

Dissertation Paper

ON

**The impact on Freedom of Expression in the age of Digital
Security Act, 2018 of Bangladesh**

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Declaration

I, Tasnuva Rahman, sincerely declare and confirm that this research paper is original and my own work and that it has not been plagiarized from anywhere or from anyone's concept. The goal of this study is to finish a course for my undergraduate studies.

The impact on Disagreement and Freedom of Expression in the age of Digital Security Act,2018 of Bangladesh

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ABSTRACT

Freedom of expression is recognized as a fundamental human right in Article 19 of the Universal Declaration of Human Rights (UDHR). It is a notion that permits a person or a group of people to express themselves without fear of retaliation, censorship, or legal consequences. The ICCPR acknowledges the same. According to the ICCPR, embodying and exercising these fundamental rights carries "special duties and responsibilities" and is "subject to certain restrictions" when it is essential "to respect the rights or reputation of others" or "to protect national security, public order, public health and morals." Major ideas of opportunity and articulation have gone all of the time hand in hand with the proper application of the law and the presence of a fair and simply equitable society, and the founding fathers put this into effect through constitutional indoctrination. Bangladesh's government approved the Digital Security Act 2018 (DSA), a contentious piece of legislation, in 2018. The DSA was supposed to be a light of hope, replacing over a thousand persons who have been imprisoned under the ICT Act., and opening up the internet to freedom of expression. However, critics have agreed that the DSA is a more oppressive version of the ICT Act. Several elements of the DSA are clearly incompatible with global merit for online freedom of expression. The right to freedom of expression is a fundamental right under the ICCPR, although it is not absolute. However, this does not imply that the state can arbitrarily restrict freedom of expression. According to Article 19(3) of the ICCPR, the state may tolerate restrictions on legitimate rights in order to achieve a lawful goal which is considered obligatory and appropriate for maintaining stability in a democratic society. In fact, consequently, the claimed explanation has given the Bangladeshi government enormous authority to censor and retaliate against critics, as well as to initiate an argument about their activities. Bangladesh's DSA has the potential to restrict and limit freedom of expression. This paper will look at the effects of Bangladesh's DSA and show how it has been and might be used to marginalize and control particular groups' viewpoints.

CHAPTER ONE

Introduction

1.1 Methodology

The approach of the study is normative and theoretical. We will try to find out the principles, doctrines and bodies of knowledge to address and analyze the research question. We will discuss in the paper through the norms how the problem is practiced and how we can confront it. Contentions, hypotheses, or new conceptual discussion for the structure of regulation to show up will be allowed through the normative approach. We will be allowed to investigate the truthfulness of legitimate applications in light of the law as a standard. During conceptual analysis and research on legal perspective, there is no ground which pushes into factual or statistical grounds. This paper will try to induce the present factual results.

1.2 Research Question

1. Whether the provisions of the Digital Security Act threaten the freethinking practice of freedom of expression on the social media platforms in Bangladesh or not?
2. Whether the provisions of the Digital Security Act are contradictory to the principles and liabilities which have been provided in ICCPR, Article 19 or not?

1.3 Research scope:

This paper is about the misuse and mutative use of the Digital Security Act which is related to the problems of freedom of expression and disagreement, the practical problem which has been raised because of it, the manner by which it can be mistreated, the failings of educational and traditional motives to change the act. Besides, this examination expects to find out the lacuna in regards to the near stand of the DSA as legislation of Bangladesh, as a signatory to the ICCPR. And also the area of the paper will be within Digital security Act and Ict Act which is the precursor of the act. It means the research will not be digging into any other acts and laws which deals with the fundamental rights practice by its own. The basics of the study is to find out the hazards of digital security act 2018 of right of expression in Bangladesh and also to find out the analysis of practical problems through the provisions of the act. The objective also will be about the illustrations of the misuse of the act and the lapse and contentions of the usage of the law to evade fundamental rights. Also we will be able to find out the probable solution through the policy initiation of the challenge.

1.4 Literature review

Freedom of expression refers to the ability of an individual or group of individuals to express their beliefs, thoughts, ideas, and emotions about different issues free from government censorship.¹ The doctrine of freedom of speech is implied as '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. The term "freedom of expression" is sometimes used synonymously but includes any act of seeking, receiving, and imparting information or ideas, regardless of the medium used.'² Article 19, of the Universal Declaration of Human Rights has protected Freedom of Expression which implies, ' your voice matters. You have the right to say what you think, share information and demand a better world. You also have the right to agree or disagree with those in power, and to express these opinions in peaceful protests'.³ In Article 39 of the Constitution of the People's Republic of Bangladesh, freedom of expression has been protected as one of the basic fundamental rights as in; Freedom of thought and conscience, freedom of press, freedom of speech and expression is granted. But also reasonable restrictions have been forced by regulation for the security of the state, well-disposed relations with foreign states, public requests etc.

Hossein Derakshan who is known as champion of the freedom of speech in Iran and also known as 'blog father' for his protrusive activism. He made a blog about how the usage of the internet got changed in a salient way when he was imprisoned for six years by Iranian government and the arrangement was terrific of the assurance of fundamental privileges, the hallucination of protection, control and limit with regards to harm.⁴ Derakshan shared his thoughts as social media eliminated the vocal power of the blogger. He also stated that surveillance and manipulation has been made by social media which results in an easier life on the commons. He concluded his thought that the governments and organizations were given the control of social media was horrible when the surveillance was in a bad condition.

