

Digital Security Act 2018: From the Lens of Investigative Journalism and Freedom of Speech

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Abstract

The world is converging as a result of technological evolution and integration. The new digital era is emphatically influencing and transforming human lives. The staggering growth in technology has many implications; at one side it brings blessings for the general mass while on the other it makes individuals' life a hex due to its misappropriation. To safeguard individuals from the realm of digital transgression and to ensure individuals right to privacy, the government of Bangladesh enacted Digital Security Act in 2018. The act has both affirmative and antithetical connotations by supporting penalisation for digital offences conversely barring investigative journalism and freedom of speech. The present paper is the reflection of the findings congregated from the systematic assessment of the secondary sources. It focuses on the limitations and challenges of the Digital Security Act 2018 by particularly seeing it from the lens of investigative journalism and freedom of expression. Moreover, it also tries to shed light on whether the act has aberrated from its sole purpose that is to ensure security of individual presence in the digital platform. Also, the article manifests the need for an incontrovertible digital security law for the welfare of the citizens.

Key Words: Digital Security, Cyber Security, Investigative Journalism, Freedom of Speech and Expression

1. Introduction

The augmentation of information and technology has not only created unprecedented technological growth and exposure but also has created

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unparalleled problems in the digital platform. Digitization has two contrasting facets just like a coin has two sides. That is, the more the country will be digitized exponentially the higher will be the risk of cyberspace menaces and assaults. Digital bridge of security has become an imperative issue due to infringement of personal information, data and identity in the cyberspace. Cyberspace has now become an avenue of antagonism, intimidation, and intrusion thus igniting the vulnerability of the online users. Organizations and individuals irrespective of their status and prominence are becoming the victims of cyber-attacks and online bullying thus fabricating a culture of aversion and ignominy. Besides, the digital platforms or electronic media have navigated different offences like hacking, defamation, illegal access, defilement, phishing, propaganda, forgery, terrorism and sedition. Digital security is thereby important with the intent that cyberspace remain implacable and secured from the fist of nefarious third party. In Bangladesh cyber laws have been enacted to provide legal protection to the online users and to litigate cyber-crimes such as Cyber Tribunal Act, 2006, Information and Communications Technology (ICT) Act, 2006 and Digital Security Act 2018 (DSA). Expressly, Digital Security Act 2018 covers most of these offences. It works for the identification, prevention, and suppression of these offences in online media (Digital Security Act, 2018). Thus, Digital Security Act 2018 an antecedence of ICT act 2006 has been validated as a tool to fight felonious act transpire in the digital platform.

The focal point of the paper is to provide an outline of the basic difference between cyber security and digital security. The paper also highlights the major gaps in the digital security act. Besides, it also exhibits the threats the digital security act posed on investigative journalism and freedom of expression. It also provides few propositions to make the digital security act widely accepted.

2. Methodology

This paper is predominantly based on content analysis and primarily focuses on drawing inferences from in-depth analysis of secondary sources such as journals, articles and newspaper articles. This paper does not intend to create new knowledge but to provide an explicit insight on Digital Security Act 2018. The information generated from secondary sources of data will not only provide comprehensive understanding of the act but will also demonstrate its limitations in the way of practicing investigative journalism and freedom of expression.

3. Digital Security vs Cyber Security

Some scholars argue that cyber security and digital security can be used interchangeably as the usage of the terms are more context specific. However,

contradiction of opinions in the application of the two terms have been observed in many literatures. Cyber security is a holistic approach to protect the complete infrastructure including networks, systems along with digital modules and data from any unauthorized ingress. According to Cybersecurity and Infrastructure Security Agency (CISA) (2019), “*Cybersecurity is the art of protecting networks, devices, and data from unauthorized access or criminal use and the practice of ensuring confidentiality, integrity, and availability of information*”. Cyber-security has become a global issue due to penetration and diffusion of new, advanced and complex technologies and these new technologies thus create ambiguous repercussions by ushering unprecedented risks in the system. According to the report of Bangladesh e-government Computer Incident Response Team (BGD e-GOV CIRT) (2021), Bangladesh ranked 29th in the list of cyber threats vulnerability as the country is more exposed to spam (unsolicited email), ransomware (hacking) and phishing (scams) menaces.

