are not bailable. Section 27 imposes a fine of Rs 50 crore (approximately 500,000 EU) on a person and / or a life sentence if convicted of cyber terrorism.¹¹⁸ This law provides immunity for those who conduct surveillance on behalf of the government, noting that any person, entity or service provider who provides or discloses information in the interests of investigation cannot investigate under civil or criminal law.

A proper review of the law will clarify that Section 57 ICT Act has been reinstated in the name of DSA. This law will somehow paralyze the activities of writers, journalists, researchers and civil society, allowing anyone to be arrested at any time. It is a tool to suppress the opponent; for that reason, the government is defending the law as a strategy to imprison journalists, writers, bloggers and activists, and is imprisoning critics. Every word, every sentence and every section of this law is an attempt to interfere with the civil rights and fundamental freedoms enshrined in the Constitution.

“According to local human rights defenders, since 2018, 204 cases have been filed against 517 persons under the DSA and ICT Acts (506 under DSA and 11 under ICT), of which 204 people were arrested. The majority of these cases have been opened in 2020, when up until September, 134 cases had been filed against 293 persons, inof which 139 were arrested. Just one month into the lockdown, over twenty journalists were jailed under the DSA, many for social media

¹¹⁸ Two years since coming into force, Bangladesh’s Digital Security Act continues to target human rights defenders and suppress free speech (*Front Line Defenders*, 8 OCTOBER 2020) <<https://www.frontlinedefenders.org/en/statement-report/two-years-coming-force-bangladeshs-digital-security-act-continues-target-human>> accessed 22 May 2021.’

posts criticizing the Government's response to the pandemic. According to the 2020 world press freedom ranking, Bangladesh¹¹⁹ ranked 151 out of 180 countries.”¹²⁰

As part of international treaties, states have certain obligations and responsibilities to protect human rights under international law. But the government of Bangladesh is violating its inhabitants' domestic rights as well as has failed to meet clear international standards of the fundamental rights of free expression. When such a situation occurs, society is also affected in many ways. People are becoming afraid to express their opinion, can't participate in a demonstration. Bloggers, writers, journalists are in fear of being arrested which interrupts social welfare. Democracy cannot be implemented without freedom of expression.

¹¹⁹ Tougher politics, more press freedom violations (*Reporters Without Border*)<<https://rsf.org/en/bangladesh>> accessed 22 May 2021.’

¹²⁰ Two years since coming into force, Bangladesh's Digital Security Act continues to target human rights defenders and suppress free speech (*Front Line Defenders*, 8 OCTOBER 2020) <<https://www.frontlinedefenders.org/en/statement-report/two-years-coming-force-bangladeshs-digital-security-act-continues-target-human>> accessed 22 May 2021.’

CHAPTER V

Circumvention of Fundamental Rights and the Beneficiaries of the Digital Security Act, 2018

The DSA, 2018 has been the primary weapon of the government in suppressing the dissidents online. The constitution of Bangladesh has guaranteed a number of fundamental rights including the right of freedom of expression. The provisions of the DSA directly conflict with the right to freedom of speech. In the previous year, the High Court Division has issued a rule on sections 25, 31 of DSA asking why they shouldn't be declared illegal and unconstitutional.¹²¹ However, the rule is yet to be disposed of. The primary beneficiary of the law is the government itself and the state functionaries. In that, the law allows the authority to create a culture of repression where the people expressing the dissenting voice fall victims. Even Gowher Rizvi, the prime minister's international affairs adviser, admitted in an interview that there are problems with the DSA saying "Sadly, we have now learned that some of the wordings are very loose and vague, which leaves it open to its abuse."¹²²

The legal framework of the fundamental rights under the constitution

The preamble of the constitution of Bangladesh states that one of the fundamental aims of the State is to realise through the democratic process a socialist society in which fundamental human rights and freedom will be secured for all citizens. It has incorporated a number of

¹²¹ Tribune Desk, 'HC issues rule on sections 25, 31 of Digital Security Act 2018' *The Dhaka Tribune* (Dhaka, 24 February 2020) <<https://www.dhakatribune.com/bangladesh/court/2020/02/24/hc-issues-rule-on-sections-25-31-of-digital-security-act-2018>> accessed on 19 May 2021.

