



BANGLADESH: Freedom of Opinion and Expression and Sustainable Development

Since assuming power in 2009, the Awami League government has consistently enacted and amended various repressive laws and imposed them to interfere with citizens' freedom of expression. Draconian laws like the Digital Security Act-2018, the Information and Communication Technology Act-2006 (Amended in 2009 & 2013), the Anti-Terrorism Act-2009, and the Special Powers Act-1974, are being consistently abused to curb such freedoms, both online and offline. The incumbent government is also using state institutions, including the National Human Rights Commission, the judiciary and law enforcement to implement its political agenda and suppress dissenting voices.

In Bangladesh, the media and flow of information are severely controlled by the government and independent/ neutral media are under pressure and practice self-censorship. Social media has also been brought under extensive surveillance. The 2018 Digital Security Act (DSA) is used against citizens to curb freedom of expression, and suppress dissent on social media, websites and other digital platforms. Journalists, human rights activists, dissidents, opposition political activists and even ordinary citizens have been booked under the Act and arrested and jailed for writing/liking/sharing posts on social media, criticising the government's inactions, corruption of public officials and people related to the ruling party. The authorities state that such persons have made false, offensive, derogatory or defamatory statements online. More than 1,700 cases have been filed under the DSA in the last four years. 36 percent of the cases are filed against critics of the government, the Prime Minister, the law enforcement agencies, the ruling party and the party leaders and activists, and for making 'derogatory remarks and propaganda'.

According to Odhikar documentation, in 2022, a total of 71 people were arrested under the Digital Security Act, 2018. Among them, 62 were arrested for online posts/comments criticizing the Prime Minister, high-ranking persons of the government and/or their family members and for making 'anti-government' comments; and nine persons were arrested for posting 'provocative' religious comments.¹ Former UN High Commissioner for Human Rights, Michelle Bachelet, expressed during her visit to Bangladesh in August 2022, that how successive UN human rights reports have documented a narrowing civic space, increased surveillance, intimidation and reprisals against human rights defenders and journalists. Furthermore, laws and policies over-regulating media and broadly restricting the freedom of expression have made it difficult for them to function effectively.²

On 4 November 2022, Netra News reported a [takedown attempt](#) involving the YouTube channel of writer, blogger and online activist Pinaki Bhattacharya. On 26 October, YouTube contacted Pinaki and informed him that it had received a takedown request from a website called Bangla News Bank. Earlier on 15 October, the Counter Terrorism and Transnational Crime (CTTC) unit of Dhaka Metropolitan Police filed a case under the DSA with Ramna

¹ Annual Human Rights Report-2022 on Bangladesh, Odhikar; <https://odhikar.org/bangladesh-annual-human-rights-report-2022-2/>

² <https://www.ohchr.org/en/statements/2022/08/un-high-commissioner-human-rights-michelle-bachelet-concludes-her-official-visit>

Police Station, accusing three people, including Pinaki Bhattacharya, of conspiring to malign the image of the state.³ On 17 November, the Detective Branch of Police arrested Nahid Islam, an activist of Manikganj Municipality unit Swechchasebak Dal⁴, on charges of caricaturing the Prime Minister's picture and posting various anti-government posts on his Facebook.⁵

Family members of expatriate critics of the Bangladesh government are being targeted in the country while the Ministry of Home Affairs has sent a list of critics to Bangladesh missions where the expatriates are living, in order to bring them under legal action. On 13 September 2022, the Detective Branch of the Police, in Noakhali District, arrested Nur Alam Chowdhury Pervez, brother of Shamsul Alam Liton, editor of the privately owned United Kingdom-based Weekly Surma newspaper. The police accused Liton of spreading anti-government propaganda on social media platforms and allege that Pervez conspired with Liton to create "confusion and agitation" among the public.⁶ The Bangladesh Telecommunication Regulatory Commission (BTRC) has developed a new draft policy titled "Bangladesh Telecommunication Regulatory Commission Regulation 2021" to regulate digital, social media, and OTT platforms.⁷ There are Bangladeshi citizens living abroad who also run online media that publish 'anti-government' news. Members of law enforcement agencies have harassed and arrested relatives of such individuals living in Bangladesh.⁸

Bangladesh has committed to ensure public access to information and protect fundamental freedoms, which is affirmed under the Sustainable Development Goal (SDG) 16.10. SDG 16.10's goal is to ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements. Implementation of SDG 16.10 is an uphill task for the government as the indicators to measure SDG 16.10 have been firmly ignored due to lack of implementation of laws and policy, and the dysfunctionality of the justice administration, policing and investigating mechanisms. None of the verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, trade unionists and human rights advocates, in recent years have been investigated or prosecuted. It is to be noted that investigation into the 2012 murder of journalist couple Sagar Sarwar and Meherun Runi is yet to be completed.⁹ While expressing concern about the lack of justice for the murder of journalists in Bangladesh, UN human rights experts said that an appalling and pervasive culture of impunity exists in Bangladesh.¹⁰

