

Decrypting the Digital Security Act of 2018 and Disclosing Its Unconstitutionality

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How to cite this paper: Bari, S. M. (2023). Decrypting the Digital Security Act of 2018 and Disclosing Its Unconstitutionality. *Beijing Law Review*, 14, 913-944. <https://doi.org/10.4236/blr.2023.142050>

Received: February 24, 2023

Accepted: June 22, 2023

Published: June 25, 2023

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Abstract

Digital Bangladesh! The infamous phrase that is acquainted with all is enjoyed by most and suffered by many in Bangladesh. The ambitious proclamation of Digital Bangladesh aspired to rejuvenate *Shonar Bangla* (Golden Bengal) by establishing ease of accessibility to information together with feasible connectivity. Inarguably, feasible connectivity enhances communication which stipulates expanding freedom of speech. Unfortunately, that is where the Digital Bangladesh agenda folds, impeding and intoxicating the democratic/fundamental right of freedom of speech. The above denotes that polemic legislations such as the ICT Act and the DSA enacted to address cybercrimes have generally inflicted more harm than good. The trend of this study shows that the safety of cyberspace is the *ex-situ* concern, and cyber defamation and sedition encumbering free speech is the primary *in-situ*. Deservingly, the latter statute was branded draconian by multiple human rights entities. Whereby legally, the vires of the law are objectively justified by the constitutional inclusion of reasonable restrictions and the widely used maxim *ut res magis valet quam pereat*. Hence, are the restrictions reasonable? This empirical qualitative study answering that embarks on exploring the Digital Security Act; its vires; frequently used provisions; identify the inflicted and the inflictors; its adjectives; and procedures by expanding and expounding the language of the Act under the shade of primary and secondary data excavated from *stare-decisis* and existing scholarly research; relevant reports from various Ministries, governmental and non-governmental organizations; news. This study shows that the legislation frustrates the freedom of speech, especially that of media personnel. The statute has just begun to germinate, and its uncompromising characteristic is already on full display. Therefore, this study attempts reality check the enactment.

Keywords

Bangladesh, DSA: Digital Security Act, Distortion of Right, Freedom of

1. Introduction

December 12 marks the one and half decadal anniversary of the declaration of Digital Bangladesh, which was the nucleus of the political manifesto of the present government since its ascension to authority (Siddique & Akter, 2016). The agenda was the seamless befitting piece of the puzzle of politics under the existing circumstances back then as the developed parts of the world galloped towards cyberspace for information, commerce, and socialisation. Bangladesh, attempting to be at par with the rest of the world, embraced the phenomenon of “Digital Bangladesh.” The proclamation was undoubtedly ambitious as it aspired to reincarnate *Shonar Bangla* (Golden Bengal). The itinerary of the concept was to obtain economic, social, and cultural sovereignty by allowing ICT or information communication technology to abridge related struggles. Such abridgement was estimated to be obtained by digitalizing the government, allowing the citizens easy access to information, and introducing ICT in business, and developing human resources to knot the ends of the string (Government of Bangladesh, 2009). Indeed, the proclamation has transcended into reality; surveys estimating the internet subscribed populous of the country have denominated that 91 million Bangladeshis are active internet users (Bahalul Haque, 2019). Having established that and the context above superimposed to the truth of the scenario, it is conclusive that new beginnings welcome new aspirations and new troubles. Speaking of new troubles, Bangladesh holds the global runners-up position for being vulnerable to cyber threats and has also been the victim of leakage of profoundly confidential information (Bahalul Haque, 2019). The Central Bank of Bangladesh suffering at the hands of hackers exemplifies and justifies the preceding statement. Furthermore, unsolicited email or spam is the primary inflictor of national cyber threats. Astonishingly, Bangladesh secured the 18th position accounting for 7.2% of global spam volume in 2021, contributing approximately 15.5 billion spam (Paul, 2022). The Government of the People’s Republic of Bangladesh, acknowledging such cyber-attacks, crafted the Digital Security Act out of Section 57 of the ICT Act of 2006 and implemented the statute to address and contain cybercrimes (Freemuse, Dirk and PEN International, 2020). Hasan Mahmud, the information minister of Bangladesh, walked the same tracks and invoked the online protection clause vindicating the necessity of the statute (Hussain, 2021). However, the enactment raised concerns and has been repudiated and remonstrated as early as the seedling stage of the draft bill in 2017 relating to the fact that the statute infiltrates one of the basic principles of democracy, impeding and intoxicating the fundamental right of freedom of speech and expression (Riaz, 2021). The journalist community alleged that statutes like the Digital Security Act and the Official Secrets Act are tools for suppressing inves-

tigative journalism online and offline, respectively (Hussain, 2021). The arrest and detention of investigative journalist Rozina Islam for photographing official government documents revealing the mismanagement and corruption within the health sector during the recent pandemic demonstrate the accusations and apprehension of the journalist community (Article 19, 2022). To complement the justification laid out by the journalist community, the Centre for Governance Studies (2021) reports that two distinct sections of the Digital Security Act, i.e., Section 25 and Section 29 dealing with sedition and defamation, respectively, have been prominently executed. The only differences between the traditional and the online approach of the offences are the method of publication and its potential outreach, i.e., in the online approach, the publication of seditious or defamatory statements exists in cyberspace, hence its reach is greater, whereas publication in the traditional form has limited reach and is transmitted offline. Hence, the reach of the information is more extensive. Irrefutably, sedition and defamation fall within the ambit of “reasonable restrictions” imposable on the freedom of speech. However, the selective application of the provisions (FIDH, 2021) and overinterpretation of the restrictions excessively curbing the freedom of speech raises concern. The murderous approach of the statute has been surviving the ultra-vires dangling on the threads of objective justification of the constitutional inclusion of the phrase “subject to reasonable restrictions” and the widely used maxim of statutory interpretation *ut res magis valet quam pereat*, i.e., allowing legislation to be operative rather than rendering it null. This study attempts reality-check the statute attempting to identify its hoo-ha, its controversial execution, and the reasons behind its renunciation by society at large.