The book 'Speech Police: The Global Struggle to Govern the Internet'⁵ by David Kaye, this is a brief but impactful piece of writing about internet tries to control the expressions as hate speech and activities of terrorism. David Kaye analyzed with proper illustration how

¹ What is freedom of expression? By freedom forum institute

<https://www.freedomforuminstitute.org/about/faq/what-is-freedom-of-expression/> accessed on march 27 ,2022

² "Freedom of Expression: Definition" History on the Net

<https://www.historyonthenet.com/freedom-of-expression-definition-2> accessed on march 27 ,2022

³ FREEDOM OF EXPRESSION, amnesty international.

<https://www.amnesty.org/en/what-we-do/freedom-of-expression> accessed on march 27 ,2022

⁴ Death of Hyperlink: The Aftermath by hossein derakshan

<https://medium.com/@h0d3r/death-of-hyperlink-the-aftermath-cb10ce79e014> accessed on march 22 , 20220

⁵ Speech Police: The Global Struggle to Govern the Internet,David Kaye,page 2-5

virtual content creators are getting targeted for various reasons. Also Kaye added some extra portion of analysis about politics of the contents on these virtual platforms and the development of determinations. All of these kaye assured people the consciousness of complexities and he mentioned if the regulations are devoted to conclusion at scale, free speech can be under attack.⁶

In the journal article, "Privacy, Security, and Surveillance in the Global South"⁷ Here is talked about the recent development of ICT sectors that increases cybercrime enormously. The authors have focused on the way different states take different initiatives to set about the border and the shortcomings of such trials. This study talks about the vulnerability of our rights as when people personally get the Medias or platforms for exercising the expressions, it is high time to realize that the lawmakers have more resources and power than them.

So, the majority of research till now has highlighted the limitations of online freedom of speech. They looked at the nature and extent of liberty, as well as the balance between liberty and reasonable restraints. Furthermore, various studies have highlighted the ICT Action's deficiencies. However, due to the DSA's relative novelty, as well as the household climate of terror created by the legislation, the number of studies on the subject is relatively limited. More research is essential to inspect the provisions of the DSA in order to determine whether they are compatible with the constitutional requirement as well as international conventions such as the ICCPR. Studies should also look into how the Bangladeshi government has been abusing the DSA's provisions to silence dissenters, particularly in tough circumstances like the epidemic.

1.5 Limitation of the study:

The basic obstacle of the study is shortage of Materials and statistics about this matter. This paper will try to access and analyze the subject matter deeply wherever possible. The precise idea about technicalities of the Act and laws can assume a part during the time spent on the document evaluation.

⁶ *ibid*

⁷ Privacy, Security, and Surveillance in the Global South
<https://dl.acm.org/doi/10.1145/3025453.3025961> accessed on march 28,2022

CHAPTER TWO

Freedom of expression on the basis of ICCPR and the constitution of Bangladesh

2.1 freedom of expression and the scope under ICCPR:

Bangladesh has signed and approved the International Covenant on Civil and Political Rights (ICCPR) in 2000.⁸ ICCPR states that ‘everybody will reserve the option to hold assessments without obstruction; the right to opportunity of articulation that incorporates the right to opportunity to look for, obtain, grant data and considerations, things being what they are, paying little regard to unsettled areas, either verbally, recorded as a printed copy, or written, as craftsmanship or through a few different media of their choice’⁹. No matter how, restrictions or limits on opportunity of articulation are reasonable under ICCPR.¹⁰ Yet, the power should show that such limitations are given by regulation and are vital for regard of the freedoms or notoriety of others; or for the insurance of public safety, public request, general wellbeing, or ethics.¹¹ The UN Human Rights Committee in its General Comment no.34 on the right to opportunity of articulation said that these days the trading of thoughts doesn't necessarily in every case occur in conventional broad communications, however another worldwide organization has been laid out¹². The state gatherings ought to guarantee opportunity in these media too¹³. With respect to limitations, for the reasons stated, restrictions must be implemented that recommended in article 19(3) and there should be an immediate connection between the constraint and the specific necessity for which they are provided¹⁴. Moreover, regulations confining the right to opportunity of articulation won't just need to consent to the particular limitations given in article 19(3) yet additionally must be viable with the arrangements, points and targets of the Covenant.¹⁵ Regulation should be figured out with such accuracy that an individual can manage their direct likewise¹⁶. It should incorporate that degree of direction that empowers the policing to recognize precluded articulations and which are permitted. While invoking any ground of limitation, the state shall demonstrate a clear understanding of the threat, as well as the necessity and proportionality of the action taken¹⁷. The right to opportunity of articulation is ensured by various worldwide basic liberties records of tight spot countries, including the Universal Declaration of Human Rights (UDHR).¹⁸ And the International Covenant on Civil and Political

⁸ The Bangladesh Constitutional Framework and Human Rights’, Muhammad Ekramul Haque. Dhaka University Law Journal

⁹ ICCPR, art 19(1)

¹⁰ ICCPR, art 19(3)

¹¹ *ibid*

¹² UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ De Groot v The Netherlands communication No. 578/1994

¹⁷ Shin v. Republic of Korea ,communication No. 926/2000

¹⁸ Universal Declaration of Human Rights - the United Nations

Rights (ICCPR)¹⁹, both of which Bangladesh is a signatory to (ICCPR). It results in, Bangladesh is obligated to uphold and protect Article 19 of the ICCPR²⁰, which ensures the right to freedom of expression.

