

**Supervised Dissertation**

**ON**

**The Digital Security Act 2018 & Freedom of Expression**

**Submitted to**

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## **DECLARATION**

I declare that I wrote the thesis all by myself and that it has not been included in any previous degree application in whole or in part. I confirm that the thesis I submitted for completion of the Undergraduate Program as Law- 406 (Supervised Dissertation) at East West University's Department of Law . I confirmed it was prepared entirely by me and it was solely the product of my own efforts, and that it was not submitted for any other degree or professional certification. This research explicitly refers to and acknowledges all content and information that contributed to its execution.

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### **ABBREVIATION**

- DSA**        = **Digital Security Act 2018**
- ICT**         = **Information and Communication Technology**
- ICCPR**      = **International Covenant on Civil and Political Rights**
- RAB**         = **Rapid Action Battalion**
- BTRC**        = **Bangladesh Telecommunication & Regulatory Commission**

## **ABSTRACT**

Thus, today's freedom of speech is protected by Bangladesh's Constitution, which also protects freedom of thought and conscience and freedom of speech thought and conscience is guaranteed". In addition, the Universal Declaration of Human Rights adopted in 1948- "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and transmit ideas and information across all media and borders. But in 2018 the government of Bangladesh passed Digital security act 2018 which has been used to arrest over a thousand people as beacon of hope and open up scope for freedom of expression on the Digital place. Although our Constitutional right to freedom of expression is to use it however we see fit, this is not right. The purpose of this thesis is to investigate how Bangladesh's digital security act violates freedom of speech and how it has been and could continue to be used to suppress and control certain groups' opinions. One person exchanges thoughts with another person through conversation, through the expression of this expression, a person presents all his needs, emotions, feelings, affections, loves in front of others. Bangladesh's digital security act has the potential to restrict and restrict freedom of expression. That is, our Constitution has given the highest importance to the freedom of speech and expression of the individual. International Covenant on Civil and Political Rights (ICCPR) in the also recognizes the right to free speech "the right to hold opinions without interference. However, the individual's freedom of thought, conscience, and expression is protected by Bangladesh's Constitution.

## CHAPTER I

### Introduction :-

**Introductory statement:-**Currently, in the modern era, digital media has become a necessary means to express one's opinion, likes and dislikes to others. But due to some laws created by the Bangladeshi government, the freedom of expression in this medium is being disrupted. Because of this, the people of Bangladesh are being deprived of their Constitutional rights. Bangladesh's democratic governance system is being disrupted. The Digital Security Act was passed to curb crimes committed using information technology. However, there are some clauses in the Digital Security Act, which not only undermine civil rights, but also seriously narrowed the opportunities of journalists to collect information. This is how the Digital Security Act has become a bottleneck. It is very important to amend it.

### Objective of the research

The research's primary objective is to:

- Analyze and break down the problematic provisions of the DSA;
- Compare the identified problems of the DSA and, where applicable, the problematic provisions of earlier laws in Bangladesh;
- Identify the pitfalls of the DSA in regard to freedom of expression in Bangladesh.

To examine the historical instances of DSA abuse;

- To explain the lapses and controversies of the use of the law to circumvent fundamental rights;
- To identify a potential solution to the difficulties.



### **Research methodology:**

A normative approach is this study's primary progression method. In order to answer and analyze the issues at hand, the author will identify essential tenets, doctrines, and bodies of knowledge. The normative part of the study lets us open up the problem's extensions, or how much of the problem we want to solve. The normative approach will make it possible to develop arguments, theories, or brand-new ideas for legislative skeletons. It enables us to compare the current application of legal jurisprudence in new settings and circumstances and investigate the truths and falsities of legal applications based on the law as a norm.

However, there is no room for empirical or statistical investigations due to the dissection and investigation of legal concepts. If at all possible, the current study will attempt to generate and present empirical findings.

### **Research Questions:**

1. Does "The Digital Security Act" hinder individuals' freedom of expression?
2. Are provisions of the digital security act contradictory with the Article 39 of the Constitution of Bangladesh?

