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## Comparison between Freedom of Expression and the Digital Security Act, 2018: Bangladesh Perspective

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### ABSTRACT

This article is basically concerned with the freedom of expression, thoughts, and speech to the violation of fundamental rights of the citizen and its impact. Freedom of expression means a person can share his or her opinion freely no one can violate his or her rights but they have some reasonable restrictions. Several times people are harassed directly or indirectly through media. The Digital Security Act 2018 is made for protecting the rights of the citizen of Bangladesh. Here it has been tried to relate this Act with our Constitution where we see that our fundamental rights are enforceable by the Court under Article 44, 102. Even Article 7, 8, 26 where says that if inconsistency will arise then that Act will be void. Basically, this Act is imposed for protecting the citizen from cybercrime whereas under Digital Security Act Police gets more opportunity to use their power, unfortunately, they use it negatively. As citizens of a democracy, we have the right to commend both good and bad government work, but DSA is implemented to silence the public voice.

**Keywords:** Freedom of Expression, Speech, Right to Privacy, Digital Security Act, Cybercrime, and ICT Act.

### INTRODUCTION:

Bangladesh is a democratic country. As a citizen of a democratic country, the people of Bangladesh are the sources of power. After a nine-month liberation war with Pakistan, Bangladesh became an independent country in 1971.

In 1972, our Constitution builds upon secular principles. The Constitution guarantees citizenship without any discrimination. According to our Constitution Part three which is guaranteed the fundamental rights of a citizen. But these rights can't practice by a citizen because of several restrictions which are imposed by the State (Islam, 2020).

For leading peaceful life, the Govt. has taken various necessary steps like amending the constitution or making new laws which need in the present time. In this paper, after a series of documentary analyses the researcher finds the actual scenario of the impact of the Digital Security Act, 2018 with some lickings and findings along with recommendations.

### Research Questions

- 1) Whether the Digital Security Act 2018 protects one's right to privacy or not?
- 2) How is Bangladesh's Digital Security Act muzzling free speech?
- 3) Whether any inconsistency created between the Constitution and DSA 2018 or not?

### **The Necessity of the DSA, 2018**

Day by day our country is digitalized, and for this reason, the technology used by the people increasing rapidly. In twenty centuries, people are connected to each other by using social media like Facebook, Twitter, Instagram, etc. In a report which was published by the BTRC in January 2021, there were 47.61 million internet users in Bangladesh. These results increased by 7.7 million between 2020 and 2021. The state has a Constitutional obligation to freedom of expression which is a basic right of an individual. Article 11 of the Constitution guarantees the state responsibility to ensure fundamental human rights and freedoms and respect for dignity and worth. Article 39 of the Bangladesh Constitution a citizen has a right to freedom of thought, conscience, speech, press, and expression which is guaranteed by this Article. People like to share their feelings on social media. Most of the time we see that a person faced harassment on social media by another person. A person has the right to speak but he has no right to violate another right. At this time, The Digital Security Act should be imposed to protect one's rights. The purpose of the Digital Security Act 2018 mentioned in this preamble is to "ensure digital security and prevent crimes committed on digital platforms." This Act deals with national security to health, food production, and media to financial transactions. This Act imposed its jurisdiction to block contents which are created conflict or any provability to create violations of one's fundamental rights. Especially, this law enacts to protect the critical information infrastructures of the State from various kinds of cyberattacks.

### **Repealing Section 57 of the ICT Act and the aftermath**

The government repealed Section 57 of the ICT Act as per the demand from home and abroad. After that this section newly comes into force to establish the Digital Security Act 2018. Even though these were absent in section 57 of the ICT Act that things also incorporated some more restrictions. The new Act is harsher than before in muzzling freedom of speech.

### **Scope of Freedom of Speech under the International Covenant on Civil and Political Rights (ICCPR)**

Ali Riaz, a Bangladeshi political scientist at Illinois State University in the US said that the provisions of the Digital Security Act, 2018 extremely create a threat to fundamental rights which are guaranteed by the constitution and international treaties. He further added that this is actually fulfilling the interest of the ruling party. We also know that all things have positive and negative sides. The Digital Security Act, 2018 which has been lacking creates conflict with the Constitution of the People's Republic of Bangladesh 1972. The Bangladesh Constitution under Article 7 mentioned that all powers in the Republic belong to the people. Part III of the constitution mentioned fundamental rights but when the Digital Security Act, 2018 was enacted process, State didn't consider freedom of expression, freedom of speech, personal data, and other fundamental rights of the citizens. As a result, people are deprived to enjoy their actual rights. Around the world, the right to freedom of speech is enshrined in the United Nations Universal Declaration of Human Rights 1948. Despite these declarations, free speech has changed in many ways around the world, although overall it is improving. Freedom of speech was expressed through European enlightenment. The freedom of speech was guaranteed in the Bill of Rights Act of England in 1689 which provided for "freedom of speech in Parliament" and during the French Revolution in 1789, the Universal Declaration of Human Rights was adopted. On the protection of freedom of speech, the colonies had different views. In the case of "*Dewan Abdul Kader v. Bangladesh (1994) 46 DLR 596*", freedom of speech is defined as "the right to express one's opinion in words, writing, printing, painting or in any other manner which may be open to the eyes and ears.