2.2 Interpretation of the fundamental rights through international law:

Interpretation of the fundamental rights in international law itself is a constitutional liability and Bangladesh is bound to exercise that liability under Human rights law²¹. International law is not directly applicable in Bangladesh if it is not legislated by the state law as it is a dualist country. Nevertheless, the Supreme Court of Bangladesh can declare the pertinence of International law at any time, especially about the fundamental rights of the citizens. The case Hussain Muhammad Ershad vs. Bangladesh²² The Appellate Division stated the same as, the national courts cannot disrespect international liabilities and especially which domestic laws stand for nothing, in that case the courts need to follow the international boundaries. Apart from this the case, Bangladesh National Women Lawyers Association v Bangladesh²³ The court held that international conventions and agreements can be looked at by the courts as an assistance to interpret the provisions for deciding the suggested principal freedoms that are not indicated in the constitution. Though international law cannot be followed religiously, it should be utilized when the national law faces any challenges to interpret the fundamental rights.

2.3 Freedom of Expression and the Constitution of Bangladesh:

Article 39 of the Constitution of Bangladesh has implied and ensure the freedom of

Expression. It says that,

1. Everybody can exercise the right of thought and conscience.
2. For the purpose of certainty of the state, international affairs, morality, public order, defamation or any kind of incitement of the state, it can be restricted or else freedom of speech, expression and press can be exercised.

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁹ ICCPR

< <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> >

²⁰ International Covenant on Civil and Political Rights | OHCHR

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²¹ *ibid*

²² Hussain Muhammad Ershad v Bangladesh (2001) 21 BLD (AD).

²³ Bangladesh National Women Lawyers Association (BNWLA) Vs. Bangladesh and Others, 14 BLC (2009) 694 https://www.lawyersjurists.com/lawyer_ci/case/bangladesh-national-women-lawyers-association-bnwla-vs-bangladesh-and-others-14-blc-2009-694

It should be mentioned that the Article 20(2) of ICCPR, Any support of public, racial or strict contempt that comprises instigation to separation, antagonism or viciousness will be disallowed by regulation.²⁴

Article 20 (2) of the ICCPR holds the focal and most thorough global level that ought to direct can't stand discourse's legitimate control.²⁵ This article sets out the option to be liberated from induced segregation, antagonism, or savagery due to supporting public standing or strict disdain denied by regulation.²⁶

It has been pledged by the constitution of the Bangladesh that the right to speak freely of discourse also, articulations are gotten under sensible limitations.²⁷ The right to discuss open issues, the right to criticize the government and its strategy of defense including the action of the defenses are also parts of the right to freedom of speech.²⁸ In a structure of democracy, one of the most important rights is the right to freedom of speech. In the case of *Dewan Abdul Kader v Bangladesh*, the supreme court of Bangladesh held that, “[the] right to express one’s own opinion absolutely freely by spoken words, writing, and 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 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.”²⁹ So, through the application of DSA 2018, nothing has changed. Nationally or internationally No rights to expression is assured. Bangladesh does not follow the international boundaries or the restrictions to assure the public to avail the rights properly. Also the constitution of Bangladesh does not clarify the restriction and even does not follow the provisions given by ICCPR.

CHAPTER THREE

Historical background of ICT and DSA Act

About the completion of the necessity of the digital era, the ICT Act, 2006 was imposed public authority of Bangladesh³⁰. But there are some provocative provisions which made the entire law both nationally and internationally criticized. Then the Digital Security Act was introduced in 2018 by the state whereas the provisions are unchanged which weakens the Act on the issue of practicing the right to speak freely of discourse. This portion of this paper will discuss the historical background of Information and Communication Act, 2006

²⁴ Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad

https://www.etd.ceu.edu/2021/azad_ananya.pdf

²⁵ *ibid*

²⁶ *ibid*

²⁷ Constitution of the People's Republic of Bangladesh, art 39.

²⁸ *Schacht v United States* (1970) 398 US 58

²⁹ *Dewan Abdul Kader v Bangladesh* (1994) 46 DLR 596

³⁰ ‘Bangladesh ICT Act: The trap of Section 57’ by Tuhin Shubhra Adhikary, The Daily Star, Jul 7, 2017

and Digital Security Act, 2018 and the global obligation of Bangladesh in the aspect of ICCPR.

3.1 The endorsement of ICT Act:

In 2006, ICT Act is forced in Bangladesh with the desire to give lawful acknowledgment and security of Information and Communication Technology and rules of important subjects³¹ The section 57 of ICT Act 2006 has been incorporated and it was amended in 2013 by expanding the punishment from ten to fourteen years of detainment. Here, it needs to be mentioned that these offenses are cognizable so that the laws can be enforced and arrest anybody without warrant. There is a tribunal to try the offenses which are committed according to this Act and it is initiated under section 68 of the ICT Act. It also should be said that the offenses are not bail able in most of the cases. For incorporating the section 57 in ICT Act, extensively it has been criticized for the violation of freedom of expression in online platforms.

3.2 Revoking section 57 of the ICT Act and the result:

After noticing the necessity both nationally and internationally, the government took the initiative to revoke section 57 of ICT Act. Nevertheless, in 2018, the Digital Security Act was passed and even repealed section 57 of ICT Act had become a stricter law whereas it had no constructive effect. DSA took the position of Section 57 into several portions, such as section 25 of the DSA 2018 punishes on virtual publications which defames the appearance of the nation but section 28 stands with the same penalty of virtual publication which attacks religious beliefs. Basically this was about full of section 57 of ICT Act as well as DSA 2018 added some extra restrictions which were not even in ICT Act. In reality by repealing section 57 of ICT Act, it becomes harsher mode in freedom of speech in DSA, 2018.

