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“FREEDOM OF EXPRESSION IN BANGLADESH: LEGAL BARRIERS AND STATE CONTROL”

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ABSTRACT

Over the years, the Bangladeshi government has passed and modified a number of restrictive regulations with the intention of limiting free expression. The government has employed various legislations, such as the Digital Security Act (DSA) of 2018, the Information and Communication Technology Act of 2006, the Anti-Terrorism Act of 2009, and the Special Powers Act of 1974, to suppress opposition in both digital and conventional domains. The government rigorously examines independent media organisations, often leading to self-censorship, and extensively monitors social media platforms. The government specifically uses the DSA to suppress dissenters, apprehending journalists, human rights advocates, opposition leaders, and regular individuals for their online criticism of the executive branch. Empirical data suggests that government adversaries and detractors of governmental authorities accounted for a substantial proportion of these arrests. Notwithstanding the abolition of the DSA and the implementation of the Cyber Security Act (CSA) in 2023, the new legislation nevertheless erodes the freedom of speech and expression for citizens, indicating an ongoing trend of government dominance over public sites and media.

INTRODUCTION

Over the course of several decades, Bangladesh's government has methodically implemented and modified a multitude of restrictive legislation with the goal of limiting its citizens' freedom of speech. Abuse of statutes like the Digital Security Act of 2018, the Information and Communication Technology Act of 2006 (with amendments in 2009 and 2013), the Anti-Terrorism Act of 2009, and the Special Powers Act of 1974 often stifles freedom of speech in both digital and physical realms. The government of Bangladesh exercises strict control over the media and the dissemination of information, therefore subjecting independent and impartial media

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organisations to significant pressure, frequently compelling them to engage in self-censorship. Furthermore, the government comprehensively monitors social media outlets.

The 2018 Digital Security Act (DSA) frequently suppresses opposition and limits freedom of speech on social media, websites, and other digital channels. The DSA has led to the apprehending and incarceration of journalists, human rights advocates, opposition members, and even regular civilians for publishing, endorsing, or disseminating anything critical of the government. This encompasses the critique of governmental shortcomings, instances of corruption, and the conduct of public officials or anyone associated with the governing party. Authorities justify these arrests by alleging the dissemination of false, offensive, or libellous information on the internet. Over the first four years of the DSA's implementation, more than 1,700 complaints were filed, with 36% specifically targeting government opponents, the Prime Minister, law enforcement, and members of the ruling party for publishing insulting comments or disseminating propaganda.

Odhikar's statistics from 2022² show that the DSA resulted in the arrest of 71 individuals. They apprehended 62 individuals for their internet postings or remarks that expressed criticism towards the Prime Minister, high-ranking government officials, or their family members. Additionally, authorities arrested nine individuals for expressing religious sentiments deemed 'provocative'.

Former UN High Commissioner for Human Rights Michelle Bachelet highlighted during her visit to Bangladesh in August 2022³ that consecutive UN assessments have shown evidence of the reduction of civic space, heightened monitoring, and the coercion and retaliation against human rights activists and journalists. Moreover, the excessive control of the media by means of stringent legislation and regulations has progressively hindered the efficient functioning of autonomous media organisations.⁴ Later, the Bangladesh parliament repealed the DSA by passing the Cyber Security Act (CSA) 2023, but nothing changed; the new Act continues to violate people's rights and freedom of expression.

² Annual Human Rights Report-2022 on Bangladesh, Odhikar; <https://odhikar.org/bangladesh-annual-human-rights-report2022-2/>

³ UN High Commissioner for Human Rights Michelle Bachelet concludes her official visit to Bangladesh; <https://www.ohchr.org/en/statements/2022/08/un-high-commissioner-human-rights-michelle-bachelet-concludes-her-official-visit> [Published 17 August 2022].

⁴ Ibid.

FREEDOM OF EXPRESSION IS PROTECTED AND GUARANTEED BY INTERNATIONAL LEGAL FRAMEWORKS

Article 19 of the Universal Declaration of Human Rights (1948)⁵ and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966⁶ both guarantee the right to freedom of opinion and expression, including the right to hold personal opinions without interference and to freely seek, receive, and share information and ideas through any medium, regardless of borders.