### **Background of the Study:-**

One of the many fundamental rights that have been guaranteed to citizens <sup>1</sup>by Article 39 of the Constitution of the People's Republic of Bangladesh reads as follows:

1. Freedom of speech is a principle that supports the freedom of an individual or community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. Consent and thought freedom are guaranteed.
2. Subject to any reasonable restrictions imposed by law in the interest of the state's security, friendly relations with other countries, public order, decency, or morality, or with the intention of court contempt, defamation, or inciting another person to commit an offense.
  - a) The right of every citizen to freedom of speech and expression; and

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<sup>1</sup>Margaret Fermin, "Freedom of Expression: Definition" (History on the Net, May 20, 2020) <<https://www.historyonthenet.com/freedom-of-expression-definition-2>> accessed October 20,2022

b) freedom of the press, are guaranteed.

In this modern age biggest communicating platform in the World is social media. But currently in Bangladesh, the government has created an obligation through the law to express people's online opinions. Because of this, such important Constitutional rights as freedom of expression of people are being hindered and the government is harassing many innocent people by arresting them through this digital security law. Journalists and opposition party leaders are facing the most problems in this law. They are not able to express their opinions and protests through digital media.

### **Limitation of the Research:-**

The limitation of this research are absence of relevant data and statistics is the primary constraint on the design. It is argued once more that the subject's suppressive nature is to blame for the absence of similarity. The research will attempt to enter and analyze the subject in depth whenever possible.

The document review process may be hindered by a lack of familiarity with legal and Act jargon.

## **CHAPTER II**

### **Historical Background of Digital Security act in Bangladesh:-**

To fulfil the wants of the digital age, the data and Communication Technology Act, 2006 (ICT Act) was enacted by the then government of People's Republic of Bangladesh however some polemical provisions of the act created the act a theme of criticism from home and abroad. The govt later introduced the DSA in 2018 however there was no modification relating to the debilitating impact of the act on the exercise of freedom of speech. This chapter can analyze the historical transcript for the institution of the ICT Act, the DSA, and therefore the position of People's Republic of Bangladesh within the context of the Constitution of Bangladesh.

### **Present Scenario:-**

Although the Digital Security Act was enacted to ensure secure digital media for the people of Bangladesh, Article Nineteen, an organization working on the right to information and expression, said there has been unprecedented misuse of the law to suppress dissent and criticism of the government over the past four years.<sup>2</sup> Journalists have been accused of misusing the Digital Security Act since its implementation in 2018. In addition, ordinary people are being arrested in accordance with the Digital Security Act whenever they express their opinions on social media regarding the government or any injustice. Dr. Nadirul Aziz, supervisor of Thakurgaon Modern Sadar Hospital, became the plaintiff and filed a Digital Security Act lawsuit against three journalists. Tanveer Hasan Tanu, a District Representative for Jagonews24.com, Abdul Latif Leetu, a District Representative for Bangladesh Pratidin, and Rahim Shubo, a District Representative for Newsbangla24.com, are the individuals who are being held accountable<sup>3</sup> Because they are releasing news about hospitals serving substandard food. A Thakurgaon college student was arrested under the Digital Security Act after he posted a video on Facebook opposing Indian Prime Minister Narendra Modi's visit to Bangladesh.<sup>4</sup> In a similar way, till August 2022, 79 cases have been filed under this law, out of which 53 cases were due to expressing opinions on Facebook or online. Eight cases were filed by police and RAB and 43 cases were filed by government party officials. Out of them, only 25 cases were filed against government party leaders including the Prime Minister. Because of the comments. 37 journalists have been accused in seventeen cases this year. And five people went to jail.<sup>5</sup> Before this, 34 cases were registered in 2018, 63 in 2019, 197 in 2020 and 238 in 2021. That means in total 611 cases have been registered in the last four years and a total of 53 journalists have to go to jail in different cases in the last three years.

Although most of the cases have no proper evidence, But the cases was made for harassment.<sup>6</sup> By this, common people and journalists are being deprived of their Constitutional rights described in Article 39 of the Constitution.

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<sup>2</sup>“Digital Security Act: 4 Years Have Created a Climate of Fear” (*BBC News*)  
<<https://www.bbc.com/bengali/news-63099927>> accessed October 25, 2022

<sup>3</sup>Correspondent S, “Anger among the Common People”  
(*DailyInqilabOnline*)<<https://m.dailyinqilab.com/article/367532>>

<sup>5</sup> “Digital Security Act: 4 Years Have Created a Climate of Fear” (*BBC News*)  
<<https://www.bbc.com/bengali/news-63099927>> accessed October 30, 2022

<sup>6</sup> *ibid*

### **Analysis of the Questionable Digital Security Act:-**

In response to national and international criticism, dissatisfaction, protests, the ministers also admitted the misuse of this law and promised a new law. As a result of the commitment of the ministers, in September 2018, Parliament passed the Digital Security Act, 2018 in a new twist. Here are the questionable sections of the Digital Security Act explained.