3.3 DSA 2018 and the background:

In April 2018, the proposed DSA was first submitted in Parliament³². Because of significant analysis of the crackdown on freedom of expression and freedom of the press, Bangladesh's Minister of Law, Justice, and Parliamentary Affairs promised in May that the draft DSA will be changed in collaboration with the journalist community. The Editors Council expressed their worries about freedom of expression but authority did not go through the issues and did not propose the process to the Bill Committee³³. Then the Editors Council rejected the draft DSA because It did not change any of the draft Act's eight parts. The Editor Council met with the administration on September 30th,

³¹ ICT Act 2006, preamble

³² Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad

<https://www.etd.ceu.edu/2021/azad_ananya.pdf> accessed on 13th april.2022

³³ *ibid*

and they proposed that the bill be altered before the President passed into law. ³⁴Nevertheless, the bill was signed by the president into law without changing anything, and the Law went into effect.

In Bangladesh's Constitution 39 (2), the law (DSA 2018) neglects to maintain the assurance of freedom of expression and freedom of the press³⁵and international conventions³⁶.

The state committed in 2018 to remove the country's draconian ICT Act, particularly Article 57 which was used for restricting freedom of expression. However, instead of removing the existing ICT, it adopted the DSA (DSA). In essence, they introduced the new harsh legislation Digital Security Act, 2018. The DSA is more stringent than the earlier ICT Act's contentious Section 57. A number of elements in both ICT Act and DSA are incompatible with international level of virtual freedom of expression. In the event that somebody does as such, they will be captured and face non-bailable punishments going from 3 to 14 years imprisonment³⁷. The state took some initiative on a number of websites, social media platforms and blogs where it believes there is a risk of blasphemy. This measure, which was enacted in the pretext of combating cybercrime, is unlawful under Bangladeshi law and in violation of international law. This DSA includes broad and ambiguous definitions for key phrases, which is troublesome and vulnerable, as well as some terms are not defined, for example: "Propaganda or campaign"³⁸, "offending others by uploading offensive stuff ³⁹", "religious sentiment"⁴⁰, "image of state"⁴¹, and so on. It has "extra-territorial application"⁴², which is unusual.

³⁴ *ibid*

³⁵The Constitution of the People's Republic of Bangladesh <<http://bdlaws.minlaw.gov.bd/act-367.html>>

³⁶Bangladesh: New Digital Security Act is attack on freedom of expression, accessed on 14th April 2022(AmnestyInternation,<<https://www.amnesty.org/en/latest/news/2018/11/bangladesh-muzzling-dissent-online/>>

³⁷ Digital Security Act, 2018
<http://bdlaws.minlaw.gov.bd/>

³⁸Bangladesh Digital Security Act, 2018, s 21

³⁹Bangladesh Digital Security Act, 2018, s 24

⁴⁰Bangladesh Digital Security Act, 2018, s 29

⁴¹ Bangladesh Digital Security Act, 2018, s 25

⁴²Bangladesh Digital Security Act, 2018 s 3(1)

CHAPTER FOUR

Analysis of the section 57 of the ICT Act and Digital Security Act, 2018 and its' illegality

In 2006, Bangladesh enacted the ICT Act at first, and then it was passed by the state. The state took an initiative to make the law more drastic⁴³ by amending section 57, in 2013. In 2018, further the state passed the new "DSA, 2018", by scrapping section 57 of the ICT Act.⁴⁴ The newly repealed section 57 was misused in many ways at that time and there are many issues to discuss about it, which is the purpose of this paper. This paper will have an analysis upon those doctrines of ICT Act and the ways by which section 57 was misused will be also discovered. This ICT might be exploited in a variety of ways, and until 2018, this ICT act stressed guilt free individuals due to its fragility and ambiguity.⁴⁵ This part will fundamentally assess the DSA considering Bangladesh's commitments and responsibility under worldwide basic liberties principles; explicitly, on account of opportunity of articulation, how the DSA clashes with public and global regulation, as well as the DSA's blemishes, will be examined and evaluated inside and out.

4.1 Analysis of ICT Act and the applicable sections and cases:

The most controversial provision of the ICT Act was section 57. Dr. Shadheen Malik, who is renowned for expertisement at constitutional field, made a comment on the section. He said that it would be enough reason for the country to go back to the medieval age. He also expressed his opinion by requesting the government to get rid of the provision.⁴⁶

The main thing mentioned in the original section that:

- 1) Assuming that anybody deliberately delivers or moves or turns into an entertainer to be delivered or moved in the site page or in electronic structure any material which is phony and manufactured or its impact is, for example, to will more often than not debase and ruin people who are probable, having respect to every pertinent situation, to peruse, see or hear the matter contained or encapsulated in it, or causes to disintegrate or makes the likelihood to decay the rule of law, bias the picture of the State or individual or causes to hurt or may hurt strict conviction or prompt against any individual or association, then, at that point, this action of his will be viewed as an offense.
- 2) The person will be penalized with imprisonment maximum ten years with fine upto maximum one crore taka.