In cyberspace, digital information can easily be infiltrated, filched and altered thus causing personal injury (Mitra, 2010). Digital security is not cyber security but a subset of cyber security with a purpose to safeguard the personal information or assets. In short, the scope of Cyber Security is broader than Digital security as it encompasses all kinds of digital security however both fall under the ambit of information security (OECD, 2015).

Table 1: Checklist for Cyber Security and Digital Security

	Cyber Security	Digital Security
Ensures security of various digital components or devices	√	√
Help to secure various information or data	√	√
Help to secure networks and servers	√	X
Help to secure computer and electronic systems (such as protection from malware, ransomware etc)	√	X

So, from the above table it is clear that theoretically cyber security covers more domains in comparison to digital security. Digital Security does not purely cover all the technical aspects as does cyber security. Cyber security provides safeguard to overall infrastructure, information, system and networks whereas digital security predominantly provides security of information infrastructure from any unauthorized access through the means of digital system. However, with the passage of time the distinction between cyber security and digital

security has become obscure as the term digital security most frequently used in lieu of cyber security in political agendas and campaigns. Many are of the views that cyber security and digital security are the different prefixes bearing the same connotation. Nevertheless, for a sound digital infrastructure cyber security is a precondition.

According to Digital Bangladesh Report (2022), the number of internet users and social media users in Bangladesh soared by 5.5 million and 4.6 million respectively between the year 2021-2022.

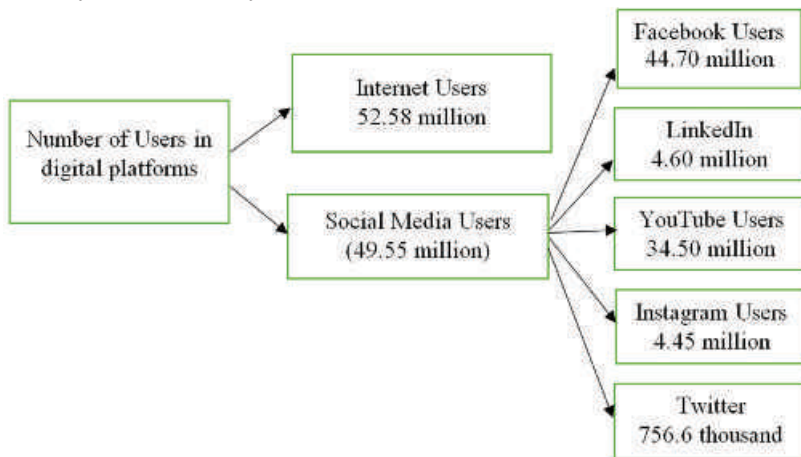


Figure 1: Number of Internet and Social Media Users from 2021-2022

[Source: The Digital Bangladesh Report (2022), Retrieved from: <https://datareportal.com/reports/digital-2022-bangladesh>]

The colossal number of internet and social media users have bolstered the horizon of accessibility into one's personal domain so data privacy has become imperative now-a-days. Besides, the electronic mediums are exposed to number of susceptibilities and threats which need counter measures like digital security (Tabassum et al., 2019). Fundamentally, digital security has become a prerequisite to regulate information explosion and contents in the digital platform.

4. Digital Security Act 2018: Pros and Cons

The perennial rise in cyber-crimes creates an urge for the enactment of Digital Security Act in Bangladesh. As such Digital Security Act was enacted in 2018 as an instrument to guarantee cyber security and to regulate and curb cyber-crimes which may frustrate national order and sentiments on digital space. However, many obscure provisions in the act have created a massive outrage

among the general mass. The draconian section 57 of ICT Act 2006 which was scrapped earlier has been accommodated in Digital Security Act 2018 by keeping the earliest provision of the section unimpaired. The act consists of plethora of chapters and sections. It has 9 chapters and 62 sections. The most contentious provisions of the act are 8, 21, 25, 28, 29, 31, 32, 43 and 53 as these provisions received highest criticisms by the human rights bodies, social media activists, journalists' associations, media personalities, opposition parties and international organisations. These provisions of the act are the death knell for freedom of expression and have the scope for being exploited on many grounds. The following provides the elaborate discussion on the aforementioned sections of the act and by analysing the various media and research reports it has been found that these sections are the most used sections of the act as the highest number of accused were indicted under these sections.