¹²² Meenakshi Ganguli, 'Limiting free speech undermines the fight against Covid-19' *The Daily Star* (Dhaka, 24 February 2021) <<https://www.thedailystar.net/opinion/news/limiting-free-speech-undermines-the-fight-against-covid-19-2050217>> accessed on 19 May 2021.'

fundamental rights in the part III of the constitution which are directly enforceable in the court. If any of these rights is violated, the aggrieved person can go to the High Court Division of the Supreme Court seeking redress under article 102 of the constitution. Moreover, this very right to get redress has also been made a fundamental right.¹²³ Therefore, there is a stringent protection regarding fundamental rights provided in the constitution.

The constitution also expressly bars the enactment of any law that conflicts with the fundamental rights of the citizens. Article 26 of the constitution states that the state shall not make any law that is inconsistent with the provisions related to the fundamental rights and any such law, if made, will be void to the extent of such inconsistency. As a result, the constitution has put a leash on the legislature while enacting any law in that they can not violate the fundamental right.

The scope of the right to freedom of speech under the constitution

The Constitution of Bangladesh has guaranteed the right of every citizen to freedom of speech and expression under reasonable restrictions.¹²⁴ The right to freedom of speech also includes the right to discuss public affairs, i.e. the right to criticise the government including its defence policy and the conduct of the Armed Force.¹²⁵ The freedom of speech is one of the most important rights in a functional democracy.

The Supreme Court of Bangladesh held in *Dewan Abdul Kader v Bangladesh* that “[the] 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 appears to

¹²³ Constitution of the People's Republic of Bangladesh, art 44.

¹²⁴ Constitution of the People's Republic of Bangladesh, art 39.

¹²⁵ *Schacht v United States* (1970) 398 US 58

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."¹²⁶ The Indian Supreme Court held in *Life Insurance Corporation v Manubhai D Shah* that "Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship."¹²⁷

Permissible restriction on the freedom of speech under the constitution

The right to freedom of speech is not absolute and is subject to the reasonable restrictions. 'Article 39 of the constitution has provided some grounds for the sake of which the restrictions can be imposed including the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement.'¹²⁸ Indian Supreme Court opined that the phrase "reasonable restriction" states that the limitation must not be arbitrary and excessive in the sense that it is more than what is required to impose for the sake of public interest.¹²⁹ The word "reasonable" implies intelligent care and deliberation which means the choice of a course which reason dictates.¹³⁰ Therefore, the legislature cannot legislature a law containing restriction on freedom of speech which is arbitrary, excessive and does not serve the purpose of public interest.

The reasonableness of any restriction can be more precisely determined by applying the principle of proportionality or necessity.¹³¹ "The proportionality test, which is more developed in administrative law, serves as an important test for determining whether the scope of

¹²⁶ *Dewan Abdul Kader v Bangladesh* (1994) 46 DLR 596

¹²⁷ *Life Insurance Corporation v Manubhai D Shah* 1992 SCR (3) 595

¹²⁸ Constitution of the People's Republic of Bangladesh, art 39.

¹²⁹ *Chintaman Rao v The State of Madhya Pradesh* (1950) SCR 759

¹³⁰ *Ibid.*

¹³¹ *Virendra Ojha v State of Uttar Pradesh* AIR 2003 All 102.

restrictions sought to be imposed balance a legal right and a prohibition.”¹³² The principle of proportionality is based on a tripartite test: firstly, whether a measure that interferes with a right is suitable for achieving its objective, secondly, whether it is necessary for that purpose, thirdly, whether it burdens the individual excessively compared with the benefits it aims to secure.¹³³ When there are two intrusive measures under contemplation, the least restrictive one should always be taken.¹³⁴ For a restriction to be reasonable, it must be proportionate or necessary.

Circumvention of freedom of speech by the Digital Security Act, 2018

Section 8 of DSA states that the director general of the Digital Security Agency may request the Bangladesh Telecommunications and Regulatory Commission (BTRC) to remove or block the any digital data-information which creates threat to digital security. Moreover, it provides the power to the law enforcement agency to request BTRC, through director general, to remove or block the data information which hampers the solidarity, financial activities, security, defence, religious values or public discipline of the country or incites racial hostility and hatred. The law does not define the contours of what constitutes a threat to the digital security or hindrance to the solidarity, financial activities, security, defence, religious values etc. The government has the absolute power to determine the question as to what constitutes a threat to the digital security. The power of interpreting these provisions given to the director general and the law enforcing agencies is purely subjective. Such subjective power of interpretation runs the risk of muzzling the opposing views.¹³⁵

¹³² Lawrence Liang, ‘Free Speech and Expression’ in Sujit Choudry, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (1st edn, Oxford University Press 2016)

¹³³ Robert Alexis, ‘Constitutional Rights, Balancing, and Rationality’ (2003) 16(2) *Ratio Juris* 131.