Josef Benedict CIVICUS a civic space research officer said that the DSA 2018 which creates an inconsistency with Bangladesh's human rights obligations and an assault on freedom of expression. Freedom of speech is civil liberty. The word freedom means the right of any person to do or say whatever he wants without stopping him. An expression refers to what people say, write or do to express their feelings, opinions, and ideas. Considering the previous meanings, it can be said that freedom of expression means the right to say or write or express feelings without any hindrance.

Again "Expression" may include having views or opinions, speaking aloud, publishing articles or books or leaflets, television or radio broadcasting, industrial production, communication via the Internet, some commercial information, and many other activities.

The notions of freedom of speech and expression are found in early human rights documents such as the Magna Carta of 1215. As per the Universal Declaration of Human Rights (UDHR) 1948, Article 19 states that "everyone has the right to freedom of opinion and freedom of expression those includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of borders. This right is again enshrined in the second paragraph of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The police got unlimited power by the Digital Security Act 2018. As per the Act, police can search one's body without his permission; seize computers and networks, and everything which is involved in the digital platforms. As a result, this Act violates a citizen's liberty, dignity, etc. Even under this Act police can arrest anyone on suspension without showing a warrant. They don't need to take any approval of any authorities which is directly created inconsistent with the constitution. The negative attitude of the police isn't built in a day and the practice of corruption which occurs over a long day. The government and non-governmental organizations are accountable for violating the fundamental rights of the general public through the practice of corruption, which takes place over the course of a long day. There are still some corrupt people in every sector, whether it is government or non-government. This is comparable to someone who can both save and destroy.

### **Interpretation of the Fundamental Rights under International Law**

In Bangladesh, International law can't apply directly unless the law won't be passed by the legislative authority. The Appellate Division of the Supreme Court held that in *Hussain Mohammad Ershad vs Bangladesh* when the domestic laws are fuzzy or contain nothing, the national courts should follow the principles incorporated in the international instruments. In another case held in "*Z.I. Khan Panna v. Bangladesh, 2017(1) LNJ 280*," one's life and liberty are so sacred that one

cannot be allowed to interfere without the authority of law. It is a principle that has been recognized and applied in all civilized countries. The purpose of Article 32 of our Constitution (Article 21 of the Indian Constitution) is to prevent the executive from interfering with the personal freedom of citizens in accordance with the law and in accordance with its provisions and in accordance with the procedure established by law. The right to life and personal liberty is a fundamental human right and even the state has no right to violate this right. In a historic landmark judgment on 24th August 2017 in the case of "*K.S. Puttaswamy v. Union of India*" the petitioner argued before the bench that the Right to Privacy is a fundamental right and should be guaranteed as a right to life with dignity under Article 21 of the Indian Constitution. The Supreme Court also held that privacy is one of the most important rights and it is necessary to be protected against both state and non-state actors. The present case is defensible in the eyes of law as the right to privacy must be protected against state and non-state actors. According to Article 7 sub-clause 2, this Constitution is as the solemn expression of the need of the people, the supreme law of the Republic and if any different law is inconsistent with this Constitution that other law shall to the extent of the inconsistency be void" and Article 26 "laws inconsistent with fundamental rights to be void." The Digital Security Act creates an atmosphere of fear and intimidation that will violate freedom of press, speech, thoughts, and expression basically investigative journalism faces a threat. This Act has limited investigative reporting on corruption involving high levels. Fahmidul Haque, journalism Professor University of Dhaka told that this act landscape is reminiscent of the era of military rule from 1983 to 1990. Articles 31 and 32 of the Constitution mentioned the right to protection of law and protection of the right to life and personal liberty but when police arrest someone without any warrant under the DSA how do people enjoy their rights according to Art. 31 and also deprived him of his personal liberty under Article 32. In the case of "*Chairman NBR vs Adv Zulhas Uddin Ahmed 2010, 39 CLC (AD), s. 3, the Value Added Tax and Supplementary Duty Act, 2012*", the court observed that Article 32 of the Constitution commands not to deprive a citizen of his right to life and personal liberty. The

media needs freedom of the press but this law-imposed regulation above the media. Even under this law's justification if they want, they can remove any broadcast or blog, or content from the websites. In the Indian case "*Express v Union of India, (1985) 1 SCC 641*" the Supreme Court ruled that freedom of expression protects the freedom of the print medium.