Article 10 of the European Convention on Human Rights (1950)⁷ ensures the right to freedom of expression, including the freedom to hold opinions and share information and ideas without interference from public authorities and across borders. The right to freedom of expression, which includes the ability to hold opinions and share information without interference, regardless of borders. However, the exercise of this right comes with responsibilities and may be subject to lawful restrictions. These restrictions must be necessary in a democratic society for reasons such as national security, public safety, crime prevention, health or moral protection, protecting the rights of others, or preserving the authority and impartiality of the judiciary.

In *Observer and The Guardian v United Kingdom*,⁸ the newspapers The Guardian and The Observer published excerpts from *Spycatcher*, a book by Peter Wright, which alleged unlawful activities by MI5. The UK government secured a court order stopping further publication of the book's contents, citing a breach of confidence. The newspapers argued that this restriction violated their right to freedom of expression. The European Court of Human Rights ruled that the initial court order was justified in the interests of national security. However, the Court also held that once the book was published elsewhere, the continuation of the ban was no longer justified since the information was no longer confidential. This case highlights the balance between freedom of expression and national security interests, with restrictions needing to be proportionate and necessary.

⁵ Universal Declaration of Human Rights, pdf. Visit: <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> [visit:14 September 2024].

⁶ ICCPR, visit: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [visit:14 September 2024].

⁷ ECHR, visit: https://www.echr.coe.int/documents/d/echr/convention_eng [visit: 14 September 2024].

⁸ *Observer and Guardian v The United Kingdom* (Application no. 13585/88).

*Nagla v Latvia*⁹ case involved a search by Latvian police of a well-known journalist's home after she reported on an information leak from the State Revenue Service database. The police seized her data storage devices. The European Court of Human Rights found that this violated Article 10 (freedom of expression), emphasising that a journalist's right to protect their sources is a fundamental part of the right to information, not contingent on whether the source acted lawfully or unlawfully.

*The Sunday Times v The United Kingdom*¹⁰ case centred on an injunction that prevented the *Sunday Times* from publishing information about pending civil proceedings related to the thalidomide scandal, in which children were born with deformities after their mothers took the drug during pregnancy. The European Court of Human Rights ruled that the injunction violated Article 10, marking a landmark decision on press freedom and freedom of expression.

FREEDOM OF EXPRESSION: THE BANGLADESH PERSPECTIVE

THE CONSTITUTION OF BANGLADESH

Article 39 of the Constitution of Bangladesh¹¹ guarantees the freedom of thought and conscience, along with the rights to freedom of speech, expression, and freedom of the press. However, these rights are subject to reasonable legal restrictions in the interest of state security, maintaining friendly relations with other states, public order, decency, morality, and to prevent contempt of court, defamation, or incitement to an offence.

The U.S. Supreme Court, in the case of *Douglas v Jeanette*,¹² established that freedom of speech and expression protects a broad spectrum of subjects, encompassing religious, political, economic, and informational concerns. The Court's ruling in *Schacht v U. S.*¹³ confirmed that the right to engage in discussions about public matters included the liberty to express disapproval of government programs, including the military services. Furthermore, in the case of *Hector v AG of Antigua and*

⁹ *Nagla v Latvia* case (Application no. 73469/10).

¹⁰ *The Sunday Times v The United Kingdom* (Application no. 6538/74).

¹¹ The Constitution of the People's Republic of Bangladesh (1972), part III-Fundamental Rights. Visit: <http://bdlaws.minlaw.gov.bd/act-367/section-24587.html> [visit:14 September 2024].

¹² *Douglas v Jeanette* (319 US 157).

¹³ *Schacht v U.S* (398 US 58).

Barbuda,¹⁴ Lord Bridge underscored the need for government officials to be receptive to criticism, and any endeavour to repress such criticism constitutes political censorship.

The Indian Supreme Court established in the case of *State of Bihar v Sailabala*¹⁵ that it has the authority to forbid the promotion of political ideology under the guise of state security, unless it directly links to acts of violence or threats. These incidents exemplify a worldwide inclination towards expanding the scope of freedom of expression in democratic societies.

THE DIGITAL SECURITY ACT (DSA) 2018

Enacted in 2018, the Digital Security Act (DSA) aimed to replace the contentious Section 57 of the Information and Communication Technology (ICT) Act of 2006, which had been modified in 2013. Under Section 57, the internet dissemination of any content considered to be inflammatory, libellous, or hurtful to religious feelings was made illegal. Specifically, Section 25 of the DSA criminalises the transmission or publication of any material that is deemed insulting, misleading, or threatening, especially if it is intended to damage the country's reputation or cause confusion. Section 8 confers to the Director General of the Digital Security Agency, together with law enforcement authorities, the authority to restrict or eliminate digital material that presents a significant risk to 'digital security.'