¹³⁴ *Vladimir Velichkin v Belarus*, Communication No. 1022/2001, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).

¹³⁵ M. Ehteshamul Bari and Pritom Dey, ‘The Enactment of Digital Security Laws in Bangladesh: No Place for Dissent’ (2019) 51(4) *The George Washington journal of international law and economics* 595, 614.

Section 21 penalizes any campaign against the liberation war of Bangladesh, cognition of liberation war etc. The reality is that hundreds of books have been written on the events of liberation war from variant perspectives. The scope, therefore, remains to prosecute anyone who advocates anything that goes against the government's own account of the events. Moreover, the provision provides a blanket prohibition against anyone criticizing the founder father of the nation as well as the founder of the Awami league, Sheikh Mujibur Rahman. It militates against the possibility of any legitimate criticism of the government of sheikh Mujibur Rahman which introduced the infamous fourth amendment to the constitution establishing a one-party state.¹³⁶ If at any time the regime changes and the main opposition party Bangladesh National Party comes to power, they may introduce similar provision regarding their founder, Ziaur Rahman.

Section 25 penalizes the publication of any data-information which is offensive, false or threatening in order to annoy, insult, humiliate or malign a person. These terms are vague and sweeping thus capable of including a wide range of publications. Moreover, the section prescribes penal provision for publishing any information with the intention of tarnishing the image of the nation. Here again, the contours of what tarnishes the image of the nation are not defined. When a lecturer of a university criticized the deceased minister, it was considered tantamount to 'undermine the image of the country'.¹³⁷ This provision effectively penalizes the criticism of the minister and prime minister.

Hurting religious feeling of the people has also been penalized under section 28. As a result, a writer's fate depends on something so indeterminable as what will hurt someone's feeling. In

¹³⁶ Ridwanul Haque, 'The Judicialization of Politics in Bangladesh: Pragmatism, Legitimacy, and Consequences' in Mark Tushnet and Madhav Khosla (eds), *Unstable Constitutionalism: Law and Politics in South Asia* (Cambridge University Press 2015) 261, 262.

¹³⁷ Shamil Shams, 'Bangladeshi lecturer arrested over Facebook coronavirus post' *Deutsche Welle* (Bonn, 14 June 2020) < <https://www.dw.com/en/bangladeshi-lecturer-arrested-over-facebook-coronavirus-post/a-53803383>> accessed on 20 May 2021.

a country where the majority of the people follow Islam, chances are high that the provision will be used only to penalize those statements which the majority consider hurting their religious belief. Moreover, this particular provision ingratiated an Islamic group called Hefazot-E-Islam, which demanded capital punishment for the secular bloggers and activists.¹³⁸ This provision is also against the principle of secularism which is a fundamental principle of the state.

Section 31 penalized any publication of anything which will create enmity, hatred or hostility among different classes or communities of the society, or destroys communal harmony, or create unrest or disorder, or deteriorates or advances to deteriorate the law-and-order situation. This is a dangerous provision since a wide range of activities can stir protests among the citizens. For example, an investigative report regarding the corruption of the government can instigate protests. In that case, the government can easily retribute using this section against the journalists.’

Section 32 penalizes the commission of an offence under the Official Secrets Act, 1923 by digital means. In other words, it penalizes the secret recording of any official documents. This is a direct threat to investigative journalism. The Official Secret Act, 1923 is itself a colonial act enacted with the intention of perpetuating the colonial regime in India. It is utterly disgraceful in itself that such an act is still operating in independent Bangladesh. The government can at any time arrest any journalist for investigating something that it does not want to be investigated. Recently, Rozina Islam, a journalist of Prothom Alo has been arrested after being charged under the Official Secrets Act, 1923 after she published a series of report

¹³⁸ Al Jazeera Staff, ‘Bangladeshi clerics fight atheist bloggers’ *Al Jazeera* (Doha, 8 April 2013) < <https://www.aljazeera.com/features/2013/4/8/bangladeshi-clerics-fight-atheist-bloggers>> accessed 22 May 2021.

regarding the malpractices in the health ministry.¹³⁹ Similarly, the government can also use section 32 of DSA to gag the journalists who dare to investigate in to the government's affairs using digital devices.'