1.1. Aims & Scope

“This Act has not been enacted to curb the freedom of speech and press” a rather conflictive statement enunciated by Anisul Huq, the Minister of Law, while conceding that the statute has been misapplied and exploited (Daily Star, 2021b) to favour the adverse. Moreover, the Digital Security Act of 2018 has been condemned by as many as 45 international human rights entities calling for its withdrawal over concerns of invasion of online freedom of speech, peril of online privacy, compromised data encryption, etcetera (Prothom Alo, 2022a), which resulted in its dismissal by such entities, correspondingly branding it draconian. The misuse of the Act to the current critical degree caused the Law Minister to advise the Home Minister to cease abusing the statutory provisions (Daily Star, 2021b). In those regards, this empirical qualitative study embarked on exploring the Digital Security Act to:

- 1) *Expand and expound the Act by explaining its general overview, the controversial investigation procedures, and identify the most frequently executed provisions.*
- 2) *Reality-check the statute by tasking the vires of the statute against the Constitution.*

3) *Identify the genuinely inflicted and the corresponding inflictors of the provisions of the statute.*

1.2. Research Limitations

The Government of the People's Republic of Bangladesh has always been efficient with manipulating and burying information, notwithstanding the party in power. The above appears to be a bold accusation; however, the case of *Mainul Hossain vs. Anwar Hossain* (2004) is evidence of the manipulative aspect. Daily Ittefaq, a prominent news company, suffered rigorously during the ministerial reign of the respondent as the respondent influenced/manipulated news reports to benefit personal and party interests. According to the [United States Department of State \(2021\)](#), there has been a decline in the rule of law in the country; the media industry walked in the footsteps of government censorship which translates to the government's distrust of society. Additionally, numerous journalists have resorted to precautionary self-censorship given the ongoing circumstance ([FIDH, 2021](#)). On the other hand, law enforcement agencies are primarily oblique and disinclined to provide data. The application of Saad Hammadi, a human rights defender enquiring about the number of cases filed, the identity of the accused, and the number of arrests inflicted under the Digital Security Act since its promulgation, was expelled by the Bangladesh Police on the grounds of non-obligation. Such dismissal is a distinct indication of the deliberate efforts to bury the information ([Riaz, 2021](#)). Financial information of the government and private companies has been withheld from being advertised by the intelligence services ([United States Department of State, 2021](#)). Furthermore, the selective application of the Digital Security Act is evident from the data of the charges entertained under the Act ([FIDH, 2021](#)). Allegations are made and dropped at will ([BSS, 2021](#)), and cases are dismissed for suiting selective needs even when an offence is apparent under the provision of the statute ([Bangla Insider, 2021](#)).

2. Methodology

The course of this study is empirical, whereby the qualitative data analysis approach was adopted to extract its results. Qualitative study deploys in-depth scrutiny *en route* revealing the relevant interconnection and interdependency between concepts ([Bari, 2022](#)). Primary and secondary documents, e.g., relevant scholarly articles, news reports, relative laws of Bangladesh like the Penal Code 1860, [The Code of Criminal Procedure 1898](#), the Information Communication Act 2006, the Digital Security Act 2018; relevant reports from various Ministries, reports of local governmental and non-governmental organizations and international entities were extensively studied and analysed. It is well-settled that Bangladesh regulates within the legal system of the common-law ([Bari, 2022](#)). Wherein any decision of the Apex Court not subjected to *per incurium* by the same division gracefully maintains the status of *stare decisis* ([Shahidul Haque Bhuiyan \(Md\) vs. Chairman First Court of Settlement, 2017](#)). Moreover, the law

declared by the Apex Court extends an irrebuttable binding effect on all other Courts inferior to it (*ACC vs. Barrister Nazmul Huda, 2008*). Keeping the doctrine of stare decisis and practical approach in mind, law journals, decisions of higher Courts of Bangladesh, and other countries relevant to the scope of this research are elaborately analysed.

3. Results & Discussions

This empirical qualitative study is designed to expand and expound the Digital Security Act by explaining its general overview, the incorporated offences, and procedures. Identify the most frequently executed provisions; reality-check the statute by tasking the vires of the statute against the Constitution and ascertain the relation of the Act to the recent Amendment of the Evidence Act and identify the genuinely inflicted and the corresponding inflictors of the provisions of the statute. All the predetermined objectives are addressed elaborately hereinafter.