Section 8 grant power to Director General with the assistance of BTRC to block and remove information and data published or circulated in digital platform which has the potency to induce communal animosity, mar religious beliefs, restrain concord, rattle economic activities and security and turmoil law and order situation. The ambiguous and irrelevant terms mentioned in this section are not distinctly defined which create scope for blocking or removing any content thus stymieing freedom of media and expression.

Section 21 cover illicit propaganda or campaign against the Liberation War of Bangladesh, hurting the spirit of the war, Father of the Nation, National Anthem and National Flag (Digital Security Act, 2018). This provision is very vague and impose content-based restrictions. Thereby, such vagueness creates leverage for the government to apprehend individuals for vilifying the spirit of Liberation War. However, this provision acknowledges the true spirit of liberation war and upholds the basic structure, fundamental values and philosophy of Bangladesh Constitution.

Section 25 addresses offences like defaming, mortifying or maligning a person reputation, tarnishing the image of the state or country by transmitting, publishing or propagating offensive or falsified information. The terminology used in this section are not broadly defined thus encourage law enforcing agencies to misapprehend it. Besides, it puts bar on investigative journalism which seek to discern cases of corruption and malpractices of national level government or influential individuals who may feel defamed or mortified by such report. According to the report of Centre for Governance Studies (2022) a total of 890 cases were filed between the year 2020 and 2022. Of them 98 were filed for defaming prime minister, 51 for defaming ministers and 75 for defaming political leaders of the ruling party. In November, 2022 the general

secretary of the Jatiyatabadi Mohila Dal was arrested for making libellous comments about the Prime Minister on Facebook (Financial Express, 2022). In the year 2022, Pinaki Bhattacharya an expatriate writer and social media activist was sued for posting and spreading misleading information and photos of Bangladesh Police, Father of the Nation and Prime Minister on Facebook thus instigating cynicism against the state (Prothom Alo, 2022).

Section 28 consider broadcasting and publishing information in electronic media to hurt religious sentiments as a punishable offence. This is a very sensitive provision in a country where religious bigotry still persists. It prohibits criticisms and investigations of illegal fatwa by local religious leaders by claiming that notions have 'injured the religious sentiments'. However, this section has a positive overtone as it can be a tool to stop Islamophobic campaigns, blasphemy and making derogatory remarks and bashing other religions on social media. In the year 2020, Baul singer Rita Dewan along with the owners of a YouTube channel were sued under this section for hurting the religious sentiments of Muslim community by making derogatory remarks about Almighty Allah while performing at a '*pala* song' event and circulating the video of the event through the YouTube channel (The Daily Star, 2020a).

Section 29 consider publication, transmission, etc. of defamatory information in digital platform as a criminal offence. This provision also creates obstruction on free spirited writings and press freedom. However, it provides a legal remedy against illegal defamation. Nonetheless, this section contravenes with the content mentioned in section 25. In 2022, a 17-year-old student of Jagannath University was arrested for violating sections 25, 29, 31 and 35 by hosting a webinar on Facebook where a retired major army officer invited as guest speaker made antagonistic opinion about the government and soon the video become viral and circulated via Facebook and YouTube (Islam & Bappi, 2022).

Section 31 expresses penalty for publishing or transmitting anything in digital platform which results in degradation of law-and-order situation and communal harmony and generate communal hatred or enmity (Digital Security Act, 2018). It is to be said that communal hatred is not always a by-product of social media content or hate speech or communally offensive posts in social media rather it is a deep-rooted social issue. The fuzziness of the provision can instigate illegal or whimsical detention of individuals for their pragmatic protest on social media platforms by citing it as a breach of communal harmony. This certainly blocks freedom of expression and gag media reporting. However, on a positive note it can aid communal riots or genocide on minorities propagated through social media. The misuse of this section has been observed in a recent

controversial case filed against a 14-year-old Hindu student in Faridpur by a local journalist. The case received wide range of media coverage as the student was accused under 28 and 31 sections of the act for hurting religious sentiments and propagating communal hatred. He was accused for creating visually disturbance content and connotations and for circulating prejudicial post on Eid-ul-Azha though Facebook. However, later inconsistencies were found in filing the case and the case seems to be self-perpetuated, intentional and systematic driven communal hatred to victimized a certain community (Salekin, 2022).