**Section 4:** Through this section, scope for extra-state application of the Act is kept. That is, if a person does something from Bangladesh or outside Bangladesh which is a crime under this Act, then he can be prosecuted under this Act. The clause is not only supra-judicial but also extra-judicial.

**Section 2(3)** defines 'person' as including any person or institution, partnership, firm or other body, its controller in respect of a digital device and any entity or artificial legal entity created by law. As a result, a case can be filed against anyone across the borders of the country.

**Section 8:** Digital Security Agency is constituted under Section 5. Under Section 8, the Agency Director is empowered to request the Bangladesh Telecommunication Regulatory Commission (BRTC) to remove or block any data that poses a threat to digital security.

**Section 8(3):**-in this section BRTC shall immediately remove or block such data upon notification of such request to the Government. Even law enforcement agencies can make such a request if it appears to them that any data in digital media undermines national unity, economic activity, security, defense, religious values or public order, or promotes ethnic hatred and hatred. That is, the government can remove any information at any time without any accountability and in this case the satisfaction of the authorities is sufficient. Which is clearly contrary to the judgment given by the High Court in the case of 'Abdul Latif Mirza v Government of Bangladesh'.<sup>7</sup>

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<sup>7</sup> 'Abdul Latif Mirza v Government of Bangladesh' case 31 DLR (AD) 33

**Section 21:** According to this section, any person who conducts or supports propaganda or propaganda in the name of the Liberation War or the spirit of the Liberation War or the Father of the Nation through digital means shall be punished with imprisonment not exceeding 10 years or a fine of one crore taka or both. Nowhere in the Act have 'liberation spirit', 'propaganda' and 'campaign' been defined. As a result, the authority's arbitrariness remains in this case as well. Moreover, the war of liberation is not a sudden event, after many struggles and fights, blocking the discussion about the war is tantamount to preventing the unfolding of the real history. The Liberation War, its spirit, the wide range of issues in Bangabandhu, the incidental events deserve repeated discussion in the interests of ethnicity.

**Section 25:** This section states that if a person intentionally publishes any information through digital media which is offensive or intimidating or which may cause someone to be dishonest or unethical or if he knowingly discloses any information to annoy, insult, defame, degrade any person or Broadcasts, or knowingly publishes or broadcasts any information likely to tarnish the image of the State, spread confusion, or misrepresentation or falsehood, shall be an offence. Which is punishable with imprisonment not exceeding three years or fine not exceeding three lakh rupees or both. In this case too, the words 'false information', 'offensive', 'image of the state' are not defined and there is a possibility of arbitrary use as there is scope for simple interpretation. Criticism of the state or government is becoming a major obstacle which is a matter of concern. Moreover, 'annoyance', 'insult' is personal matters, which have no impersonal criteria.

**Section 27:** This section states that if any person or group publishes or disseminates anything through digital media that hurts religious sentiments or values, it shall be an offense punishable with imprisonment for a term not exceeding seven years or with a fine of 10 lakh rupees or with both. In May 2019, poet Henry Swapan wrote on social media about an event in his community about the bombings in Sri Lanka. Barisal's Christian priest Father Lacaba Liel Gomez filed a case under the Digital Security Act against three people including poet Henry Swapan as the plaintiff. After this incident, there was a storm of discussion on the issues of 'hurt feelings' or 'incitement'. Hurt feelings are relative. The term 'religious sentiment' has never been defined. Such laws are disappointing despite the protection of religious freedom in the Constitution. Moreover, any anti-religious freedom and blasphemous laws are against the 'International Covenant on Civil and Political Rights'.

Section 28: This section provides for the punishment of offenses under section 499 of the Penal Code by digital means. Criminal prosecution of defamation, whether online or offline, is against international standards of freedom of expression.

**Section 31:** According to this section, it shall be an offense for any person to publish or disseminate anything through digital media which causes or destroys communal harmony or causes or is likely to cause deterioration of law and order, punishable with imprisonment for a term not exceeding seven years or with fine of five lakhs. In this case too, there is a deficiency in the definition, as a result of which journalists, human rights activists or anyone with a dissenting opinion can become victims. The clause also fails to provide protection against any discrimination, hostility or violence arising out of national, ethnic or religious hatred under Article 20 (2) of the International Covenant on Civil and Political Rights.