The Supreme Court in *Blast vs Bangladesh* case observed that article 31 and 32 of the constitution has imported the concept of both substantive and procedural due process.¹⁴⁰ It further held that a law, to be valid, must be reasonably certain or predictable.¹⁴¹ The Indian Supreme Court held in *Chintaman Rao v The State of Madhya Pradesh* 'that where the language employed in the statute is wide enough to cover restrictions on a fundamental right both within and without the limits of constitutionally permissible legislative action affecting the right and the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, the law must be held to be wholly void.'¹⁴²

The Supreme Court of India in *Singhal v. Union of India* declared section 66A of information Technology Act of 2000 as unconstitutional of the ground that the language of the section was too wide and vague to be within the permissible restriction as mention in Article 19(2) of the Indian Constitution.¹⁴³ The section punishes the sending of "any information that is grossly offensive or has menacing character" by using computer device or a communication device. The court held that "where no reasonable standards are laid down to define guilt in a Section which creates an offense, and where no clear guidance is given to either law abiding citizens or to authorities and courts, a Section which creates an offense and which is vague must be struck down as being arbitrary and unreasonable."¹⁴⁴

¹³⁹ Redwan Ahmed 'Bangladeshi journalist arrested and charged over alleged document theft' *The Guardian* (London, 18 May 2021) <<https://www.theguardian.com/global-development/2021/may/18/bangladeshi-journalist-arrested-and-charged-over-alleged-document-theft>> accessed on 19 May 2021.

¹⁴⁰ *Bangladesh v Bangladesh Legal Aid and Services Trust* (2016) 8 SCOB 1.

¹⁴¹ *ibid*

¹⁴² *Chintaman Rao v The State of Madhya Pradesh* (1950) SCR 759

¹⁴³ *Singhal v. Union of India* (2013) 12 SCC 73.

¹⁴⁴ *ibid*

All of these provisions discussed above are vague and give unfettered power to the law enforcement agencies to make their own judgement and arrest anyone using the power of ‘arrest without warrant’ conferred by section 43. They also provide the ruling party with the power to suppress the dissidents and gag the press. These provisions do not fulfil the test of reasonableness and an antithesis to the concept of freedom of speech. Therefore, they directly violate article 39 of the constitution read with article 19 of the ICCPR.

Violation of fundamental right by arresting without warrant

Section 43 of the DSA says that any police officer can arrest any person without a warrant if the person is suspected to have committed or be committing an offence under DSA. This provides immense power to the law enforcement agency to arrest anyone whom they think has committed a crime based on their subjective view. The Supreme Court has provided detailed guidelines regarding how the power of arrest without warrant can be exercised. For example, ‘the law enforcement officer shall prepare a memorandum of arrest immediately after the arrest mentioning the date and time of arrest; the member law enforcement must contact a relative’ of the arrestee within 12 hours of the arrest; there must be an entry in the diary specifying the ground of arrest and name of the informer, complainant, the name of the personnel under whose custody the arrestee is staying; the law enforcing officer shall disclose his identity and if demanded etc.¹⁴⁵ However, these guidelines are not followed in reality.

Journalist Kajol was charged Under DSA after he was allegedly forcibly disappeared for 53 days and detained for seven months without any trial or charge.¹⁴⁶ Similarly, Ahmed Kabir

¹⁴⁵ *Bangladesh v Bangladesh Legal Aid and Services Trust* (2016) 8 SCOB 1.

¹⁴⁶ Ganguly (n 122)

Kishore was allegedly detained for at least 60 hours before he was officially shown arrested.¹⁴⁷

A gruesome narrative of the torture inflicted upon him was published in the Daily Star.¹⁴⁸

The provision for arrest without warrants along with the vagueness of the law has made the law a potent instrument for harassing the dissidents. Moreover, due to the non-bailable nature of the offence, the arrestee can't easily get bail. As a result, people arrested without warrant on the subjective satisfaction of the law enforcement agency have to stay in prison for long before they can have proper judicial disposal of the case.

The chilling effect on the exercise of the free speech

Chilling effects means a situation where an individual does not exercise his legitimate right in fear of punishment.¹⁴⁹ It happens when the provision of law is too broad to include a wide range of activities as prohibited. The provisions of the DSA have a chilling effect on a portion of the population who weren't directly victim of these arrests, but nonetheless restrain themselves from exercising their right to freedom of speech because of the fear generated thereby. For example, Mr. A has been arrested for writing an article in a blog under the DSA for the vague term 'tarnishing the image of nation', this arrest will not only stop Mr. A from exercising his free speech but also restrain others from exercising the free speech who have no idea what would tarnish the image of the nation.