Section 32 asserts punishment for breaching secrecy of Government by digital means. It is a controversial provision as government can put bar on right to information about government affairs on the pretext of terming it as secret which limits transparency and accountability. Moreover, it makes investigative journalism non-viable as it debars journalist from accessing official information and records without official authorisation (Aziz, 2021). The investigation of corruption can face impediment if government places restriction on accessibility of public documents under this section by labelling it as ‘Encroaching Government Secret’. Ain O Salish Kendra and Editors’ Council expressed their concern over section 32 as it will encourage self-censorship and will wane open journalism (Prothom Alo, 2018; The Financial Express, 2018).

Section 43 has granted inexhaustible power to law enforcing agencies to search and arrest anybody, to search and enter any place, and to confiscate computer, devices, data or other materials without warrant. This is one of the darkest provisions of the act as it encourages arbitrary detention and violates basic fundamental rights of the accused guaranteed by Article 33 of Bangladesh Constitution. Subsequently, the provision creates a sense of insecurity and fear not only for the reporters, bloggers but also for the whole online media activists. Moreover, it permits law enforcement agencies to intrude personal information and space thus breaching right to privacy. The provision is also contradictory with section 17 of the International Covenant on Civil and Political Right (ICCPR) which guaranteed right to privacy (ICCPR, 1966). As Bangladesh is one of the state members of the covenant the insertion of such provision has to be in accordance with the provision of the treaty. Amnesty International expressed that Digital Security violates the treaty of International Covenant on Civil and Political Right (ICCPR) (Amnesty International, 2020).

Section 53 is related to the offences that are cognizable and non-bailable. About 14 offences have been marked as non-bailable and cognizable which is an infringement of human rights as it violates Article 28(1) of the

constitution which guarantees equality before law and equal protection of law. The punishment defined in this section are extensive compared to the intensity of the offences. Besides, the provision is repressive and detrimental for investigative journalism and freedom of expression.

From the above discussion it can be said that there are certain sections of the Act which is creating bar on free speech and investigative journalism

5. Digital Security Act and Freedom of Speech

Now-a-days digital platforms have become a dominant power hub to aid or contradict the activities of the government. In recent times digital platforms acted as a catalyst behind the formation of organised network group who are culpable to spur vehement demonstrations, for instance, Shahbagh movement for trial and retribution of war-criminal is a glaring example behind the growth of online activism (The Daily Star, 2015). Besides, online platforms have been severely misused for the deliberate spread of religious propaganda. The incident to be mentioned here is the Ramu violence which took place in the year 2012 perpetuated through Facebook. Thus, Digital Security has become imperative to ensure licit safeguard against cyber-crimes. Notwithstanding, the Digital security Act 2018 is under relentless scrutiny and severe backlash as it unduly represses freedom of expression and media freedom in the name of averting offences and revoking rumours. The freedom of speech and expression and the freedom of press is one of the fundamental human rights guarantees by Article 39(2) of Bangladesh Constitution.

In the opinion of MacBride (1980), there is no alternative to freedom of expression though existence of such freedom doesn't guarantee citizen's right of freedom if freedom of association, freedom to assemble, and freedom to join trade unions remain non-existence. Subsequently, in the transitional society the media has widened its scope irrespective of print media the online media has taken a predominant place where users can frequently access information and express proposition. The freedom of expression is an apparatus to achieve democracy and mass media or social media is the means to achieve this freedom (Habiba et al., 2017).

According to Article 19 of Universal Declaration of Human Rights (1948), 'freedom of expression is the right of individuals to hold opinion with conviction and without intercession and to request, convey and acquire information and data through social media regardless of boundary'. However, the right of expression and speech is not fully operational in Bangladesh due to the courtesy of Digital Security Act 2018. The people now-a-days are petrified of persecution and are under compulsion not to express and write

on digital platforms as a result of restrictive nature of the law (Habiba et al., 2017). Many legal experts termed this law as a law to end free will and to mute public voice. The act also creates bar on constructive criticisms of the government in digital platform. Amnesty International (2018), termed this act as draconian as it strikes on freedom of expression. The act has the ability to muzzle dissident and to provide arbitrary and unconstrained power to the executives and concerned authorities.