3.1. General Overview of the Enactment

The Preamble of any Statute is the general indication of the intent of the Legislature. In that context, the Digital Security Act of 2018 ensures digital security by classifying, inhibiting, and suppressing offences committed through digital devices (*Digital Security Act, 2018*). The Act was not enacted to silence the voices of the citizens and the mass media (*Runa, 2019*). This is debatable; however, *Runa (2019)* failed to realize that the statute was engraved out of the controversial Section 57 of the ICT Act (*Freemuse, Dirk and PEN International, 2020*) amid demands for its amendment. By virtue, modern civilisation embraces broader definitions of media, journalists, and the concept of citizen journalism, given that media has expanded and reached the palms of almost anyone equipped with a smartphone (*Ataulla & Yildirim, 2021*). *Lacy and Mookherjee (2020)* remarked that the Digital Security Act was enacted to amplify the severity of procedures, i.e., designate all broad charges of the remonstrated Section 57 of the ICT Act as cognizable or arrestable demonstrated in **Figure 1**, curtail its bail-ability, and enhance the penalties. Prior to promulgation, the statute was brutally scrutinized, repudiated, and remonstrated, whereby the statute was open to being assessed by any interested citizen, academics, NGOs, foreign government, and international entities (*Ministry of Post, Telecommunication, and Information Technology of Bangladesh, 2014*) and the recommendations and criticisms were overlooked (*Perrera, 2020*), which amounted to its denunciation by 45 international entities (*Prothom Alo, 2022a*). Originally the Act projected to enforce the National Cybersecurity Strategy [at par with the Global Cybersecurity Agenda] to eliminate risks of cyberspace and cybercrimes and protect critical informational infrastructure (*Ministry of Post, Telecommunication, and Information Technology of Bangladesh, 2014*). Out of all the different cyber offences incorporated in the statute, online defamation and sedition are the crowned achievers (*Riaz, 2021*).

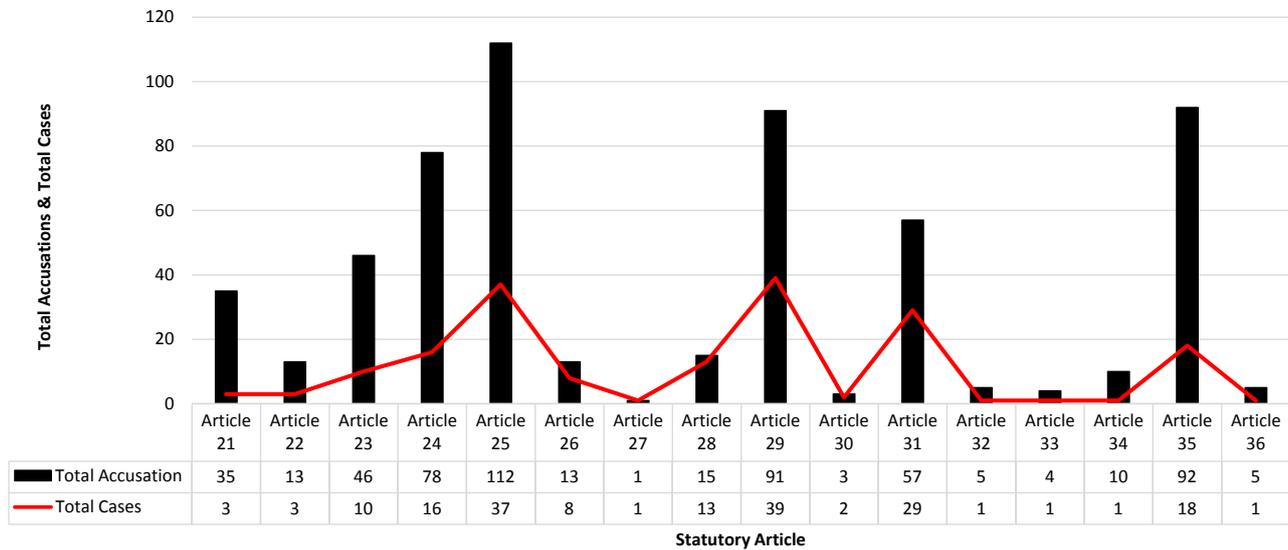


Figure 1. General review of the execution of the Statute of 2018 (Riaz, 2021).

In recent years, Bangladesh experienced two pandemics and one war: the COVID-19 and the rape pandemic (Bari, 2022) and the war on freedom of speech. The government was heavily critiqued in cyberspace for its incompetent/futile response to the pandemic, corruption, discriminatory application of lockdown rules, and misappropriation of relief packages during the lockdowns. A few accusations of corruption were attended; however, all the critics of the questionable pandemic response, such as academics, doctors, government officials, journalists, and ordinary citizens, were prosecuted (Siddiki, 2022) illustrated in Figure 2. Health officials were deliberately prohibited from addressing the media (United States Department of State, 2021). It has also been reported that a monthly average of 67 arrests are made (Daily Star, 2022). The Centre for Governance Studies trailed 668 cases under the Digital Security Act; astonishingly, only two tracked cases have been disposed. The first case is one relating to extortion of money by police officers, and the second relating to defamation. Furthermore, the organization also reported that the alleged victims did not file 88% of those tracked cases (Riaz, 2021). Amnesty International (2021) has branded the law as draconian, vague, overly broad and recognized it as a tool for repression as it violates the international standard of free speech and expression. Provisions such as sections 25, 28, 29, etcetera vigorously threaten freedom of speech (Farok, 2019). The international standard of free speech also designates that criticism of authority can never be justifiably punished (Amnesty International, 2021). The Prime Minister of Bangladesh has advised the journalist community to refrain from publishing untrue or concocted news while reassuring them that the truth shall cause no trouble (Runa, 2019). Politics begets both content and conflict (Al-Zaman, 2020). Md. Junaid Alam Sarkar, Additional Deputy Commissioner of Police Intelligence, in an interview, said that it is only prime cybercrime cases that are preceded. With poor infrastructure, limited expertise, and human