The punishments of this law will have a demoralizing effect on the journalists and will keep them away from investigative journalism which requires collecting vital information regarding

¹⁴⁷ Zyma Islam, 'Scars of torture all over him' *The Daily Star* (Dhaka, 5 March 2021) <<https://www.thedailystar.net/frontpage/news/scars-torture-all-over-him-2055265>> accessed on 20 May 2021.

¹⁴⁸ *ibid*

¹⁴⁹ Rónan Ó Fathaigh, 'Freedom of Expression and the Chilling effect' (*Human Rights Centre*) <<https://hrc.ugent.be/research/freedom-of-expression-and-the-chilling-effect>> accessed on 20 May 2021.

corruption or other anomalies in the government.¹⁵⁰ For example, 14 out of 20 are penal and non-bailable.¹⁵¹ The chilling effect of the law on the journalists was more particularly evident in the aftermath of an Aljazeera report titled “The Prime Minister’s Men” which showed the illegal activities committed by the army chief and his brothers with direct support of the prime minister.¹⁵² After the airing of the report, all the prominent media self-censored themselves and refrained from publishing any news on the report.¹⁵³ In an editorial, Mahfuz Anam, the Editor-in-Chief of The Daily Star, stated “If we were a free media today, we would have delved deeper into the widely-talked-about Al Jazeera report and analyzed it, point by point”.¹⁵⁴

The beneficiaries of the law

The primary beneficiary of the law is the ruling party itself and its allies. It has used this law to suppress the dissidents in a bid to keep itself in power. After the enactment of this law, the ruling government has excessively used this act in two particular situations; before the election of 2018 and during the coronavirus pandemic.’

Before the general election of 2018, the government started to use the DSA to oppress the opposite parties. At least 63 people were arrested under DSA most of whom were activists and bloggers between October 2018 and January 2019 for criticizing the prime minister, the father of the nation and government in general online.¹⁵⁵ A candidate of the Bangladesh National

¹⁵⁰ Md Aliur Rahman and Harun-Or-Rashid, ‘Digital Security Act and Investigative Journalism in Bangladesh: A Critical Analysis’ (2020) 2(2) CenRaPS Journal of Social Sciences 216, 229.

¹⁵¹ *ibid*

¹⁵² Faisal’Mahmud, ‘Why Bangladesh’s mainstream media has been silent on explosive charges in new Al Jazeera documentary’ *Scroll.in* (India, 7 February 2021) < <https://scroll.in/article/986149/why-bangladeshs-mainstream-media-has-been-silent-on-explosive-charges-in-new-al-jazeera-documentary>> accessed on 20 May 2021.

¹⁵³ *ibid*

¹⁵⁴ Mahfuz Anam, ‘Column by Mahfuz Anam: Al Jazeera story, government’s response and the state of our journalism’ *The Daily Star* (Dhaka, 7 February 2021) < <https://www.thedailystar.net/opinion/the-third-view/news/column-mahfuz-anam-al-jazeera-story-governments-response-and-the-state-our-journalism-2039401>> accessed on 20 May 2021.

¹⁵⁵ Muktadir Rashid, ‘63 people held since October’ *The New Age Bangladesh* (Dhaka, 15 January 2019) < <https://www.newagebd.net/article/61819/63-people-held-since-october>> accessed on 20 May 2021.

Party, Golam Maula Rony, was sued over a conversation he had on leaked telephone for undermining law and order and threatening security.¹⁵⁶ There were reports of irregularities in the election. Hedayet Hossain Mollah, a local correspondent of the Dhaka Tribune, was arrested in case filed under DSA for reporting the inconsistencies in the voting procedure.¹⁵⁷ The authority claimed that the report contained false, fabricated and provocative information.¹⁵⁸