**Section 32:** This section states that if a person by unlawful entry obtains any highly confidential or confidential information-data, computer, digital device, computer network, digital network or any other electronic medium of any government, semi-government, autonomous or statutory body. , transmits or stores or assists in doing so, he shall be deemed to have committed the offense of digital espionage. Which is punishable with imprisonment not exceeding 14 years or fine of Tk. 25 lakhs or both. This trend is considered to be the biggest threat to independent and investigative journalism. Mahfuz Anam, General Secretary of Bangladesh newspaper editors' organization 'Editors Council', commented on this section, "Section 32 of the law states that if government secrets are breached through digital means, the punishment will be 14 years. Now what is the official secret? Anything that the government does not officially disclose to the public remains a secret. People have no right to know that according to this law. Because the government is not telling that. But it is a 24-hour job to inform the journalists. As it is a state secret, I can no longer do journalism here."<sup>8</sup>

**Section 33:** According to this section, if any person unlawfully accesses a computer or digital system and stores or assists in making any addition or deletion, transfer or transfer of any information of any government, semi-government, autonomous or statutory body or any financial or commercial organization. If you do, it will be considered a crime. Whose

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<sup>8</sup> Correspondent S, "Editors' Council Calls Section 32 an Attack on Democracy" (*Prothomalo*) <<https://en.prothomalo.com/bangladesh/Editors-Council-calls-section-32-an-attack-on>> accessed November 2, 2022

punishment is not exceeding five years or fine not exceeding 10 lakh rupees or both. This section of Article 32 is also an obstacle in the way of independent journalism.

**Section 35:** According to this section, if any person assists in the commission of any offense under this Act, that person's act shall also be deemed to be an offense and he shall also suffer the punishment prescribed for the original offence. But nowhere in the Act is it defined exactly what acts shall be deemed to be assistance. This allows for straightforward interpretation. For instance, people who like or share something that is considered a crime on Facebook or any other social media platform can also be harassed.

**Section 43:** According to this section if a person is suspected of committing or being accused of committing an offense under the DSA, any police officer can arrest them without a warrant. This grants the law enforcement agency enormous authority to arrest anyone they believe has committed a crime based on their own subjective opinion. The procedure for using the power to arrest without a warrant has been laid out in great detail by the Supreme Court. For instance, the police officer must immediately prepare a memorandum of arrest with the date and time of the arrest; Within twelve hours of the arrest, the member of law enforcement must get in touch with the arrestee's relative; The reason for the arrest, the name of the informant or complainant, and the name of the personnel in charge of the arrestee's custody must all be recorded in the diary. If asked, the law enforcement officer must reveal his identity. However, in practice, these guidelines are not followed. The law's vagueness and provision for arrest without warrants have made it a potent instrument for dissidents' harassment. In addition, the offense is non-bailable, making bail for the arrestee difficult to obtain. People who are arrested without a warrant on the agency's subjective satisfaction must, as a result, remain in prison for a considerable amount of time before their cases can be properly resolved by the courts.

**Section 53:** In this section, the offenses mentioned in 17, 19, 21, 22, 23, 24, 26, 27, 28, 30, 31, 32, 33 and 34 are declared to be cognizable and non-bailable.

**Section 60:** By this part, the Public authority is enabled to make rules by notice in the Authority Newspaper to do the reasons for this Demonstration. As a consequence of this, there are instances in which the Executive is granted inconsistent authority to enact laws that ought to be made without Parliament's consideration. For instance, the review of traffic data or information, its methods of collection and storage, interference, methods of review or decryption, and security and the safeguarding of stored data.

The DSA was merely an elaborate version of the ICT Act's section 57. The DSA's provisions not only violate the citizens of Bangladesh's human rights but also the Bangladeshi Constitution. Society is also impacted in a variety of ways when a situation like this occurs. People are becoming reluctant to voice their opinions and are unable to take part in demonstrations. Social welfare is disrupted because bloggers, writers, and journalists are afraid of being arrested. Without freedom of speech, democracy cannot be implemented.