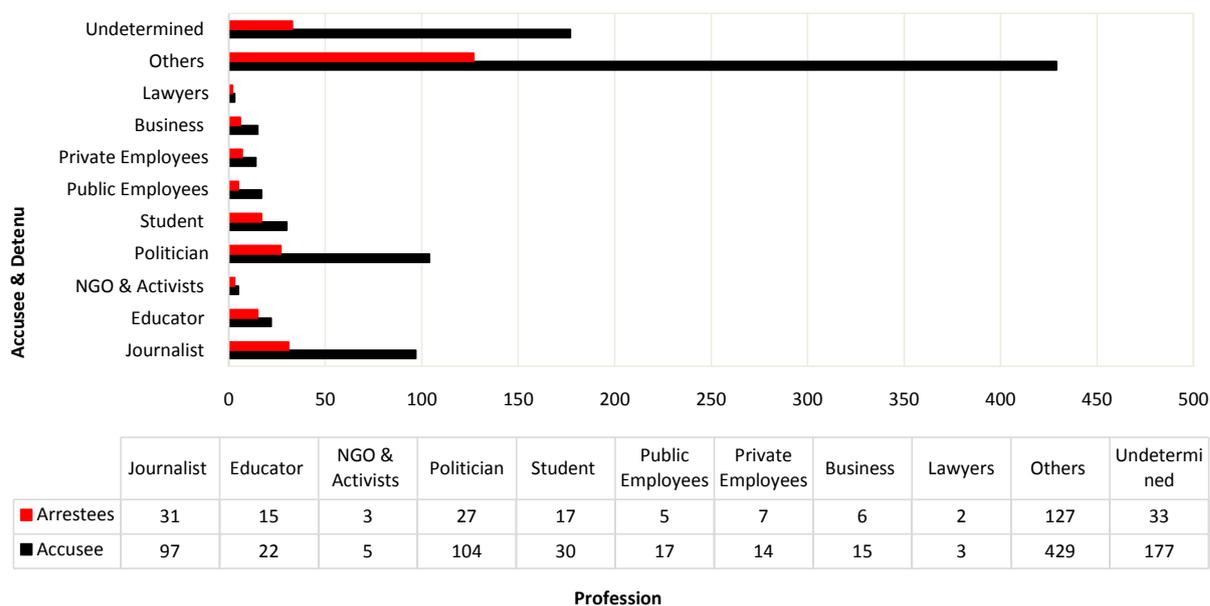


Figure 2. Categorization of the accuser/arrestees by profession (Riaz, 2021).

resources, it is only the freedom of speech, expression, and press being victimized (The Financial Express, 2021).

3.1.1. Offences: Its Constituents, Penalties and Characteristics

From the trend of the offences provided by the Digital Security Act of 2018, it is apparent that the special statute is inclined to punish the cyber variant of traditional offences. *Exempli gratia*, propaganda against friendly sovereign entities (Section 21), forgery (Section 22), fraud (Section 23); identity fraud (Section 24); sedition (Section 25); offending religious sentiments (Section 28); defamation (Section 29); deteriorating law and order (Section 31) and disclosing confidential government information (Section 32). The cyber form of traditional offences constitutes roughly 53% (fifty-three percent), i.e., the majority average of the offences provided therein. Furthermore, the penalization is categorized into first offence and successive offence. The first offence incurs imprisonment ranging from 6 months to imprisonment for life, and the fine impossible ranges from Tk. 2 lac to Tk. 1 crore. A few of the offences committed first instance are non-arrestable, and only the offence of making or abetting illegal access to a computer provided under Section 18 (1) (a) is compoundable. All successive offences are arrestable and non-compoundable. Wherein imprisonment ranges from 2×6 months, i.e., one year to life imprisonment, fines impossible like imprisonment extends from $2 \times$ Tk. 2 lac, i.e., Tk 4 lac to Tk. 5 crores.

3.1.2. Investigation

Comprehend this, complaining that the additional taxes imposed on mobile call rates on Facebook was a hard bargain for a 14-year-old student. The minor was arrested and detained in juvenile prison over a post that was supposedly critical of the government and also supposedly defamed the Prime Minister (FIDH,

2021). Another 17-year-old minor, Dipti, was jailed under the Digital Security Act for merely sharing a picture of the Holy Quran on a woman's thigh. The picture allegedly hurt the religious sentiments of pious Muslims (Islam, 2021b). The takeaway that offends the legal mind is that the special legal framework for minors is consciously overlooked. On another note, is the cyberspace of Bangladesh intolerably thin-skinned? The answer probably is no. However, the correlation between the statutorily allowed authority and its divergence from reality infers the thin-skinned characteristic. The Digital Security Act facilitates unprecedented power for the government and its officials (FIDH, 2021). To simplify, investigation proceedings are initiated at the snap of a finger against anybody whose online activities are considered a threat. Individuals have been apprehended without a lawful warrant in a non-arrestable offence on mere suspicion, search, and seizure occur without the authority of a search warrant, and the most unfortunate of all, the event of case filing after arrest (Riaz, 2021). The answer can be debated but cannot be justified against the deducted reality. The digital cell of the police must refer to Section 53 of the act before manifesting arrest (Karim, 2022). Even the procedural law prescribes the issuance of warrant (The Code of Criminal Procedure, 1898|99A. Power to Declare Certain Publications Forfeited and to Issue Search Warrants for the Same). However, the DSA is a special statute that supersedes the procedural law by virtue of the non-obstante clause (Mahboob vs. Bangladesh Election Commissioner, 1998), which is the primary reason for all the panic (Perera, 2020). Speaking of special statutes, the investigative procedure prescribes that the investigation must be completed within 60 days. Failure to comply allows the investigation period to be extended by 15 days by the controller. Thereafter, the jurisdiction shifts to the special tribunal, whereby the tribunal may allow an extension of 30 days. Furthermore, the investigating officer failing to complete the investigation within the prescribed period and the extensions allowed by the higher authorities may again seek an extension of a reasonable period from the tribunal. Conclusively, the statutorily prescribed period for completing an investigation is 75 days. However, the accused is held in custody even after the expiration of such period (Riaz, 2021). Consider the detention of Shahidul Alam for over 100 days as an example (Dr. Shahidul Alam vs. State, 2019), the custodial death and 10-month detention of Mushtaq Ahmed, the custodial torture and 10-month detention of Ahmed Kabir (Amnesty International, 2021), and many more undocumented. Under such circumstances, the course of the law dictates that procedural failures such as noncompletion of investigation entitle the accused to be released on bail de-jure (Begum Khaleda Zia vs. State, 2020). Moreover, the search and seizure policy is contradictory and allows broad discretion to the police. According to Section 42, the police may search with a warrant, and the very next section permits the police to execute search at discretion without a warrant (Digital Security Act, 2018). It is evident from various landmark judgments of the Apex Court of Bangladesh, such as *Abdul Latif Mirza vs. Bangladesh*, *Bangladesh vs. BLAST*, etc., that government officials, especially the police, are masters of abusing discretion-