The recent incidence like the arrest and suspension of a Rajshahi University teacher arrested under sections 25, 29 and 31 of the Act for his Facebook post where he criticizes the former health minister and presidium member of ruling party received wide media coverage and protest (The Daily Star, 2020b). Besides, the custodial death of social media activist Mushtaq Ahmed and persecution of cartoonist Ahmed Kabir Kishore sparks severe condemnation of the act not just nationally but internationally. They were arrested under sections 21, 25 and 31 of the Digital Security Act 2018 (The Daily Star, 2021). Mushtaq Ahmed was arrested for damaging state image and for disseminating fallacious content against government's coronavirus relief programmes on social media. Ahmed Kabir Kishore was detained for posting sardonic cartoon on Facebook and criticising the action of Government in handling the Covid-19 crisis. Amnesty International (2021) condemn both of the arrests and expressed that it is against the peaceful expression of freedom of speech which is one of the basic fundamental rights of the citizens.

6. Digital Security Act and Investigative Journalism

Earlier in the 19th and 20th centuries the freedom of press was inconspicuous as media played a more restrictive and elitist role as it unequivocally used to propagate the notion of the authoritarian rulers. Thus, freedom was a pseudo freedom as it was only meant to publicise their unorthodox political ideas and opinions. Gradually media outset making important contribution to popularise movement for national liberation and right for democracy. It can be aforesaid from the past that the freedom of media was trampled for political propaganda. However, with the motion of development the voice for press freedom got momentum.

Verily, in the 21st century it is very apparent that in many parts of the world the freedom of press and media is confined and Bangladesh is not an exception in this regard. In Bangladesh after the 4th amendment of the constitution newspapers were banned from circulation and power of media was curtailed. Today freedom is injured as a result of censorship and subjugation. Bangladesh ranked 162 out of 180 countries in the World Press Freedom Index 2022 indicating the disarray picture of press freedom (RSF, 2022).

Investigative journalism means disclosure of affairs that are either kept concealed intentionally or unwittingly by the influential individuals or government in power. It plays a crucial part in maturing of media and freedom of expression. In the digital era investigative journalism promotes public welfare and healthy democracy by keeping power of government in scrutiny and by digging and publishing report of economic and political wrongdoings (Waisbord, 2002; Rahman, 2020). That is investigative journalism acts as a watchdog on government activities. If the freedom of media is curtailed true stories will remain untold thus democracy will be in disarray. Investigative journalism can provide a concrete, factual and comprehensive picture of terrorism, corruption and administrative inconsistencies within a country. There is no substitution of investigative journalism when the question is to probe and expose an intense secret (Rahman, 2020). The investigation report is crucial for the citizens to make them aware about the political and administrative reality of a country. The investigative journalism is a means to uncover different scandals of public interest. In the opinion of Burgh et al., (2008), investigative journalism is an indispensable means of transparency and accountability.

In Bangladesh media has been under extreme surveillances besides, many mainstream media have faced eviscerated or being disbanded because of publishing censored report. The Digital Security Act 2018, places a deliberate threat on investigative reporting and independent journalism (Rahman, 2020). The journalists are forced to suppress the truth in fear of facing humiliation and retribution. The study on media professionals exhibits that Digital Security Act 2018 creates sense of agitation resulting in self-censorship which adversely limits the freedom of expression (Kundu & Hoque, 2019).

The Digital Security Act 2018 can be considered as the last nail on the press freedom and investigative reporting. Many prominent journalists, educationist, politicians, media professionals and civil rights activists have showed their condemnation due to the current wave of arrest and disappearances under the Digital Security Act. The arrest of photojournalist and editor Shafiqul Islam Kajol in a defamation case against a member of parliament under sections 25 and 31 of DSA received mass outrage (Human Rights Watch, 2020). Mamunar Rashid Nomani chief editor and editor of a privately owned local newspaper and online newspaper Daily Shahnama and Barishal Khabar was detained for publishing a report on the failure of mayor of Barishal City Corporation to address flood in the city. He was accused under sections 26 (unauthorized collection, selling, possession and usage of information) and 33 (preserve and transfer data or information illegally) of the act. He was later held and tortured by the ruling party activists and a spurious case was filed against him for secretly recording video of Mayor and his wife and children (Committee to