### **CHAPTER III**

#### **Infringement of Fundamental Rights and Beneficiaries of the Digital Security Act of 2018**

The Digital Security Act of 2018 has served as the government's primary online suppression tool. A number of fundamental rights, including the right to free speech, are protected by Bangladesh's Constitution. The right to free speech is directly violated by the DSA's provisions. The High Court Division issued a rule in the previous year that questioned why sections 25, 31, and 32 of the DSA should not be declared illegal and unconstitutional. However, the rule has not yet been resolved. The state officials and the government itself are the primary beneficiaries of the law. As a result, the law gives the authorities permission to establish a climate of repression in which those who speak out against the establishment become the victims. Gowher Rizvi, the prime minister's international affairs adviser, admitted in an interview that the DSA has issues. said "Sadly, we have now learned that some of the wordings are very loose and vague, which leaves it open to its abuse," the prime minister's international affairs adviser, admitted in an interview that the DSA has issues.<sup>9</sup>

#### **The Constitutional framework for fundamental rights under the Constitution:-**

The preamble of Bangladesh's Constitution states that one of the fundamental goals of the state is to create a socialist society in which all citizens will have access to fundamental human rights and freedom through democratic means. It has incorporated a number of fundamental rights that are directly enforceable in court into Part III of the Constitution.

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<sup>9</sup> Meenakshi Ganguli, 'Limiting free speech undermines the fight against Covid-19' The Daily Star (Dhaka, 24 February 2021) <<https://www.thedailystar.net/opinion/news/limiting-free-speech-undermines-the-fight-against-covid-19-2050217>> accessed on 7 November 2022'



Under Article 102 of the Constitution, if any of these rights are violated, the person who was hurt can seek redress at the High Court Division of the Supreme Court.<sup>10</sup> In addition, the right to seek redress has been declared a fundamental right. As a result, the Constitution provides strict protections for fundamental rights.

Additionally, the Constitution expressly prohibits the enactment of any law that violates citizens' fundamental rights. According to Article 26 of the Constitution, the state may not enact any law that violates fundamental rights, and any such law will be null and void to the extent of such inconsistency. Consequently, the Constitution restricts the legislature's ability to enact any law by prohibiting them from violating a fundamental right.

### **The scope of the Constitutional Right to freedom of speech**

The right to freedom of speech also includes the right to discuss public affairs.<sup>11</sup> The right to criticize the government, including its defence policy and the conduct of the Armed Forces. The freedom of speech is one of the most important rights in a functioning democracy. The right to freedom of speech has been guaranteed by the Constitution of Bangladesh under reasonable restrictions.

### **Constitutionally permissible restrictions on speech freedom:-**

The right to free speech is subject to reasonable limitations and is not absolute.

According to Article 39 of the Constitution, "some grounds for the restriction can be imposed for the sake of the State's security, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement."<sup>12</sup>

According to the Indian Supreme Court, the term "reasonable restriction" means that the restriction can't be arbitrary or too much in the sense that it's more than what's necessary to impose for the sake of the public interest.<sup>13</sup> The term "reasonable" refers to a course of action that is guided by reason, and it implies thoughtful consideration and care.<sup>14</sup> As a result, the

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<sup>10</sup> Constitution of the People's Republic of Bangladesh, Article 44.

<sup>11</sup> Constitution of the People's Republic of Bangladesh, Article 39.

<sup>12</sup> Constitution of Bangladesh Article 39

<sup>13</sup> Chintaman Rao v The State of Madhya Pradesh (1950) SCR 759

<sup>14</sup> *ibid.*

legislature cannot pass a law restricting freedom of speech that is unreasonable, arbitrary, and does not serve the public interest.

When two intrusive measures are being considered, the one that is least restrictive should always be taken. A restriction must be proportionate or necessary for it to be reasonable.

### **The Digital Security Act of 2018 violates free speech:-**

According to DSA Section 8, the director general of the Digital Security Agency may request that any digital data-information that poses a threat to digital security be removed or blocked by the Bangladesh Telecommunications and Regulatory Commission (BTRC). In addition, it grants the law enforcement agency authority to request the BTRC, through its director general, to remove or block data containing information that jeopardizes the nation's solidarity, financial activities, security, defense, religious principles, public order, or incites racial animosity.