### **Digital Security Act was once a Weapon of Choice**

No one is above mistakes. As a citizen of a democratic country, we have a right to criticize our Government, State policy, etc. We are committed to the protection of the dignity and correct history of our Liberation War but section 21 of the DSA mentioned punishment that spread propaganda about war, the father of the nation, etc. Freedom of expression must be needed for a democratic country. The Govt. under answer for his work to the Republic of the people. When any laws are being imposed upon the citizen, we need to be very clear and specific. Because not only a journalist but also a researcher, the writer also going to be accused of this act. Freedom becomes meaningless if the lives and liberties of the citizens are not protected. Article 28 of the Constitution provides that no person shall be deprived of life or personal liberty according to the law.

Article 31, among others, provides that every citizen has the inalienable right to be treated in accordance with the law. The legal aid provided by the government and NGOs is relatively less than the needs of a large number of indigenous peoples. In the case of "*Dr. Mohiuddin Farooq vs. Bangladesh and others 48 BLD (HCD) (1996) 438 Mostafa Kama*"<sup>1</sup>, J. stated that "People will always be at the center of the Supreme Court's concern when it involves administering justice or promoting any judicial theory or interpreting any provision of the constitution. During the pandemic situation creating COVID-19, that's time some people criticize the activity of the govt. for this reason, they are being accused under the DSA 2018. Mushtaq Ahmed who was arrested to do criticism of govt. activity by writing on Facebook. As result, he was under arrest and his bail was rejected six times. He was deprived of his liberty, expression, and speed under the Constitution. In the case of "*Shreya Singhal v. Union of India AIR 2015 SC 1523; Writ Petition (Criminal) No. 167 OF 2012*" as per this case the primary argument which was made by the respondents in Shreya

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Singhal is that the restrictions on freedom of speech on the web don't seem to be certain by Article 19(2), as it could be a separate medium altogether.

The Supreme Court did not adopt this argument. Article 19 of the International Covenant on Civil and Political Rights also talks about freedom of expression. The basis of legitimacy must be clear to the citizens as a part of the State's duty to safeguard democracy. The govt. misuses this act which creates inconsistency under the Constitution.

### **Findings and Recommendations**

The Digital Security Act 2018 which created a clear violation of the country's obligations as per international law and uses this Act as a tool to protect neutral speech. Transparency International Bangladesh (TIB) the executive director said that the State should be created as an environment where the media could publish various information's freely, impartially, and objectively. If they don't feel free to work in their respective place, however, the normal disclosure or flow of information, rumors & mistrust will develop. 180 journalists have been sued according to section 57 of the DSA 2018 since the beginning. As per the case, "*Bangladesh Legal Aid and Services Trust and Others v Government of Bangladesh*", it has been said, the harshest and most unusual punishments have been in conflict with the obligations of the Bangladeshi legal system, and Bangladesh has a fortnightly agreement with human rights organizations working against it. Any citizen of the state cans Writ to enforce fundamental rights. This right to the writ is given in Article 44. Therefore, in case of violation of the fundamental rights of a speaker, he may file a suit to the High Court Division under the powers conferred by Article 44 of the Constitution and the High Court may issue an order or writ to enforce the violation of the powers conferred under sub-section 102(1). On January 19, 2020, the lawyers and educators filed a writ challenging the DSA 2018 sections 25, 28, 29, and 31. When the law secretary, information secretary, and other concerned parties were asked why sections 25 and 31 should not be declared illegal, the judge of the High Court Division issued a rule, but a year has passed and the authority has still not responded. Almost every section of this Act constitutes a violation of domestic and international law. This law restricts people's ability to voice

their opinions about the pandemic situation, including shortcomings in health management, corruption in various industries, a lack of effective government, etc. The rights of citizens to digital security and protection, as well as their civil rights and constitutional protections, are being violated by this Act.

### CONCLUSION:

This article sought to demonstrate how the impact of fundamental human rights infringes on the status of freedom of expression. It follows that where activity is covered by the wrongful practice of law, the law's enforcement must be moderated. A democratic culture must be institutionalized, which requires freedom of expression. There are no safeguards against violations in this Act. The government should stop harassing the free thinkers, take the criticisms under consideration, fix the issue, and uphold administrative transparency while protecting the right to freedom of expression in a democratic country like Bangladesh.

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### CONFLICTS OF INTEREST:

The author declared that they have no potential conflict of interest with respect of the research work.

### REFERENCES:

- 1) Angerin Bangladesh over Dissident Writer's Death in Prison.  
<https://www.Aljazeera.Com/News/2021/2/26/Anger-In-Bangladesh-Over-Prominent-Writers-Death-In-Prison>
- 2) Bangladesh charts 9m new social media users.  
<https://Www.Dhakatribune.Com/Bangladesh/2021/04/26/Bangladesh-Charts-9m-New-Social-Media-Users>
- 3) Bangladesh Legal Aid and Services Trust and Others V Government of Bangladesh [Section 54 Guidelines Case, or Rubel Killing Case, or Guidelines on Arrest and Remand Case].