⁴³ Tuhin Shubhra Adhikary, 'Bangladesh ICT Act: The trap of Section 57' The Daily Star, jul 7,2017

<https://www.thedailystar.net/frontpage/bangladesh-ict-act-the-trap-section-of-57-1429336>

⁴⁴ Tashmia Sabera, 'All that is wrong with the Digital Security Act' The Daily Star, march 9,2021 <<https://www.thedailystar.net/law-our-rights/news/all-wrong-the-digital-security-act-2057321>>

⁴⁵ Bangladesh: New Digital Security Act is attack on freedom of expression, November 12,2018 (Amnesty International,

<https://www.amnesty.org/en/latest/news/2018/11/bangladesh-muzzling-dissent-online/>

⁴⁶ Star Online Report, 'Amended ICT law to take country towards medieval age' The Daily Star, May 13,2022 <<https://www.thedailystar.net/news/amended-ict-law-to-take-country-towards-medieval-age>>

The matter here can be seen that the maximum punishment is ten years imprisonment, with a fine extending to one core, according to the section. Even it is not mentioned about the scope for arrest without any warrant there.

After that modification, the punishment changed from maximum ten years to seven years minimum and fourteen years maximum.⁴⁷The amendment made the crimes cognizable and non-bailable offenses, which are under section 57. This brought a power to the law enforcement agency to arrest offenders without a warrant, as the crimes were declared as cognizable. This provision imposed a penalty on publishers, who publish something obscene and which is probably going to corrupt the readers, listeners, or viewers.

By the arrangement, there is additionally a punishment for the distribution of anything which biases the image of the state or individual. In this matter, there are some points to be discussed. At first, the phrase “image of the state” is not clear and determined. If any person criticizes the government for their activities, case may be filed against that person. But, as we know, being a citizen of a democratic state, any person should have the right to criticize for any kind of work.

In the ICT Act, section 57 is too large and also indeterminate to put a broad scope of activities under its order. As a consequence, it constructively goes beyond the legitimate prohibitions which are provided in the constitution. It has provided a large power to the state on the aspect of permissible practice of the freedom of speech to diminish. Ultimately the right to freedom of speech no longer has the accompaniment, when such a way to label a broad range of actions as a punishable offense exists.

Among them, it has been seen to arrest any offender or the prosecution has been made in only a few cases⁴⁸. However, the situation turned a little bit better after the amendment in 2013. The offense under section 57 of the ICT Act was not eligible to bail, the arrestee could not undoubtedly acquire the bail. Consequently, they had to be imprisoned for a long time. This could torment the oppositions, even though the charge brought against them couldn't be proved. After the amendment, the first sufferers were the bloggers. So many persons were arrested under section 57 of the ICT Act. As a result, the larger provisions of section 57 that was suspected to be open to misuse and impishness was not unfounded, what was an agitation. It has disregarded the sacred right to freedom of speech, which the people's republic of Bangladesh itself carries for the commons. So, basically Section 57 of ICT Act was not consistent anymore with the ratification or command of the constitution, in which freedom of speech, democracy and secularism are mentioned. The provision which was fully indeterminate and vague was used to torture the opposition.

⁴⁷Bari, M. Ehteshamul, The Enactment of Digital Security Laws in Bangladesh: No Place for Dissent (December 31, 2019). George Washington International Law Review, Vol. 51, No. 4, 2019, pp 595-631, Available at SSRN: <https://ssrn.com/abstract=3590287>

⁴⁸ David Bergman, ‘No Place for Criticism: Bangladesh Crackdown on Social Media Commentary’ May 9, 2018 <<https://www.hrw.org/report/2018/05/09/no-place-criticism/bangladesh-crackdown-social-media-commentary>>

4.2 Analysis of the Digital Security Act 2018:

In general DSA is consistent with nine chapters. Section 57 of the repealed ICT Act states that, 'in the event that an individual purposefully distributes or communicates something on a site or in whatever other electronic arrangement, which might be perused, seen or heard by somebody believing it to be misleading and revolting or related, maligning, corruption of the rule of law, tainting the picture of the state and the individual, or harming strict opinions, or impelling an individual or association with such data, would be viewed as a wrongdoing⁴⁹.' The most extreme sentence for this wrongdoing is 14 years and the base is 7 years and a maximum fine of Taka 1 crore for this wrongdoing. The provisions have been partitioned into areas 25, 28, 29 and 31 of the new DSA. There are a few restricted types of articulation as safeguarded under global regulation, while others make abnormally expansive cutoff points on expression⁵⁰. The trickiest areas are 8, 21, 25, 28, 29, 31, 32, 43 and 53⁵¹. For instance, section 28 doesn't define crime clearly and precisely, which can be a scope of being misused to criminalize free expression⁵². There are even sections that limit expressions protected by international law, while others define additional broad restrictions⁵³.

Section 25⁵⁴ makes it against the law broadcasting or publishing information which is intentionally defaming or scaring on a webpage or in any electronic media. The information affects the state's image or reputation, however the portion of it, it will be considered as crime⁵⁵. The ambiguous language of the segment considers its authoritarian application against analysis and disagreeing voices⁵⁶. This section is broad, and there is extension for misrepresentation and also the idea of 'misleading data' and 'hostile' content isn't clear here⁵⁷.

About freedom of expression, this clause is problematic. This part is problematic in the issue of freedom of expression since it is impossible for common people to tell what is accurate and which one is false information. As a result, anybody could be charged with spreading false material on social media.