The boundaries of what constitutes a threat to Digital Security or a barrier to solidarity, Financial activities, security, defense, religious values, etc. are not outlined in the law. The Question of what constitutes a threat to digital security can only be answered by the government. The director general and law enforcement agencies have solely subjective authority to interpret these provisions. The opposing points of view run the risk of being muzzled by such subjective interpretation power. The publication of data or information that is offensive, false, or threatening in order to annoy, insult, humiliate, or denigrate a person is punishable under Section 25. Because they are broad and ambiguous, these terms can encompass a wide range of publications. In addition, the section specifies penalties for publishing information with the intention of harming the nation's image. Again, the specifics of what tarnishes the nation's image are unclear. It was considered to "undermine the image of the country" when a university lecturer criticized the deceased minister. The criticism of the minister and prime minister is effectively punished by this provision.

Section 28 also punishes hurting the people's religious feelings. Consequently, the fate of a writer is determined by something so improbable as what will hurt someone. In a country where the majority of people adhere to Islam, there is a good chance that the provision will only be used to punish statements that the majority of people believe are harmful to their religious beliefs. Additionally, this provision goes against the fundamental state principle of secularism.

Section 31 made it illegal to publish anything that would stoke animosity, hatred, or hostility between different social classes or communities, disrupt communal harmony, cause unrest or disorder, or worsen or advance the situation with law and order.

Because a wide range of activities have the potential to elicit citizen protests, this provision poses a risk. Protests, for instance, may be sparked by an investigation into government corruption. The government can easily use this section to punish the journalists in that situation.

Under Section 32 Digitally committing an offense under the Official Secrets Act of 1923 is punishable. To put it another way, it makes it illegal to secretly record any official documents. Investigative journalism faces a direct threat from this. The Official Secret Act of 1923 is a colonial law that was passed to keep the colonial rule in India going. In and of itself, the fact that such an act persists in Bangladesh's independent status is utterly scandalous. Any journalist who investigates something the government does not want investigated can be arrested at any time.

#### **Arresting without a warrant amounts to a violation of a fundamental right:-**

According to Section 43 of the DSA, if a person is suspected of committing or being accused of committing an offense under the DSA, any police officer can arrest them without a warrant. This grants the law enforcement agency enormous authority to arrest anyone they believe has committed a crime based on their own subjective opinion. The procedure for using the power to arrest without a warrant has been laid out in great detail by the Supreme Court. For instance, the police officer must immediately prepare a memorandum of arrest with the date and time of the arrest; Within twelve hours of the arrest, the member of law enforcement must get in touch with the arrestee's relative; The reason for the arrest, the name of the informant or complainant, and the name of the personnel in charge of the arrestee's custody must all be recorded in the diary. The law enforcement officer is required to reveal his identity upon request, among other things. However, these guidelines are not followed in practice. After allegedly disappearing for 53 days and being held without trial or charge for seven months, journalist Kajol was charged under the DSA. Similarly, Ahmed Kabir Kishore reportedly remained in custody for at least

60 hours before his arrest was made public. The Daily Star published a gruesome account of the torture he endured.<sup>15</sup>

### **The chilling effect on using one's right to free speech**

A chilling effect occurs when a person does not exercise his legitimate right out of fear of punishment<sup>16</sup>. This occurs when the law is too broad to cover a wide range of prohibited activities. A portion of the population, despite not being directly affected by these arrests, refrains from exercising their right to freedom of speech due to the fear generated by the provisions of the DSA, which chill those who were. For instance, Mr. Babul has been detained under the DSA for publishing an article in a blog with the ambiguous title "tarnishing the image of nation." This detention will not only prevent Mr. Babul from exercising his right to free speech, but it will also prevent others from doing so who are unaware of what would tarnish the image of the nation.

Journalists will be discouraged by the law's punishments and will steer clear of investigative journalism, which requires gathering crucial information about government corruption or other anomalies.<sup>17</sup> After an Al Jazeera report titled "The Prime Minister's Men" showed the illegal activities committed by the army chief and his brothers with direct support from the prime minister, all prominent media self-censored and refrained from publishing any news on the report.<sup>18</sup> In an editorial, Mahfuz Anam, the Editor-in-Chief of The Daily Star, stated that "If we were a free media today, we would have delved deeper into the widely-talked-about Al Jazeera report and investigate it properly."<sup>19</sup>

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<sup>15</sup> Zyma Islam, 'Scars of torture all over him' The Daily Star (Dhaka, 5 March 2021) <<https://www.thedailystar.net/frontpage/news/scars-torture-all-over-him-2055265>> accessed on 15 November 2022.