nary power.

3.2. Frequently Executed Provisions

Referring to the general overview, the Digital Security Act was enacted primarily to provide security of the cyberspace *interalia*. The statute was, however, mostly executed to criminalize defamation, slander, libel, and criticisms of the government, head of the government, or government officials (United States Department of State, 2021) done on the various platforms of cyberspace like Facebook, Twitter, YouTube, TikTok and Likee (Daily Star, 2021b). UK based human rights body Article 19 reports that affiliates of the ruling party filed 40% (forty percent) of the cases under the statute for reasons mentioned hereinabove, illustrated in Figure 11. It is unfortunate that the digital revolution and the existing mechanisms have failed to safeguard freedom of expression, expression of views (Daily Star, 2021a), and the right to criticize (Sheikh Mujibur Rahman vs. State, 1969).

3.2.1. Section 25

Democracy operates best in a society where free and frank discussions are accepted with enthusiasm and positivism (Sheikh Fazlul Haque vs. State, 1970). Unarguably, Bangladesh is a democratic society. In *Sheikh Mujibur Rahman vs. State* (1969), it was held that the concept of democracy also permits oppositional activities, freedom of expression and thoughts within qualified limits, and the right to criticize (Mashiur Rahman vs. State, 1974). Such right to criticize must not be abused to jeopardise the safety of the government by provoking contempt, hate, disaffection, and disloyalty against the government (Sangbad vs. East Pakistan, 1958). The law disregards the severity of the criticism, as mere usage of passionate language is not sufficient to constitute revulsion or contempt (Tofazzal Hossain vs. East Pakistan, 1965). However, it investigates the method through which alteration of government policies is intended to be brought about as alterations by lawful means is the inalienable right of any citizen (Sheikh Mujibur Rahman vs. State, 1969). Such right of criticism cannot be denied (M. Mansur Ali vs. State, 1970). The case of *Sangbad vs. East Pakistan* (1958) recognized the then government of current Bangladesh as unusually touchy. On the topic of touchy governments, the government's intolerance to criticism and dissent is visibly represented by its pro-commentators (FIDH, 2021). Take the misspelling scenario at Jamuna Future Park movie theatre as an example; when tale is misspelled as tail, it absurdly attracts a lawsuit (Lacy & Mookherjee, 2020). Minors have been arrested over mere comments (Human Rights Watch, 2021). Access to mobile internet has been restricted and disrupted, and contents have been censored and filtered over unconstitutional, undemocratic reasons (United States Department of State, 2021). The scope of this provision is excessively broad (FIDH, 2021); it criminalizes hate speech but has left the definition and constituents of hate speech to discretion (British Home Office, 2021). Consequentially, the provision allows unprecedented authority to suppress dissent and punish legitimate political expressions (Juracuity, 2021). Shackling freedom of speech is

a political tradition in Bangladesh and has been commonly done by every political party in power (Hossain et al., 2021). Nonetheless, the severity of the Digital Security Act is so relentless that it has been frowned upon since its seedling stage. The mischiefs of Section 25 of DSA have been portrayed in Figure 3. Abdul Asad, the editor of Gazi and Daily Sangram was exposed to sedition over an article calling Quader Mollah a martyr (CPU Media Trust, 2020). Pritam of *Rastro Songskar Andolon* was arrested over a Facebook post (BDNews24, 2022). According to Amnesty International (2021), writer Mushtaq Ahmed and cartoonist Ahmed Kabir were imprisoned over a Facebook post criticising the government's response to COVID-19. Journalist Mahtab Uddin was arrested regarding an unconfirmed Facebook post about the arrest of a lawmaker. Journalist Akhtaruzzaman was arrested for accusing Bogura Sadar Upazila Health and Family Planning officer for embezzling money (IFJ, 2021). Public men should not be so thin-skinned (Kartar Singh vs. State, 1994), sensitive, or abnormally touchy. According to Sir James Fitzjames Stephen, it is not sedition to publicize the government's shortcomings (Stephen, 1883). Moreover, the contribution of public opinion to the common good of society cannot be emphasized enough as the spread of truth on vital concerns is an imperative objective of society and government (Chaudhuri & Arora, 1997: pp. 142-149). Nevertheless, such public opinions must not dissuade morality or public order. Hence, reasonable restrictions are impossible on the freedom of speech. The test of reasonableness trades the objective path of what a person of ordinary prudence considers reasonable (Chaudhuri & Arora, 1997: pp. 142-149). Whether the consequence of exercising such right propagates any evil (Narendra Kumar vs. Union of India, 1960); and the mental outlook and ability of the people between acting on passion and reason (Sheikh Fazlul Haque vs. State, 1970). Sedition is the vaguest of all criminal offences within the common law. Historically, it has always been deployed to