Protect Journalists, 2022). The editor of the local Daily Parbotto Chattogram and Pahar.24.com Fazle Elahi was arrested under sections 23, 25, 26, 29, 31, 34, 35 and 37 of the Digital Security Act 2018 for tarnishing the image of former lawmaker by publishing a report on social media (The Daily Star, 2022a). A notable poet and journalist Henry Swapon was arrested under sections 28, 29 and 31 for his post on Facebook where he criticizes a local catholic church for holding a cultural event the day after terrorist incursion in Sri Lanka on Easter Sunday (Dhaka Tribune, 2019). The number of cases filed under DSA from 2018 to 2021 are given below:

Table 2: Cases filed Under DSA from 2018-2021

2018	2019	January 2020- March 2021
925	1189	1500

Source: Centre for Governance Studies Report 2020-2021

The following table shows the number of accused and arrested under the sections of Digital Security Act from the year January 2020- February 2022.

Table 3: Number of Accused and Arrested Under DSA from January 2020- February 2022

Profession	Accused Under the DSA	Arrested Under the DSA
Journalists	207	59
Educators	41	27
NGO Workers/Activists	10	6
Politicians	254	80
Students	79	47
Government Employees	32	13
Private Employees	53	34
Business people	79	28
Legal Practitioners	21	3
Religious Leaders	8	6
Other Professions	36	12

Source: Riaz, A. (2022) The Unending Nightmare: Impacts of Bangladesh’s Digital Security Act 2018, Centre for Governance Studies, Bangladesh.

From the above table it is noticeable that journalists irrespective of electronic, print and online media were indicted second highest by the act. The study conducted by Centre for Governance Studies (2021) revealed that most of the charges of the accused were counterfeit and frivolous. The research report also explicitly expressed that many of such cases were not filed by the victims itself rather by the third party for the sake of purported defamation. Also, by analysing different cases filed under the Act it can be concluded that most of the cases were against the person critical to the government. Nevertheless, it can be asserted from different findings that, the noticeable number of detention of journalists has created a cramped and unsecured environment for maverick journalism.

7. Conclusion

Laws are to protect the citizens not to feel them unprotected and agitated. The Digital security act which was supposed to make people secured and protected has become the reason of their insecurity due to its vagueness and misapplication. The Act is often abused and inappropriately used to silent the critics of the government. Besides many provisions of the act have been arbitrarily misused for personal interest and harassment. In order to restore the democratic values and human rights it is crucial that murky and misleading provisions of the law to be revised for greater acceptance. Besides, the power of law enforcing agencies and Director General should be curtailed. Moreover, the accused must be given opportunity for self-defence. Additionally, the most disputed sections of the act should be revoked to flourish freedom of expression and investigative journalism. The act is inconsistent with national and international laws which make it mandatory for immediate amelioration. It is also indispensable to strike a balance between individual liberty and individual security when applying the act. The Government recently has assured that the cases filed under the DSA will be sent to the ICT cell established in 2006 for scrutiny and if no validity of information is found the case will be regarded as null and void. This is an affirmative step if executed then the number of fallacious cases and harassment will certainly reduce.

Undoubtedly, the Digital Security Act 2018 has given some legal protection against online harassment, defamation, hate speech, misinformation, spreading propaganda against Liberation War and ridiculing in the name of religion. Expressly, Digital Security Act 2018 upholds the values of nationalisms and secularism. Digital Security Act is indeed a powerful weapon to regulate arbitrary use of social media by the users. Article 15 of Digital Security act stated about critical information infrastructure. The government in line with the provision of the act has recently listed 29 organisations as critical information

infrastructure. The illegal access and breaching of critical information infrastructure will be deemed as criminal and punishable offence. This will certainly protect the PMO's office, public institutions and corporations, central and government owned banks, stock exchanges and immigration departments from cyber-attacks which may affect large number of critical information of public safety, national security and financial security (The daily star, 2022b). The Digital Security Act can be a stepping stone to end illegal and immoral practices of the users in digital platforms if flaws of the act are eliminated and tangible protection are given to the users without any prejudice.

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