<sup>16</sup> Rónan Ó Fathaigh, 'Freedom of Expression and the Chilling effect' (Human Rights Centre) <<https://hrc.ugent.be/research/freedom-of-expression-and-the-chilling-effect>> accessed on 20 November 2022

<sup>17</sup> Md Aliur Rahman and Harun-Or-Rashid, 'Digital Security Act and Investigative Journalism in Bangladesh: A Critical Analysis' (2020) 2(2) CenRaPS Journal of Social Sciences 216, 229.

<sup>18</sup> Faisal' Mahmud, 'Why Bangladesh's mainstream media has been silent on explosive charges in new Al Jazeera documentary' Scroll.in (India, 7 February 2021) < <https://scroll.in/article/986149/why-bangladeshs-mainstream-media-has-been-silent-on-explosive-charges-in-new-al-jazeera-documentary>> accessed on 20 November 2022.

<sup>19</sup> Mahfuz Anam, 'Column by Mahfuz Anam: Al Jazeera story, government's response and the state of our journalism' The Daily Star (Dhaka, 7 February 2021) < <https://www.thedailystar.net/opinion/the-third-view/news/column-mahfuz-anam-al-jazeera-story-governments-response-and-the-state-our-journalism->

The DSA's extensive provisions go well beyond the constitutionally permissible restrictions on free speech. The DSA has been used by the government to silence opposition and maintain its power. The time has come for the government to recognize the DSA's problematic provisions and repeal them.

## CHAPTER IV

### Analysis of the Digital Security Act through cases

In the case of *Dewan Abdul Kader v. Bangladesh*, the Supreme Court of Bangladesh ruled that "[the] right to express one's own opinion absolutely freely by spoken words, writing, printing, or in any other manner which may be open to the eyes and ears" was a fundamental right. Therefore, it encompasses the expression of one's thoughts on any subject through any means, including gestures, postures, banners, and signs. We believe that this freedom is broad enough to allow for both the expression of one's own original ideas and one's opinion in the form of comments, explanations, annotations, solutions, and questions regarding the ideas of others.<sup>20</sup>

In the case of *Blast v. Bangladesh*, the Supreme Court noted that the concepts of substantive and procedural due process have been incorporated into the Constitution by articles 31 and 32.140 It also ruled that a law must be reasonably certain or predictable in order to be valid.<sup>21</sup>

In the case of *Ahmed Kabir Kishore and others vs Bangladesh* case was filed under the DSA against the duo and nine others with Raman police station on charges of spreading anti-state falsehood to tarnish the image of Bangladesh and create confusion from a Facebook page. Later, court sent Kishore and Mushtaq to jail under the case.<sup>22</sup>

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[2039401](#)> accessed 23 November 2022.

<sup>20</sup> *Dewan Abdul Kader v Bangladesh* (1994) 46 DLR 596

<sup>21</sup> *Bangladesh v Bangladesh Legal Aid and Services Trust* (2016) 8 SCOB 1.

<sup>22</sup> "Digital Security Act: A Tool for Harassment" (*Dhaka Tribune - Current & Breaking News Bangladesh & World* July 19, 2022)  
<<https://www.dhakatribune.com/bangladesh/2022/07/19/digital-security-act-a-tool-for-harassment>> accessed November 20, 2022

Due to the DSA case, former SP Babul send to jailed. On September 27, 2020, Banaj Kumar Majumder filed the case with the Dhanmandi Police Station in the capital under the Digital Security Act and the Special Powers Act against Babul akhter. The order was made by Dhaka Metropolitan Magistrate Mamunur Rashid after the police brought Babul to the court on Friday after the end of his one-day remand in the case, and the case's investigation officer pleaded to keep him behind bars until the investigation was finished.<sup>23</sup>

The Bangladeshi DSA has the potential to restrict and restrict freedom of expression. The citizens of Bangladesh's right to domestic freedom of expression is being violated by the government. Society is also impacted in numerous ways when a situation like this occurs. People are becoming reluctant to voice their opinions and are unable to take part in demonstrations. Social welfare is disrupted because bloggers, writers, and journalists are afraid of being arrested. Democracy cannot be implemented without speech freedom.