The government passed the Right to Information (RTI) Act, 2009 in recognition of the people's right to information as an inalienable part of the constitutional right to freedom of thought, conscience and speech. However, the effectiveness of the RTI Act has been questioned over the years. Studies have pointed to shortcomings in terms of the legal framework as well as extra-legal factors such as the culture of secrecy, fear and red-tapism as reasons behind the slow progress in its implementation.¹¹

³ New Age, 18 November 2022; <https://www.newagebd.net/article/186790/>

⁴ Voluntary wing of BNP

⁵ Dhaka Tribune, 18 November 2022; <https://www.dhakatribune.com/bangladesh/2022/11/18/swechchasebak-dal-man-arrested-for-posting-distorted-picture-of-pm-hasina>

⁶ New Age, 15 September 2022; <https://www.newagebd.net/article/181101/govt-targets-families-of-expat-critics>

⁷ Similar to the Digital Security Act, this regulation prohibits any content that "creates disturbance or disorder or tends to aggravate or worsen the law and order situation" or is "offensive, false or threatening and defamatory or insulting to a person". This will severely curtail freedom of speech and thereby bring private service providers under scrutiny. Under the BTRC Act 2001, private service providers who violate this policy can be fined up to Tk 3 billion and punished up to 5 years imprisonment.

⁸ New Age, 10 September 2022; <https://www.newagebd.net/article/180735/>

⁹ The Daily Star, 5 January 2023; <https://www.thedailystar.net/news/bangladesh/crime-justice/news/sagar-runi-murder-case-investigators-fail-submit-probe-report-95th-time-3212921>

¹⁰ New Age, 12 February 2022; <https://www.newagebd.net/article/162522/un-experts-concerned-over-impunity-for-killings-of-sagar-runi>

¹¹ The Daily Star, 28 September 2020; <https://www.thedailystar.net/opinion/news/challenges-making-the-right-information-act-effective-1968513>

The Information Commission is another institutional mechanism has been established under the RTI Act. The Commission is responsible for overseeing the compliance with the RTI Act, 2009 educating people about their rights and resolving disputes regarding information disclosure. Though the Commission is said to be a statutory independent body, in practice it cannot exercise its functions independently due to influence of the government. It is evident that the government intends to have control over the Commission's formation of a five-member 'Selection Panel' designed to choose the members of the Commission. The government has direct control over three of the five members of the selection panel, according to the RTI Act. There is, therefore, hardly any scope for independent people, politically or intellectually, to be members of the 'independent' Information Commission.

Independent media outlets and journalists face several challenges and threats, while accessing public information or reporting on or criticising government's policies. Lack of access to information, harassment and persecution amongst the most common challenges that they face. Furthermore, journalists in Bangladesh are currently working in an atmosphere of insecurity due to the legal barrier and digital surveillance journalists are being closely monitored at the national to district level, which is hampering investigative journalism. In 2021, Rozina Islam, Senior Reporter of the daily Prothom Alo went to the Ministry of Health to collect information on looting and corruption in the health sector amid the Covid-19 pandemic, where she was confined in the room of the Health Secretary's Private Secretary for about six hours and where she reportedly suffered physical and mental harassment by Health Ministry officials. Later a case was filed against Rozina Islam at Shahbagh Police Station under Section 379 of the Penal Code, 1860 and Sections 3 and 5 of the Official Secrets Act, 1923.¹² Since then, Rozina has been facing charges of up to 14 years in prison or even the death penalty. She was granted bail almost a week after her arrest.¹³ She is still being harassed.¹⁴ Earlier in July 2022, the police submitted its investigation report to the Dhaka Chief Metropolitan Magistrate Court dropping charges against journalist Rozina Islam.¹⁵

On 23 January 2023 at around 11:30am, two men in plain clothes identified themselves as members of the law enforcement agency and asked journalist Raghunath Kha to get off his motorcycle at the three-road intersection of Sultanpur Barabazar in Satkhira District. Seven hours after he was picked up, two cases were filed against him on charges of carrying explosives and extortion. After being released on bail on 29 January, Raghunath Kha alleged that he was blindfolded, tortured, and electrocuted in police custody.¹⁶ Apart from arbitrary detentions, random arrests, enforced disappearances, torture, intimidation, and harassment of independent journalists while carrying out their professional duties are common.

Investigative journalism is now in a state of extinction. Ironically, in 2011 the Parliament passed the Public Interest Information Disclosure (Provide Protection) Act (popularly referred as the Whistleblower Protection Act) to guarantee legal protection to the whistleblowers. Even though the principal aim of this law is to ensure safeguards to the whistleblowers, journalists are also eligible to take advantage of this legislation for their professional purposes. Regrettably, more than a decade after the enactment of this law, people know very little about it.