According to Section 28, it would be unlawful for a person or group for using electronic media on the purpose of attacking religious beliefs or sentiments⁵⁸. However, no indication is made of what

⁴⁹ Information Communication and Technology Act (ICT) 2006, [\(https://www.icnl.org/research/library/bangladesh_comm2006/\)](https://www.icnl.org/research/library/bangladesh_comm2006/)

⁵⁰ Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad, accessed on 21th april, 2022
<https://www.etd.ceu.edu/2021/azad_ananya.pdf>

⁵¹ *ibid*

⁵² *ibid*

⁵³ *ibid*

⁵⁴ Bangladesh Digital Security Act, 2018, s25

⁵⁵ Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad, accessed on 25th april, 2022
<https://www.etd.ceu.edu/2021/azad_ananya.pdf>

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ Bangladesh Digital Security Act, 2018, s 28

religious principles include. It is possible to be arrested even if one rejects religious fanaticism. The penalty will be up to 7 years in prison and/or a fine of up to 10 lac TK, with a re-offending penalty of up to 10 years in prison and/or a fine of up to 20 lac TK. The right to free expression is guaranteed under Article 19 of the ICCPR, and General Comment No 34 on the right to freedom of expression prohibits disrespect for religion.⁵⁹

An individual who commits an offense under Section 499 of the Penal Code (1860)⁶⁰ connecting with slander on a site or in some other electronic media will be penalized, according to Section 29⁶¹. For supplying defamatory information, a provision has been made for a considerable length of time for three years imprisonment and a punishment of 5 lakh taka or both, however the meaning of criminal in the Penal Code is quite juvenile, thus anyone may be a gripper if he reprimands a persuasive person. It is inconsistent with global guidelines of freedom of expression, and it is additionally maligning, whether on the web or in reality.

Section 31 states, "Offense and punishment for deteriorating law and order, etc. If any person intentionally publishes or transmits anything in a 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 a crime⁶²." This part is excessively broad, which is certainly not a worldwide norm⁶³, and crucial terminology like 'law and order' are unclear and ambiguous. The DSA's Chapter 6 covers a wide range of crimes, including expressive offenses and computer crimes. The law⁶⁴, according to Article 19, is a duplication of existing criminal speech offenses. The contents of the speech offenses under this chapter are ambiguous.

The most vigorously talked about section 32⁶⁵ states that assuming an individual communicates or abets the transmission or capacity of exceptionally classified or private information of an administration semi-government, independent or legal body through a computer, advanced gadget, computer organization, or computerized medium⁶⁶. The DSA's provisions are broad and ill-defined, which makes it troublesome and fragile. The Act grants the investigating officer the right to get into,

⁵⁹ General comment No. 34 Article 19: Freedoms of opinion and expression
(<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>)'

⁶⁰ 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%20case%20hereinafter>))

⁶¹ Bangladesh Digital Security Act, 2018, Section 29

⁶² Bangladesh Digital Security Act, 2018, Section 31

⁶³ Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad

<https://www.etd.ceu.edu/2021/azad_ananya.pdf>

⁶⁴ ARTICLE 19 – Free Word Center, 60 Farringdon Rd, London EC1R 3GA – www.article19.org. (Bangladesh-Cyber-Security-act-2018-analysis-FINAL.pdf)

⁶⁵ Bangladesh Digital Security Act, 2018 Section 32

⁶⁶ Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad accessed on 29th April, 2022

<https://www.etd.ceu.edu/2021/azad_ananya.pdf>

physically inspect doubts, grab any doubtful objects, and arrest suspects without a warrant Pre-preliminary detention ought to be the special case, and bail ought to be allowed, except if in occurrences where the charged is probably going to slip away or obliterate proof, impact observers, or leave from the power of the State party⁶⁷," the Human Rights Committee concluded. Furthermore, the DSA stipulates that virtual crime is not only punishable but also non-bailable, which is conflicting with the ICCPR's article 9(3). Anybody captured or detained on a crook accusation will be immediately brought under the watchful eye of an adjudicator or other official approved by regulation to practice legal power, and will be qualified for a rapid trial or delivery.⁶⁸ Persons awaiting trial shall not be held in custody as a general rule, although release may be conditional on guarantees of appearance for trial, at any other stage of the legal procedures, and, if necessary, for execution of the judgment.'

A thorough examination of the law reveals that Section 57 of the ICT Act has been resurrected in the name of DSA. The activities of writers, journalists, researchers, and civil society will be stifled by this law, which allows anyone to be seized at any time. Every phrase, penalty, and the sections of this law is an attempt to circumvent the Constitution's protections for civil rights and fundamental freedoms. States should perform those definite obligations and duties to defend human rights under international law as a result of international treaties. People are hesitant to express their opinions, and they are unable to participate in demonstrations. Bloggers, writers, and journalists dread getting detained, disrupting social welfare. Without freedom of expression, democracy cannot be realized.

CHAPTER 5

Ignorance of Fundamental Rights through the Digital Security Act, 2018:

To defeat the dissidents online, the DSA, 2018 has become the primary safeguard of the government⁶⁹. Beside the right to freedom of speech, a major number of fundamental rights has been guaranteed by the Constitution of Bangladesh. But, DSA's provisions do not comply with the freedom of speech, rather they contradict. Nevertheless, the rule is still to be thrown away. When the legislation permits to make a tradition of suppression, the people who express the dissenting voice are getting victimized on the other hand. The prime minister's international affairs adviser, Gowher Rizvi, accepted the fact that there are problems with DSA. In an interview he said that,

⁶⁷ 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>

⁶⁸ Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad accessed on 29th April,2022

https://www.etd.ceu.edu/2021/azad_ananya.pdf

⁶⁹ Digital Security Act in Bangladesh: The Death of Dissent and of Freedom of Expression by Ananya Azad accessed on 29th April,2022

https://www.etd.ceu.edu/2021/azad_ananya.pdf

"Unfortunately, we have now discovered that a portion of the phrasings are exceptionally free and obscure, which leaves it open to its maltreatment."⁷⁰