Furthermore, Section 31 makes it illegal to deliberately publish or broadcast digital anything that has the potential to disturb 'communal harmony.' The imprecise and widely defined terminology in these parts adversely affect freedom of expression, particularly on issues of public concern. Significantly, Section 53 explicitly states that offences falling under several sections, such as Sections 17, 19, 21, 22, 23, 24, 26, 27, 28, 30, 31, 32, and 34, are subject to cognizability and cannot be discharged on bail.

The meaning of these portions, as well as others, has frequently been susceptible to wide-ranging and subjective interpretation. Despite being implemented with the aim of safeguarding individuals, the DSA has promptly faced criticism for its use as a means of harassment.

¹⁴ [1990] 2 AC 312.

¹⁵ AIR 1952 SC 329.

As of July 2021, at least 433 people were imprisoned under the DSA in Bangladesh,¹⁶ primarily for publishing allegedly false or offensive information online. Those affected include journalists, activists, and others, with some reportedly subjected to torture. Amnesty International has criticised the DSA for severely restricting freedom of expression and called for the release of individuals detained solely for exercising their rights.¹⁷ The DSA grants law enforcement agencies broad powers to arrest individuals without a warrant, contravening international human rights standards, such as the International Covenant on Civil and Political Rights (ICCPR),¹⁸ to which Bangladesh is a signatory.¹⁹

Despite concerns raised by United Nations experts and recommendations to amend the law, the Bangladeshi government continues to use the DSA to target critics. For example, activist Ruhul Amin was imprisoned for 45 days for criticising the government, and writer Mushtaq Ahmed died²⁰ in custody after being jailed for criticising the government's COVID-19 response. Amin had been arrested under the Digital Security Act (DSA) for criticising the government on social media over the death of writer Mushtaq Ahmed.²¹

Amnesty International has called for reforms, asserting that the DSA unjustly criminalises dissent. Another case involves pharmacist Emdadul Haque Milon, who was detained for criticising the government on Facebook,²² allegedly to prevent him from securing a government contract. In 2021, nearly 50% of DSA cases were dismissed for lack of evidence, but many individuals continued to face detention. Amnesty International has urged the UN to maintain pressure on Bangladesh to protect free speech and prevent the misuse of the DSA.

¹⁶ Amnesty International 'Bangladesh: End crackdown on freedom of expression online'. Visit: <https://www.amnesty.org/en/latest/news/2021/07/bangladesh-end-crackdown-on-freedom-of-expression-online-2/> [published on 25 July 2021].

¹⁷ Ibid.

¹⁸ UN-ICCPR, Visit: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [visited: 15 September 2024].

¹⁹ Human Rights Watch, 'No Place for Criticism-Bangladesh Crackdown on Social Media Commentary'. Visit: <https://www.hrw.org/report/2018/05/10/no-place-criticism/bangladesh-crackdown-social-media-commentary> [published on 25 July 2021].

²⁰ International Federation of Journalists, 'Bangladesh: Writer Mushtaq Ahmed dies in police custody'. Visit: <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/bangladesh-writer-mushtaq-ahmed-dies-in-police-custody> [published on 02 March 2021].

²¹ Prothomalo, 'DSA case: Workers' leader Ruhul Amin gets bail'. Visit: <https://en.prothomalo.com/bangladesh/crime-and-law/dsa-case-workers-leader-ruhul-amin-gets-bail> [published on 19 April 2021].

²² Dhaka Tribune, 'Amnesty urges Bangladesh to end crackdown on freedom of expression online'. Visit: <https://www.dhakatribune.com/bangladesh/253311/amnesty-urges-bangladesh-to-end-crackdown-on> [published on 26 July 2021].