The government swiftly dispatched the DSA to tackled the dissenting voices during the coronavirus pandemic. In the beginning, the government started to intimidate the doctors to stop them from speaking out against the lack of personal protective equipment. When the media and bloggers started writing about the mishandling of the situation, they drew the ire of the government. Journalists and bloggers were arrested in connection with what the authority called spreading rumors about the coronavirus.¹⁵⁹ On 6 May 2020, Ahmed Kishore, a cartoonist; Mushtaq Ahmed, a writer; Shafiqul Islam Kajol, a journalist and Didarul Islam Bhuiyan, a Rashtrachinta activist were charged under the DSA for spreading propaganda against the government and the state.¹⁶⁰ Mushtaq Ahmed died in custody after spending nine months in the prison without even trial.¹⁶¹ Ahmed Kishore was tortured in custody and released after

¹⁵⁶ Tribune Desk, 'BNP candidate Rony sued under Digital Security Act over leaked phone conversation' *The Dhaka Tribune* (Dhaka, 21 December 2018) < <https://www.dhakatribune.com/bangladesh/election/2018/12/21/bnp-candidate-rony-sued-under-digital-security-act-over-leaked-phone-conversation>> accessed on 20 May 2021.

¹⁵⁷ Star Report, 'Khulna journalist arrested under Digital Security Act' *The Daily Star* (Dhaka, 2 January 2019) < <https://www.thedailystar.net/bangladesh-national-election-2018/khulna-journalist-arrested-under-digital-security-act-1681558>> accessed on 20 May 2021.

¹⁵⁸ *ibid*

¹⁵⁹ SNB Web, '11 charged, 2 arrested for spreading COVID-19 rumours in Bangladesh' *The Statesman* (Delhi, 7 May 2020) < <https://www.thestatesman.com/world/11-charged-2-arrested-spreading-covid-19-rumours-bangladesh-1502885150.html>> accessed on 20 May 2021.

¹⁶⁰ Star Correspondent, 'Police charge journo Kajol, cartoonist Kishore' *The Daily Star* (Dhaka, 9 February 2021) < <https://www.thedailystar.net/frontpage/news/police-charge-journo-kajol-cartoonist-kishore-2041425>> accessed on 20 May 2021.

¹⁶¹ Human Rights Watch, 'Bangladesh: Writer Dies After 9 Months in Custody' (Human Rights Watch, 26 February 2021) < <https://www.hrw.org/news/2021/02/26/bangladesh-writer-dies-after-9-months-custody>> accessed on 20 May 2021.

spending 10 months in prison.¹⁶² It can therefore be observed that the ruling party has been using the DSA in order to tackle the criticism from the dissidents and thereby facilitating its stay in power.

Concluding remarks

The abolition of section 57 of the ICT Act was no respite. The government came up with even harsher provisions in DSA. The broad provisions of the DSA fall well beyond the permissible restriction on the freedom of speech provided by the constitution as well as the ICCPR. The government has been using the DSA to silence the dissent and thereby perpetuate its hold on the power. It's high time the government came to sense and repealed the problematic sections of the DSA.

¹⁶² Zyma Islam, 'Scars of torture all over him' *The Daily Star* (Dhaka, 5 March 2021) <<https://www.thedailystar.net/frontpage/news/scars-torture-all-over-him-2055265>> accessed on 20 May 2021.

CHAPTER VI

Concluding Chapter

The enactment of section 57 of the ICT Act itself was the first step towards the muzzling of dissidents in Bangladesh. Thereafter, the amendment made in 2013 increasing the punishment and providing the power to arrest without a warrant was an attempt by the current government to upgrade the weapon of crushing on the dissidents. The enactment of the DSA was the last nail in the coffin of free speech in Bangladesh online. Being armed with DSA, the government can now effectively dictate what kind of expression it would allow in the online sphere.

Section 57 of the ICT Act was used mostly to charge the critics of the government as well as the secular bloggers of the country who criticizes the religious doctrines. The provision was too broad to be respectful to the freedom of speech online. After the abolition of section 57 of the ICT Act, the government came up with the DSA which is a stricter law.

The provisions of the DSA are also too broad to include a wide range of expression within it. This directly conflicts with article 39 of the constitution which provides for the freedom of expression of the citizen with some permissible restrictions. The provisions of the DSA go beyond the boundaries of permissible restrictions set up by the constitution. Moreover, they do not allow criticism of the government which is an essential feature of any democracy. It does not allow criticism of religion which goes against the secular mandate of the constitution. It is also a huge barrier to journalism as a whole and investigative journalism in particular.