5.1 The legal framework of the fundamental rights under the constitution:

In the preamble of the constitution of Bangladesh, it is mentioned that, through the democratic process, one of the fundamental aims of the State is to realize a socialist society full of fundamental human rights with proper guard to the freedom of the citizens. It made an incorporation of fundamental rights in the part-III of our constitution to be directly applied in the court. For any infringement of the mentioned right, concerned people reserve the privilege to go to the High Court Division and article 102 of the constitution permits them to look for change for this⁷¹. In addition, this right to redress itself has been created as a fundamental right. Hence, regarding fundamental rights, a strict protection has been provided in the constitution. There is no permissible provision regarding any conflict with the fundamental right of the citizens. In article 26, it is stated that, the state will not make any regulation that is conflicting with the arrangements connected with freedoms and any such regulation, whenever made, will be void to the degree of such irregularity. Consequently, the constitution makes a bar on the legislation that they have no authority to violate citizen's fundamental rights.

5.2 Permissible restriction on the freedom of speech under the constitution:

The right to freedom of speech is not an independent one. Also it is conditioned on some reasonable restrictions. Article 39 of the constitution expresses a few reasons for the government assistance on which the limitations can be enforced including the security of the State, well-disposed relations with unfamiliar states, public request, conventionality or ethical quality, or comparable to hatred of court, maligning or actuation.⁷² It was proposed by the Indian Supreme Court that the expression "sensible limitation" expresses the impediment which should not be flighty and over the top that it puts more emphasis than what is fundamental to force for public retention.⁷³ "Sensible" recommended objective management and consultation which alludes to the decision of a course which reason orders.⁷⁴ Subsequently, the legislators can't enact a regulation which contains limitations on the right to speak freely of discourse, which is flighty, unreasonable and doesn't conform to the thought process of public interest. By upholding the guideline of proportionality, the sensibility of any limitation can be administered all the more explicitly.⁷⁵ The proportionality test, which is more evolved in regulatory regulation, fills in as a significant test for deciding if the extent

⁷⁰ Meenakshi Ganguli, 'Limiting free speech undermines the fight against Covid-19' The Daily Star, Feb 24, 2021 <<https://www.thedailystar.net/opinion/news/limiting-free-speech-undermines-the-fight-against-covid-19-2050217>>

⁷¹ Constitution of the People's Republic of Bangladesh, art 44.

⁷² Constitution of the People's Republic of Bangladesh, art 39.

⁷³ Chintaman Rao v The State of Madhya Pradesh (1950) SCR 759

⁷⁴ *Ibid*

⁷⁵ Virendra Ojha v State of Uttar Pradesh AIR 2003 All 102

of limitations looked to be forced equilibrium, a lawful right and a disallowance.⁷⁶ The principle of proportionality is based on a multilateral examination. At first, whether a system which interferes with a right is considered as suitable to gain its objective needs to be ensured. Secondly, the issue is, whether it is fundamental for that intention and thirdly, whether it puts trouble on the different separation with the benefits which it focuses on⁷⁷. Whenever there are more than one undesirable measures under perception that ought to generally be taken which is the most prohibitive one.⁷⁸ It must be either proportionate or necessary, in the matter of restriction to be reasonable.

5.3 Confinement Of freedom of speech and the Digital Security Act, 2018:

Section 8 of DSA allows the director general to request the BTRC to delete any digital data which is an ultimatum to digital security. Also, it gives the capacity to the policing to demand BTRC to eliminate the information which hampers conviction or public rule of the nation or which makes disdain. The law does not define the threat to digital security or public values. The government holds the power to specify the fact of threat. The power is absolutely discretionary which is given to the chief to decipher the arrangements and this risks gagging the contradicting sees.⁷⁹

It is punishable under section 25 to publish any data which is offensive, false or threatening in order to humiliate anyone. However, these terms are unclear. For publishing any information to tarnish a nation's image has penal provisions under the section and the amount of punishment are not defined⁸⁰.

Section 28 penalized whoever hurts religious feelings. Consequently, on indeterminable action, a writer's fate depends. There are chances enough to be penalized only when the action goes against this can be misused personally and politically.

Any publication which will create hatred among different communities of the society, or advances to deteriorate the law and order situation are punishable under section 31. This is a dangerous provision for citizens to protest for anything. Using this section against the journalists, when they protest against corruption. The commission of any offense under the Official Secrets Act, 1923⁸¹ or the secret recording of any official documents are punishable under section 32.

⁷⁶ Lawrence Liang, 'Free Speech and Expression' in Sujit Choudry, Madhav Khosla and Pratap Bhanu Mehta

⁷⁷ Robert Alexis, 'Constitutional Rights, Balancing, and Rationality' (2003) 16(2) Ratio Juris 131.

⁷⁸ Vladimir Velichkin v Belarus, Communication No. 1022/2001, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).