On March 30, 2023, Shamsuzzaman Shams, a journalist for the prominent national newspaper *Prothom Alo*, was arrested²³ under the Digital Security Act (DSA) due to his article addressing the rising cost of living in Bangladesh. He was detained in the middle of the night and charged with publishing material that allegedly "tarnished the image of the nation," among other accusations. Several others associated with the article were also implicated, including *Prothom Alo*'s editor Matiuir Rahman, executive editor Sajjad Sharif, an unnamed camera operator, and other unidentified individuals. Although Shams was later released on bail, the incident escalated when, twelve days after his arrest, Prime Minister Sheikh Hasina publicly condemned *Prothom Alo* in parliament, labeling the newspaper as an "enemy" of her Awami League party, democracy, and the people. Following her remarks, a group of young individuals vandalised the exterior of *Prothom Alo*'s office.²⁴

Amnesty International has also highlighted a pattern of Bangladeshi authorities using sections 25, 29, and 31 of the DSA to criminalise free speech and target dissenters.²⁵ In early 2021, 80% of the 199 cybercrime cases under trial involved sections 25 and 29, which criminalise the publication of offensive or defamatory content.²⁶ Amnesty International has criticised the criminalisation of defamation under the DSA, urging the government to treat defamation as a civil matter rather than a criminal offence in order to prevent the suppression of critical voices.

THE CYBER SECURITY ACT (CSA) 2023

The Cyber Security Act (CSA)²⁷ recycles many of the repressive provisions from the now-repealed Digital Security Act (DSA) 2018 and Section 57 of the ICT Act 2006, despite assurances of reform. The CSA has been used to target journalists, human rights defenders, and dissidents. For example, in June 2024, a man was arrested under the CSA for criticising the quota system in a Facebook post, and in July, seven people were charged for mocking government officials, including ex-Prime Minister Sheikh Hasina, online. Amnesty International's Taqbir Huda condemned the CSA as a mere replication of the DSA, calling it a performative reform that violates international human

²³ Bangladeshi journalist Shamsuzzaman Shams arrested under Digital Security Act; <https://cpj.org/2023/03/bangladeshi-journalist-shamsuzzaman-shams-arrested-under-digital-security-act/> [29 March 2023].

²⁴ Youths breach security, intrude on Prothom Alo office; <https://www.newagebd.net/article/199148/youths-breach-security-intrude-on-prothom-alo-office> [11 April 2023].

²⁵ Amnesty International 'Bangladesh: End crackdown on freedom of expression online'; <https://www.amnesty.org/en/latest/news/2021/07/bangladesh-end-crackdown-on-freedom-of-expression-online-2/> [published on 25 July 2021].

²⁶ Ibid.

²⁷ The Cyber Security Act 2023; <http://bdlaws.minlaw.gov.bd/act-1457.html> [visit:15 September 2024].

rights standards. The briefing provides a comprehensive analysis of the CSA, revealing a wider crackdown on civic space, including warrantless arrests, denial of bail, and arbitrary online censorship, which intensified during the student-led quota-reform protests, ultimately leading to Sheikh Hasina's resignation.

Despite this change, the CSA retains 58 of the 62 provisions of the DSA, with only minor adjustments, making it essentially a rebranding of the same repressive law. Amnesty International's analysis found that 28 provisions were copied verbatim, while 25 underwent minor terminology or sentencing changes. Only one new provision was added, penalising false case filings. Crucially, the CSA retains five major speech-related offences from the DSA, which have been used to penalise dissenting opinions under vague terms like "propaganda against the spirit of the liberation war," "offensive information," "defamation," and "disrupting communal harmony." Despite calls for reform, including nine legislative recommendations from the UN, the government implemented just one of them, leaving the core issues untouched. Critics argue that the CSA is merely a superficial attempt to deflect international criticism while continuing to undermine freedom of expression in Bangladesh.

The CSA grants authorities broad powers to search, arrest, and detain individuals, as well as seize their devices, without sufficient safeguards for the use and storage of personal data. It also allows government-controlled agencies to make blanket requests for blocking or removing online content on vague grounds like 'threat to cyber security,' without judicial oversight or a chance to appeal. Although termed as 'requests,' these demands are binding on the Bangladesh Telecommunication Regulatory Commission (BTRC). A lawyer interviewed by Amnesty International remarked, "The government has full control over what can be said online, with no accountability or transparency."²⁸

Despite limited official data and potential under-reporting, Amnesty International identified at least ten instances within six months of the Cyber Security Act's enactment where individuals were charged for allegedly defaming former Prime Minister Sheikh Hasina or other high-ranking officials on social media.²⁹

²⁸ Bangladesh: Interim Government must restore freedom of expression in Bangladesh and repeal Cyber Security Act; <https://www.amnesty.org/en/latest/news/2024/08/bangladesh-interim-government-must-restore-freedom-of-expression-in-bangladesh-and-repeal-cyber-security-act/> [Published 8 August 2024].