Bangladesh as a signatory of ICCPR has an international responsibility to ensure freedom of expression online. Article 19 of ICCPR provides that everyone shall have the right to hold opinions without interference with some restrictions mentioned in article 19(3), i.e., for respect

of the rights of others, for the protection of national security or of public order and public health or morals. Again, this provision was further clarified by General Comment No. 34 of the ICCPR. It states that freedom of expression is a necessary condition for the realization of the principles of transparency and accountability, promotion and protection of human rights.¹⁶³ All branches of the State (executive, legislative and judiciary) have the responsibility to ensure that article 19 of the ICCPR is duly reflected in the domestic law of the states.¹⁶⁴ State parties also need to strictly follow article 19(3) and when it imposes restrictions which should not in any way put in jeopardy the right itself.¹⁶⁵ The provisions of DSA are in clear violation of article 19 of the ICCPR as they are vague, wide, excessively restrictive and thereby frustrate the very right of freedom of speech itself.

The government has been using DSA mostly as a tool for harassing its critics. The provisions for arresting without a warrant and non-bailable nature of the offenses have enabled the government to turn this law into such a tool. Using this law, the law enforcement agency can arrest anyone for writing anything under the DSA. Thereafter, the arrestee will have to stay in prison for a long time since getting bail becomes difficult. Moreover, the broad provisions of the DSA enable the law enforcement agency to arrest anyone who criticizes the government. The law, therefore, has created an atmosphere of fear among the citizens in Bangladesh.

The primary beneficiary of the law is the government itself. After coming to power in a controversial election, the government tries its best to suppress the critics since the criticism would instigate further protest and put the government in a precarious situation in the international arena. Especially, during the covid-19 Pandemic, the repression on the critics has

¹⁶³ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34.

¹⁶⁴ *ibid*

¹⁶⁵ *ibid*

increased dramatically. This shows that whenever the government will face any difficult situation and there will scope of criticism, it will just use the DSA to stop the critics.

Although the controversial provisions of the ICT Act and the DSA are often discussed, there are some necessary provisions as well. In this digital era, it is important to ensure that there are provisions in place to ensure safety online, i.e. the provisions regarding hacking, secure digital signature etc. Due to the sheer importance given to the controversial provisions, the beneficial provisions are often neglected. However, it is submitted that these beneficial and necessary provisions can be accommodated within the ICT Act itself and there is no necessity for DSA. DSA mostly contains the penal provisions directed against the criticism of the government. Therefore, it is explicit that the government's sole intention in enacting the DSA was to create a weapon to suppress the critics. The following recommendations can be proved effective.

1. The government should repeal the DSA altogether and incorporate the amendment to the ICT Act to make it more comprehensive to deal with the need of digital age. There is absolutely no need to have two separate acts in the same field.
2. The broad provisions of the act, i.e., tarnishing the image of the state, should be repealed and a more precise definition of crime should be added. The government can make rule in this regard.
3. The provisions regarding defamation, deterioration of law and order etc. should be repealed and the existing provisions of the penal code should be used. The government can introduce an amendment to the Evidence Act to admit the digital evidence.
4. The authority to filter any online content should be given to experts providing sufficient guidance regarding what sort of content should be filtered.
5. Both the ICT Act and the DSA allow the law enforcement agency to arrest without warrant. This power to arrest without warrant should be dispensed with.

6. The offenses should be bailable and the provisions regarding the bail under Criminal Procedure Code should strictly be followed especially in the lower court.

Section 21, 25, 28, 31 and 32 of DSA are unconstitutional and go directly against the fundamental rights guaranteed in the constitution. The presence of such law is an antithesis to democracy and freedom of speech. As the guardian of the constitution, the Supreme Court of Bangladesh should take steps to ensure that constitutionalism is followed in the country. Already, a writ has been filed asking why section 25, 31 of DSA asking why they shouldn't be declared illegal and unconstitutional.¹⁶⁶ The writ is yet to be disposed of. It is expected that the Supreme Court will take positive steps to ensure the exercise of fundamental right in the country. Moreover, the government should also be respectful to the constitution and the freedom of speech of the citizens. The human rights organizations from home and abroad should speak out more in this regard and persuade the government to repeal the unconstitutional part of the DSA.

¹⁶⁶ Tribune Desk, 'HC issues rule on sections 25, 31 of Digital Security Act 2018' *The Dhaka Tribune* (Dhaka, 24 February 2020) < <https://www.dhakatribune.com/bangladesh/court/2020/02/24/hc-issues-rule-on-sections-25-31-of-digital-security-act-2018>> accessed on 19 May 2021.

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