## **CHAPTER V**

### **Conclusion**

In this digital age, it is critical to ensure that safeguards for online safety are in place, the provisions regarding secure digital signatures, hacking, and other topics. Even though the DSA's contentious provisions are frequently discussed, there are also some essential provisions. The provisions regarding secure digital signatures, hacking, and other topics. Beneficial provisions are frequently overlooked due to the sheer importance placed on controversial provisions. The majority of the DSA's penal provisions target criticism of the government. As a result, it is abundantly clear that the government's sole purpose in enacting

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<sup>23</sup> ibid

the DSA was to develop a weapon to silence critics. To get the necessary advantage some provisions can be recommended in the DSA act.

## **RECOMMENDATIONS**

The following recommendations can be proved Effective:-

1. To meet the demands of the digital age, the government ought to completely eliminate the DSA. The government need to amend this act newly but more specifically.
2. A more precise definition of crime should be added, and the act's broad provisions regarding tarnishment of the state's image should be repealed. In this regard, the government has the power to rule.
3. The provisions pertaining to libel, deterioration of law and order, and other issues. should be used instead of the current provisions of the penal code. Digital evidence can be accepted by the government through an amendment to the Evidence Act.
4. Experts with sufficient guidance on the types of content that should be filtered should be given the authority to filter any online content.
5. The DSA allow the police to make arrests without a warrant. It is time to abolish this authority to arrest without a warrant.
6. Infractions ought to be bailable, and the provisions of the Criminal Procedure Code pertaining to bail ought to be strictly adhered to, particularly in lower courts.

## **Concluding Remarks**

The arrangements of the DSA are likewise excessively expansive to incorporate an extensive variety of articulation inside it. This straightforwardly clashes with article 39 of the Constitution which accommodates the opportunity of articulation of the resident for certain allowable limitations. The arrangements of the DSA go past the limits of allowable limitations set up by the Constitution. In addition, they do not permit analysis of the public authority which is a fundamental component of any vote based system. Indeed it does not permit analysis of religion which conflicts with the common order of the Constitution. It is likewise a colossal boundary to news coverage all in all and analytical reporting specifically. The public authority has been utilizing DSA generally as a device for irritating its faultfinders. The arrangements for capturing without a warrant and non-bailable nature of the offenses have empowered the government to transform this regulation into such a device. Utilizing this regulation, the

policing can capture anybody for composing anything under the DSA. From there on, the arrestee should remain in jail for quite a while since getting bail becomes troublesome. Besides, the expansive arrangements of the DSA empower the policing to capture anybody who censures the public authority. The law, hence, has made an air of dread among the residents in Bangladesh. Albeit the disputable arrangements of the DSA are frequently talked about, there are a few important arrangements too. In this advanced time, it is vital to guarantee that there are arrangements set up to guarantee security on the web. the arrangements in regards to hacking, secure computerized signature and so forth. Because of the sheer significance given to the disputable arrangements, the gainful arrangements are much of the time neglected. DSA generally contains the correctional arrangements coordinated against the analysis of the public authority. Consequently, it is express that the public authority's only goal in establishing the DSA was to make a weapon to smother the pundits. We must eliminate the DSA entirely in order to address this issue and meet the demands of the digital age. The government must amend this act in a new and more specific way.

The act's broad provisions regarding tarnishment of the state's image should be repealed and a more precise definition of crime should be added. The government has the authority to rule in this regard. libel, deterioration of law and order, and other provisions should be used in place of the penal code's current provisions. Through an amendment to the Evidence Act, the government can accept digital evidence. Any online content should be filtered by experts who are well-versed in the types of content that should be filtered. Police are permitted to make arrests without a warrant under the DSA. This authority to arrest without a warrant needs to be abolished. Infractions should be bailable, and the Criminal Procedure Code's bail rules should be strictly followed, especially in lower courts.

Section 21, 25, 28, 31 and 32 of DSA are illegal and go straightforwardly against the principal privileges ensured in the Constitution. The presence of such regulation is an absolute opposite to a majority rules government and the right to speak freely of discourse. As the watchman of the Constitution, the High Court of Bangladesh ought to do whatever it takes to guarantee that Constitutionalism is continued in the country. As of now, a writ has been documented inquiring as to why segment 25, 31 of DSA inquiring as to why they shouldn't be announced unlawful and illegal. The writ is yet to be discarded. It is normal that the High Court will find positive ways to guarantee the activity of essential squarely in the country. In addition, the public authority ought to likewise be aware to the Constitution and the the right to speak freely of discourse of the residents. The common freedoms associations from home and abroad ought to



stand up more in such manner and convince the public authority to cancel the unlawful part of the DSA.

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