²⁹ Cyber Security Act: Man sent to jail over FB post; <https://www.thedailystar.net/news/bangladesh/crime-justice/news/cyber-security-act-man-sent-jail-over-fb-post-3637876> [Published 21 June 2024].

Cases filed under the CSA against several individuals, including blogger Selim Khan,³⁰ who is facing charges for his online content; Shamim Ashraf, a poet and graphic artist from Mymensingh known for his visually compelling artworks,³¹ who has been targeted for his satirical work and environmental advocacy; and religious preacher Akramuzzaman Bin Abdus Salam, who is accused of making controversial statements online.³² These cases underscore the broader trend of repression and self-censorship prompted by the new law.

Taqbir Huda from Amnesty International stated, “The authorities’ continued legal harassment against peaceful dissent has intensified repression and fostered widespread self-censorship. This will persist unless ongoing cases are dropped and the CSA’s repressive provisions are removed.”³³ Amnesty International urges the Interim Government of Bangladesh to repeal or substantially amend the Cyber Security Act to align with international human rights standards and to release all detainees held under repressive laws like the ICT Act, DSA, and CSA, dropping all charges related to peaceful expression.³⁴

CONCLUSION

In essence, the scope of freedom of expression in Bangladesh is significantly limited by a set of stringent legal provisions that empower the government to repress opposition and regulate the distribution of information. Notwithstanding the abolition of the 2018 Digital Security Act (DSA) and its substitution with the 2023 Cyber Security Act (CSA), the underlying concerns persist, since the new legislation continues to allow infringements against individual rights. The current legislative framework, which encompasses the Information and Communication Technology Act, Anti-Terrorism Act, and Special Powers Act, has bestowed upon the government extensive authority to specifically target journalists, human rights activists, and ordinary individuals who express criticism towards the central government. Furthermore, the stringent media control and thorough surveillance of social media platforms exacerbate this restricted atmosphere. The

³⁰ Bangladesh: Blogger arbitrarily detained despite bail: Selim Khan; <https://www.amnesty.org/en/documents/asa13/8137/2024/en/> [Published 10 June 2024].

³¹ Silencing the critic: The cost of stifling voices in the name of authority; <https://www.thedailystar.net/opinion/news/silencing-the-critic-the-cost-stifling-voices-the-name-authority-3555546> [29 February 2024].

³² Islamic preacher sued for controversial Shab-e-Barat remarks; <https://www.dhakatribune.com/bangladesh/court/340917/islamic-preacher-sued-for-controversial> [published 3 March 2024].

³³ Bangladesh: Interim Government must restore freedom of expression in Bangladesh and repeal Cyber Security Act; <https://www.amnesty.org/en/latest/news/2024/08/bangladesh-interim-government-must-restore-freedom-of-expression-in-bangladesh-and-repeal-cyber-security-act/> [Published 8 August 2024].

³⁴ Ibid.

omnipresent possibility of legal consequences has cultivated an atmosphere of self-censorship and apprehension, considerably eroding democratic norms and inhibiting the free interchange of ideas.

The activities of Bangladesh have raised concerns among international human rights organisations, including Amnesty International, Human Rights Watch, and the United Nations. During her 2022 visit, Michelle Bachelet, the former UN High Commissioner for Human Rights, emphasised similar concerns, citing a diminishing scope for public participation and escalating government monitoring. Bangladesh's suppression of freedom of speech not only breaches its international obligations to human rights as outlined in agreements such as the International Covenant on Civil and Political Rights (ICCPR), but also undermines the country's reputation on the international arena. The escalating authoritarianism in Bangladesh erodes the legitimacy of its democracy, raising questions about its dedication to maintaining the principles of legal governance and safeguarding basic liberties.

Moreover, the repression of opposition and autonomous journalism endangers sustained social and economic advancement, since transparent communication and responsibility are crucial for combating corruption, enhancing governance, and guaranteeing that the opinions of individuals are taken into consideration in the formulation of policies. Amidst this more stringent climate, civil society groups, human rights activists, and international organisations persist in their efforts to promote change and safeguard fundamental rights, but they encounter formidable suppression. If these concerns are not resolved, Bangladesh faces the possibility of more profound socioeconomic stratification and global seclusion, which would undermine its democratic principles and the confidence of its citizens.