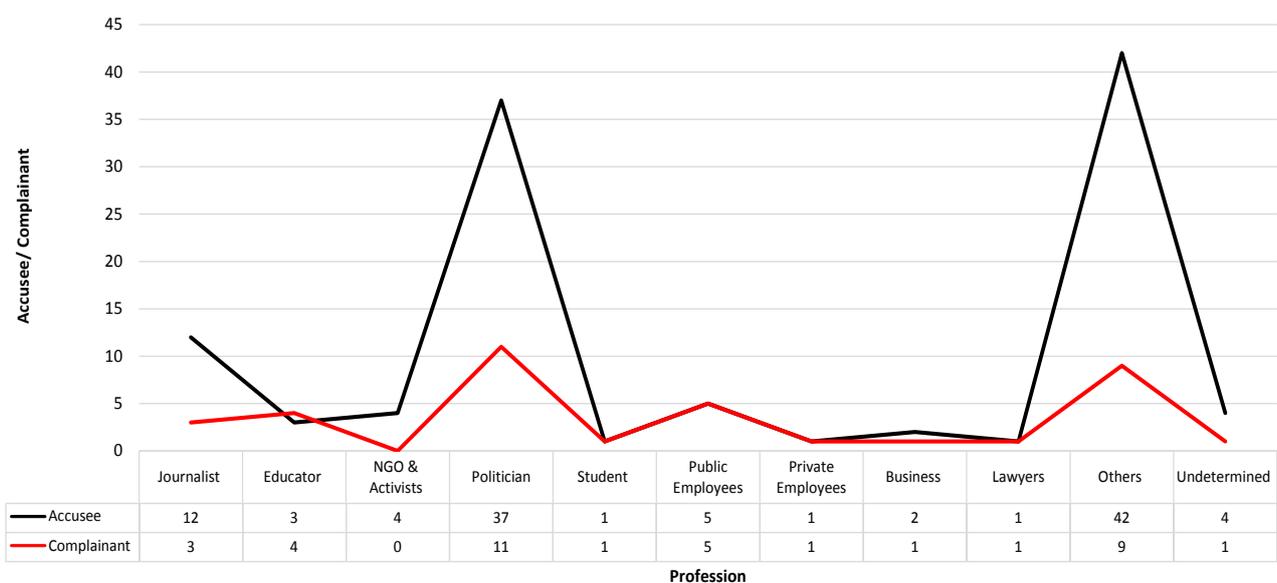


Figure 3. Accusations and detentions u/s 25 (Riaz, 2021).

diminish critics (Garner & Black, 2009: p. 1479). Germany in the 1930s criminalized listening to enemy broadcasters and imprisoned any violators in concentration camps, the ethnic cleansing of Myanmar was a civil war, and Bangladesh is a step away from dismissing and altogether criminalizing freedom of speech and freedom of media (Lita, 2022).

3.2.2. Section 29

Commencing ahead, *ACC vs. Mufti Shahidul Alam* (2016) must be introduced. Therein, the Apex Court declared that the functions of a Member of Parliament (MP) pertain to public life and is a servant of the state in the highest sense. At this moment, it is worth restating that public men should not be thin-skinned or allow comments related to office to crawl under their skin (*Kartar Singh vs. State*, 1994). Criticism related to the conduct of public men within the functions and colours of office is an exception to the offence of defamation (*The Penal Code, 1860*|*Public Conduct of Public Servants*). Speaking of not being thin-skinned, the incident of Muhammad Yunus, the microfinance pioneer, pops in. Yunus had previously commented on politicians of the country in an interview in 2007, for which he was dragged to Court 4 years later, fined, financial matters investigated and removed from Grameen Bank (*Lacy & Mookherjee*, 2020). It has already been established that criticising the public conduct of public men does not amount to defamation, nor does criticising the merits of public performance (*The Penal Code, 1860*|*Merits of Public Performance*). The defendant in *Khwaja Noor-Uddin vs. Hamidul Huq Chowdhury* (1964) was a minister to the government when the alleged defamation relating to public performance occurred. The merit of public performance is always open to public judgement, and under no circumstance does criticism of such performance amount to defamation (*Syed Mohammed Afzal Hossain vs. SM Salim Idris*, 1995). To consider an example, misappropriation of public funds, being a matter of vital public concern, is open to the judgement of the public, wherefrom a minister of the respective ministry is enquired in those regards, and the minister confirms such misappropriation along with the names of the individuals responsible, publication related to such matter of public concern does not qualify for defamation (*Jawaharlal Darda vs. Manohar G Kapsikar*, 1998). In *Anis Hossain vs. State* (2020), the petitioner was accused of defamation under section 57 of the ICT Act. Therein, the publication of the defamatory statement against Patgram UNO was transmitted through two mobile SMSs to the higher authorities of the informant UNO, one to the DC Lalmonirhat and the other to the Divisional Commissioner, Rangpur. The High Court declared that the initiation of the proceeding amounted to abuse of power as the communication was private and no publication had taken place. Arguably, the SMS sent contained criticisms related to the office or functioning of the public servant. For the sake of argument, let's assume that the publication had taken place; the criticism would still fall within the exception. Furthermore, the accusing party must prove the falsity of the statement and the liability of the defendant (Garner & Black, 2009: p. 479). Halsbury's