¹² Dhaka Tribune, 17 May 2021; <https://archive.dhakatribune.com/bangladesh/dhaka/2021/05/17/prothom-alo-journo-handed-over-to-police-by-health-ministry>

¹³ The daily Prothom Alo, 23 May 2021, <https://en.prothomalo.com/bangladesh/journalist-rozinas-bail-what-transpired-in-court>

¹⁴ New Age, 23 January 2023; <https://www.newagebd.net/article/192454/further-investigation-into-case-against-journalist-rozina-ordered>

¹⁵ New Age, 27 October 2022; <https://www.newagebd.net/article/184770/police-drop-charges-against-journalist-rozina>

¹⁶ New Age, 29 January 2023; <https://www.newagebd.net/article/193035/journalist-raghunath-alleges-torture-in-custody>

Moreover, the Digital Security Act (DSA) 2018 and the Official Secrets Act (OSA) 1923 have provisions that are contradictory to the Right to Information Act and the Whistleblower Protection Act. The OSA, and the DSA not only create obstacles for journalism but also violate statutory rights of the citizens to get information while disregarding the constitutional spirit to uphold the freedom of press.¹⁷

According to Odhikar, in 2022, two journalists were killed, 103 were injured, 37 were assaulted, 15 were attacked, five were arrested, 21 were threatened and nine journalists were sued for carrying out their professional duty. In a report published on World Press Freedom Day in 2022, Reporters Without Borders (RSF) said that Bangladesh has fallen 10 steps in the [World Press Freedom Index 2022](#) compared to last year. Bangladesh ranks 162 out of 180 countries in the index with a score of 36.63.¹⁸ Despite the low ranking in the WPF Index, the government is amending the Press Council Act to further harm independent media and journalists. On 20 June 2022, the Cabinet gave its approval to the draft Press Council (Amendment) Act-2022, adding the provision of monetary penalty against journalists for ‘false reporting’.¹⁹ Earlier, the Press Council could only reprimand journalists for their offenses under the Press Council Act. If it is passed in Parliament, the Press Council will also have the power to impose a fine.

It is not only journalists who are targeted. Media activists and human rights defenders have been persecuted for being vocal against human rights violations. Odhikar’s Secretary and Director are currently facing trial at the Cyber Tribunal of Dhaka for publishing reports on extrajudicial killings, enforced disappearances and torture. Furthermore, the government has cancelled the registration of Odhikar for documenting human rights violations in the country, and for working closely with the United Nations and international rights groups.²⁰

Most recently, the government drafted a Data Protection Act (DPA), 2022 to protect information, saying it would restrict the unauthorised use of personal information for commercial purposes. However due to the ambiguity of the provisions of the draft law, lack of proper definition, including no definition of ‘personal data’, and the absolute power given to the ‘Digital Security Agency’ mentioned therein, it has been alleged that the draft law will also be used to repress. The proposed Data Protection Act states that it will have precedence over all existing laws thereby having an overriding effect on Bangladesh’s Right to Information Act, 2009, which is a key instrument that protects people’s right to information. The law, if enacted, will create the risk of administrative and governmental control over information in the name of protecting personal data. The Director General of the Digital Security Agency has been given unlimited and absolute power under the law. The draft law does not include provisions for going to court or seeking legal redress against the use or abuse of this unlimited power. According to the Section 33 and Section 34 of the proposed Act, the government can exempt any Data Controller or data processing activities from the obligations under the DPA. Section 66 provides broad immunity to the Director General and the staff, controllers, processors, and retainers of the Data Protection Office from criminal and civil liability for activities done ‘in good faith’.²¹ Article 43(b) of the Constitution of Bangladesh recognizes the right to privacy

¹⁷ The Daily Star, 25 May 2022; <https://www.thedailystar.net/law-our-rights/news/the-legal-protection-whistleblowers-2098373>

¹⁸ New Age, 4 May 2022; <https://www.newagebd.net/article/169596/bangladesh-slips-10-notch-in-rsf-press-freedom-index>

¹⁹ The Daily Star, <https://www.thedailystar.net/news/bangladesh/news/cabinet-approves-press-council-amendment-act-22-draft-principle-3052016>

²⁰ Aljazeera, 8 June 2022; <https://www.aljazeera.com/news/2022/6/8/bangladesh-scrapping-rights-groups-licence-a-chilling-message>

²¹ Dhaka Tribune, 11 May 2022; <https://www.dhakatribune.com/bangladesh/2022/05/11/data-protection-act-protecting-privacy-or-surveilling-citizens> . Incidentally, the DSA has a similar ‘immunity’ section.

of personal data, but the proposed DPA, omits this provision. Such law is in conflict with the right to privacy, as enshrined in the ICCPR and the Constitution of Bangladesh.

Recommendations:

Under these terrible circumstances, Odhikar calls on the Special Rapporteur on Freedom of Opinion and Expression to:

1. Compel the Bangladesh government to end the crackdown on people's right to freedom of expression, cease interference with media and repeal the repressive laws and policies that restrict freedom opinion and expression.
2. Compel the Bangladeshi authorities to adopt and/or amend laws and policies where applicable in compliance with international human rights law and standards.
3. Take immediate and appropriate measures to ask Bangladesh government to release everyone arrested under the controversial and repressive DSA and ICT Act for exercising their rights to freedom of expression and opinion.
4. Ask the government withdraw all targeted ban on media and the false cases filed against journalists and human rights defenders and to impartially investigate incidents of attacks on them and meet the ends of justice.