⁷⁹ Bari, M. Ehteshamul, the Enactment of Digital Security Laws in Bangladesh: No Place for Dissent (December 31, 2019). George Washington International Law Review, Vol. 51, No. 4, 2019, pp 595-631, Available at SSRN: <https://ssrn.com/abstract=3590287>

⁸⁰ Shamil Shams, 'Bangladeshi lecturer arrested over Facebook coronavirus post' Deutsche Welle <<https://www.dw.com/en/bangladeshi-lecturer-arrested-over-facebook-coronavirus-post/a-53803383>>

⁸¹ Official Secrets Act, 1923
<<http://bdlaws.minlaw.gov.bd/act-132.html>>

The Official Secret Act, 1923 is a colonial Act and it is expressively disgraceful that the Act is still operating in independent Bangladesh. It creates a bar to the investigation of journalists. A journalist has been captured under the Act for distributing reports with respect to the misbehaviors in the wellbeing service⁸². 'Blast vs Bangladesh' case held that the article 31 and 32 of the concept of substantive and procedural due process was introduced by the constitution, both.⁸³ It also stated that a law must be reasonably certain to be valid.⁸⁴ Chintaman Rao v The State of Madhya Pradesh, case observed that where the language utilized in the resolution is adequately wide to cover limitations on a central right both inside and without the restrictions of intrinsically allowable authoritative activity influencing the right and the opportunity of its being used for purposes not endorsed by the Constitution can't be precluded, the law should be held to be completely void.⁸⁵ The section punishes the offensive action using a computer device or a communication device. All of these rules are ambiguous and provide law enforcement authorities the power to develop their own observation and arrest anyone using the 'arrest without warrant' power described in section 43, as well as giving the ruling party the power to punish dissenters. These provisions do not comply with the concept of reasonableness and they infringe article 39 of the constitution read with article 19 of the ICCPR.

5.4 Infringement of fundamental right by arresting without warrant:

Section 43 of the DSA gives power to capture any individual without a warrant assuming that the individual is thought to have committed an offense under DSA, which gives colossal capacity to the power to arrest anyone from their abstract view. The Supreme Court has given that, "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; 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."⁸⁶ In reality, these rules are not followed.

5.5 The beneficiaries of the law:

The vital recipient of the law is the state itself. It has utilized this regulation to repress the dissidents in order to stop them. The government has ample opportunity to abuse the law. The law even gives opportunity to an individual to harass another. People can utilize the law on a general purpose like taking revenge on another. So in a sense the beneficiary of the law can be the individuals. Consequently, It can be seen that the DSA has been used to combat criticism and also to make it possible to be in power.

⁸² Redwan Ahmed 'Bangladeshi journalist arrested and charged over alleged document theft' The Guardian

<<https://www.theguardian.com/global-development/2021/may/18/bangladeshi-journalist-arrested-and-charged-over-alleged-document-theft>>

⁸³ Bangladesh v Bangladesh Legal Aid and Services Trust (2016) 8 SCOB 1.

⁸⁴ *ibid*

⁸⁵ Chintaman Rao v The State of Madhya Pradesh (1950) SCR 759

⁸⁶ Bangladesh v Bangladesh Legal Aid and Services Trust (2016) 8 SCOB 1.

CHAPTER SIX

Conclusion

The establishment of section 57 of the ICT Act itself was the initial move towards the gagging of Protesters in Bangladesh. Then after the amendment of the section in 2013, it increased the penalty and the power of arresting without warrant which is given by the state was the main initiative to silence the activists. Furthermore the DSA 2018 is enacted. As a result, it stopped free expression and through the implication state can completely dictate people about what kind of expression are permitted on virtual platforms. Section 57 of ICT Act was too extensive to consider freedom of expression that is why it accused the critics, bloggers who talked about government, religious beliefs, doctrines etc. After this, DSA 2108 came with a harsher implication.

DSA 2018, the sections are also too extensive to express freely which is directly conflicting with Article 39 of the Constitution. It does not respect the given permissible restriction by the Constitution and the practice of democracy as the criticism about the state or religious views are not allowed by the Act. As the law gives so many barriers on virtual platforms and electronic media, the investigative reporters, writers, bloggers cannot exercise the right.

As Bangladesh is the signatory of ICCPR, it has international liability to assure the freedom of expression on virtual platforms or social media. The right to share one's own thoughts freely or without any limitation is given Article 19 of ICCPR. It gives some permissible restriction in Article 19(3) and also the general comment no 34 clarifies the provision. As, DSA2018 is very harsh, limited and vague so, it prominently violates the Article 19 of ICCPR and right to freedom of speech. The authority can arrest anybody without any warrant and the arrestee will be imprisoned for a certain time as the offense is non-bailable in nature. So, in Bangladesh, this law itself is a frightening object to the public.

There are a few vital provisions in ICT Act and DSA too, though till now the disputable provisions are frequently examined. There is also a need to assure safety in social media and virtual platforms or cyberspace. Mostly, DSA gives the punishment clause about the criticism against the state.

Some recommendations are given below:

1. Digital Security Act 2018 should be repealed wholly by the government and the Ict Act should be imposed with the proper amendment based on what is needed in this digital era. There is a positively compelling reason to have two separate laws in a similar field.
2. The extensive provisions need to be abolished and the definition of crime needs to be more precise in this Act. Instead a rule can be made by the government.
3. For the purpose of punishment on defamation, depreciation of law and public order, the sections on Penal Code, 1860 should be used instead of using DSA. The Evidence Act should be amended for dealing with electronic evidence.
4. The experts should give proper guidance on filtering virtual contents.
5. The provisions about arresting without warrant should be repealed and the offenses should be bailable in nature, so that people can enjoy the right to freedom of speech.

The implication of those controversial sections completely violates the practice of democracy and freedom of speech. The sections 21,25,18,31 and 32 of DSA are against the constitution of Bangladesh. Already there is a writ filed against the section 25 and 31 of DSA 2018 by inquiring about the declaration of its constitutionalism and illegality⁸⁷. Moreover, the state should take the proper initiatives to maintain freedom of expression.

⁸⁷ HC issues rule on sections 25, 31 of Digital Security Act 2018' The Dhaka Tribune
<<https://www.dhakatribune.com/bangladesh/court/2020/02/24/hc-issues-rule-on-sections-25-31-of-digital-security-act-2018>>

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