Laws of England (Art 41, Vol. 24) sets the criterion of defamation to *arbitrium boni viri*, i.e., the opinion of the worthy ordinary. The defamatory words must be untrue (Shahadat Chowdhury vs. Md. Ataur Rahman, 1996), and it must lower the estimation of the defamed in the eyes of the prudent members of the society. The offence of defamation is subjective to the character of the defamed and the society he lives in (Khwaja Noor-Uddin vs. Hamidul Huq Chowdhury, 1964). Hence, the assassination of reputation by words written or spoken or represented visibly (Mukherjee, 1971: p. 494) must be directed to the the defamed with intention (AKM Enamul Haque vs. Md. Mizanur Rahman, 1994) of incurring adverse opinions regarding the character/reputation of the defamed (Surrender Nath vs. Bhageshwari, 1961; Venkataramaiya, 1996: p. 631). However, such defamatory comments must not be covered by one of the exceptions (Abdul Hamid vs. Habib Ahmed, 1999) provided therein Section 499, Penal Code. Having established the above, Bangladesh legally recognizes defamation as a criminal offence (Ashok vs. Radhakanta, 1967), and within the pretext of the Digital Security Act, digital defamation is a severer offence. The magnitude is so brutal that mere humor is also penalized (Juralacuity, 2021). Even though the section is characterized as non-cognizable (Toufiq Ahmed vs. State, 2021), more arrests are inflicted over this offence than any other cybercrime (Juralacuity, 2021), illustrated in Figure 4. One defensive method that can be adopted by individuals, especially media personnel, to protect oneself from the mischief of digital defamation is reconfirming the truth of the story (Emran Faruk Masum vs. State, 2008; Sodhi Gurbachan Singh vs. Babu Ram, 1969).

3.3. Freedom of Speech, Expression & Its Restrictions

The schema of Digital Bangladesh was to walk side by side with modern civilisation, and one prime feature of modern civilisation is enhanced communication

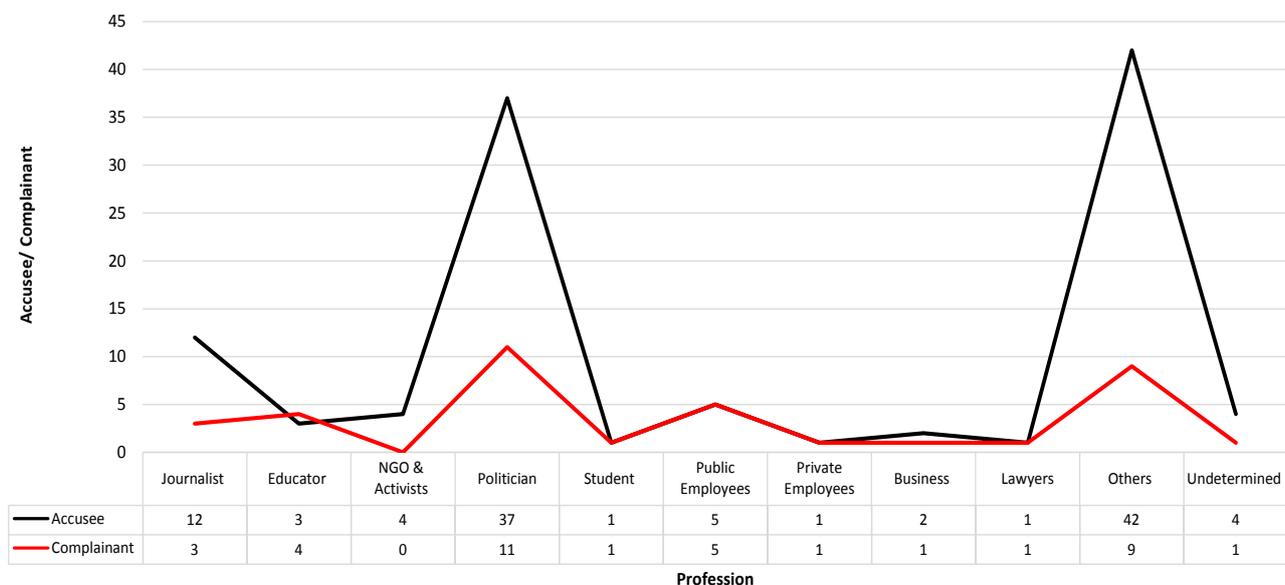


Figure 4. Accusations and detentions u/s 29 (Riaz, 2021).

(Haque, 2018). Such enhanced communication reciprocally necessitates the expansion of fundamental rights, especially freedom of speech and expression. Bangladesh being a 50-year young nation, has lots to discover, rediscover, research, reiterate and adapt and especially realize that democracy operates best in a society where free and frank discussions are accepted with enthusiasm and positivism (Sheikh Fazlul Haque vs. State, 1970); that freedom of speech is the pedestal of democracy (Haque, 2018); that freedom of speech consolidates and institutionalizes democracy (Ataulla & Yildirim, 2021) and that freedom of speech is indispensable for a functioning democracy (Islam, 2012: p. 329). Freedom House, an American non-profit human rights-defending organisation, surveyed Bangladesh and deemed it partially free. The result of the survey is tabulated in **Table 1**.