- 4) Collecting VAT from Patients Illegal: HC.  
<https://www.TheDailyStar.Net/News-Detail-97001>
- 5) Development of Public Interest Litigation in Bangladesh.  
<https://www.LawyersJurists.Com/Article/Development-Of-Public-Interest-Litigation-In-Bangladesh>
- 6) Digital Security Act-BGD E-GOV CIRT.
- 7) Experts: DSA Needs To Be Repealed.  
<https://www.Dhakatribune.Com/Law-And-Rights/2021/02/27/Experts-Dsa-Needs-To-Be-Revoked>
- 8) How Is Bangladesh's Digital Security Act Muzzling Free Speech?  
<https://www.taiwannews.com.tw/en/news/4141491>
- 9) Indian Express Newspapers V/S Union of India and the Freedom of Press.  
<https://Vidhilegalpolicy.In/Blog/Indian-Express-Newspapers-V-S-Union-Of-India-And-Freedom-Of-Press/>
- 10) Islam MN. (2020). A Critical Analysis on Violation of Human Rights Caused by Extra-Judicial Killings with Special Reference to the Role of Police: Bangladesh Perspective, *Asian J. Soc. Sci. Leg. Stud.*, 2(1), 11-32.  
<https://doi.org/10.34104/ajssls.020.011032>
- 11) Law Review: Digital Security Act 2018 And Questions Of Citizen Basic Human Rights.  
<https://Shuddhashar.Com/Law-Review-Digital-Security-Act-2018-And-Questions-Of-Citizens-Basic-Human-Rights>
- 12) M. Ehteshamul B Ari and P Ritam D Ey.  
<https://poseidon01.ssrn.com/delivery.php?id=25510008108&ext=pdf&index=true>
- 13) New Digital Security Law A Further Blow to Media Freedom and Free Expression in Bangladesh, 21 September 2018.  
<https://www.civicus.org/index.php/media-resources/news/3498>
- 14) Odyssey Communications Pvt. Ltd Vs Lokvidayan Sanghatana & Ors On 19 July, 1988.  
<https://Indiankanoon.Org/Doc/1241147>
- 15) Restrictions on Freedom of Expression.  
<https://www.thedailystar.net/law-our-rights/restrictions-freedom-expression-152341>
- 16) Shreya Singhal V. Union of India AIR 2015 SC 1523.  
<https://Globalfreedomofexpression.Columbia.Edu/Cases/Shreya-Singhal-V-Union-Of-India/>

- 17) The Constitution of The People's Republic of Bangladesh, Article 11.
- 18) The Constitution of The People's Republic of Bangladesh, Article 39.
- 19) The Constitution of The People's Republic of Bangladesh, Article 39 Sub-Clause 2.
- 20) The Constitution of The People's Republic of Bangladesh, Article 7.
- 21) The Enactment of Digital Security Laws in Bangladesh: No Place for Dissent.
- 22) The Constitutional Validity of The Aadhar Act in The Case Of Justice K.S. Puttaswamy (Retd.) And Anr. Vs. Union of India.  
<https://blog.ipleaders.in/justice-k-s-puttaswamy-retd-and-anr-vs-union-of-india/>
- 23) The Constitution of the People's Republic of Bangladesh, Article 7(2) & 26.
- 24) The Constitution of the People's Republic of Bangladesh, Article 44.
- 25) The Constitution of The People's Republic of Bangladesh, Article 102(1).
- 26) TIB: Digital Security Act Curtailing Freedom of Expression.  
<https://Www.Dhakatribune.Com/Bangladesh/2020/06/20/Tib-Digital-Security-Act-Curtailing-Freedom-Of-Expression>
- 27) What's the Difference between Civil Rights and Civil Liberties?  
<https://swartz-legal.com/employment-law-resources/whats-the-difference-between-civil-rights-civil-liberties/>
- 28) Why We Oppose Digital Security Act.  
<https://en.prothomalo.com/opinion/why-we-oppose-digital-security-act>
- 29) Writ Petition No. 3806 of 1998.
- 30) Z.I. Khan Panna V. Bangladesh, (2017). (1) LNJ 280.  
[https://www.lawyersnjurists.com/lawyer\\_ci/case/z-i-khan-panna-vs-bangladesh-and-others-2017-1-lnj-280](https://www.lawyersnjurists.com/lawyer_ci/case/z-i-khan-panna-vs-bangladesh-and-others-2017-1-lnj-280)
- 31) 55 DLR (2003) 363.  
<https://Www.Blast.Org.Bd/Issues/Criminaljustice>

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