The characterization of the country being partially free is widely based on unprecedented, prejudiced restrictions imposed on the freedom of speech and a half-hearted, jeopardised democracy (United States Department of State, 2021). The fact that every government in Bangladesh has always been at war against the freedom of speech is nerve-wracking (Hossain et al., 2021). Take *Mainul Hosein vs. Anwar Hossain* (2004) for instance. Such atrocities cause the mind to wander the paths of freedom of speech and the restrictions imposable thereon. The dogma of freedom of speech is comprehended from two approaches, the equality clause, and the political liberty clause (Runa, 2019). Equality in political liberty, i.e., the combined effect of both dogmas that embodies freedom of speech accurately. In *Dewan Abdul Kader vs. Bangladesh* (1994), it was held that the freedom of speech guaranteed under article 39 of the constitution explicates articulating, writing, and visibly representing one's opinions, observations, ideas, et cetera. Speaking of ideas, it must be remembered that ideologies give rise to differences, and in a civilized society, differences are resolved through dialogue, i.e., unrestricted speech, which in turn educates, informs, and entertains (Islam, 2012: p. 330). Four employees of the Daily *Jana Kantha* were accused of spreading misinformation, misinterpretation, and misguiding Muslims by Motijheel

Table 1. Freedom score of Bangladesh (Freedom House, 2022).

Defining Characteristic	Outcome
Score on Global Freedom	$\frac{39}{100}$: Partially Free
Score on Internet Freedom	$\frac{43}{100}$: Partially Free
World Status Freedom	Partially Free
Restriction on Network	Yes
Blockage on Social Media	No
Blockage on Websites	Yes
Commentators Pro-Government	Yes
Arrest of Users	Yes

police. The Apex Court squashed the allegations on the rationale that the publications educated and cautioned the Muslim community about false interpretations (*Shamsuddin vs. State*, 2000). In black and white, the freedom of speech in Bangladesh is undoubtedly reassuring and wide as it recognizes *hartal*, the traditional civil disobedience, as a democratic right and the call for it as the exercise of the freedom of speech (*Khondaker Modarresh Elahi vs. Government of the People's Republic of Bangladesh*, 2001). Ironically, the freedom of Bangladesh was partially obtained through such civil disobedience or *hartal*. However, such must not jeopardise safety and disrupt daily transactions (*Khondaker Modarresh Elahi vs. Government of the People's Republic of Bangladesh*, 2001). The notion of safety is the standard for restricting freedom of speech. The limits imposable on free speech are very narrow and stringent (*Romesh Thappar vs. Madras*, 1950). To specify, free speech can only be constricted to ensure state security, maintain cordial relations with foreign states, uphold public order, public morality and decency, discourage contempt of court, and contain incitement of an offence (*Islam*, 2012: p. 330). In short, statements proved to be in breach of law (*Dicey*, 1959: pp. 240-241), satisfying the presumption that exercising such right neither offends any law nor violates any right of any individual (*Bangladesh National Curriculum and Text-Book Board (NCTB) vs. Bangladesh*, 1996) or a class of citizens (*Tayeeb vs. Bangladesh*, 2015). *State vs. Chief Editor, Manabjamin* (2005) established that malicious, libellous, or untrue statements do not fall within the ambit of freedom of speech, and the protection provided therewith is suspended. From hereinabove, reasonable restrictions are lawfully imposable on the freedom of speech; however, the reasonableness of such restriction must resonate with Article 19 of the ICCPR and must be provided by law pursuing a legitimate objective that is essential and proportionate (*Liu, Posetti, & Shabbir*, 2022).

3.3.1. Right to Privacy

“There is no spying in America. We don’t have a domestic spying program” remarked then-President Barack Obama on the tonight show with Jay Leno (*Obama*, 2013). NSA employee and whistle-blower Edward Snowden proved the contrary of the statement revealing to the world how the joint venture between the NSA and the British (GCHQ) founded on the UKUSA agreement violated the right to privacy (*Puntambekar*, 2015). There is no spying in Bangladesh either; however, the investigative unit of Al Jazeera recently alleged that Bangladesh purchased surveillance equipment that is capable of monitoring hundreds of mobile phones simultaneously (*Unit AJI*, 2021). Froomkin, in his article entitled “The Death of Privacy,” argues the impossibility of complete privacy and that such is only achievable by completely disappearing and discarding the use of cyberspace. Privacy of communication is a fundamentally guaranteed right in Bangladesh (*Islam*, 2012: p. 381). Unfortunately, that right is victimized by targeted surveillance (*Siddique & Akter*, 2016) as the Digital Security Act permits espionage by considering the secret recording of information of autonomous, government, and non-government institutions (*Runa*, 2019). HRH, Prince of

Wales v Associated Newspapers Ltd. established that confidential information pertaining to personal agenda, affairs, and transaction fall within the ambit of privacy (Barnett, 2009: pp. 557-559). However, such privilege does not extend to matters relating to personal property and wealth (Tarique Rahman vs. ACB, 2000).

3.3.2. Assessing the Vires of the Enactment

It is already settled hereinbefore that equality in political liberty accurately embodies the fundamental right of freedom of speech. Furthermore, the doctrine of *lebertas in legibus*, i.e., liberty under the law and such liberty must not be encroached under the cloak of public interest, public safety, public law and order (Afzal Hossain vs. Ministry of Home, 2002), justifies the ideology further. The government of Bangladesh is instituted under constitutional democratic politics whereby the concept of rule of law serves as the aorta of the democratic system (Bangladesh Bank vs. East West Property, 2017). A democratic system where dialogue, reason, and oppositional activities are permitted, and freedom of speech is ensured (Sheikh Mujibur Rahman vs. State, 1969). Where the Constitution is the chief law of the state, and all subordinate legislations are at par with all its amenities, such as the freedom of speech in this case (Bangladesh National Curriculum & Text Book Board (NCTB) vs. AM Shamsuddin & Others, 1999) as every legislation is empowered by the Constitution and is incapable of exceeding its authority and protections provided (Brigadier General Md. Khurshid Alam, 2011). The Constitution allows affecting/infringing the right of citizens only in accordance with the law and under the authority of the law (Jamil Huq vs. Bangladesh, 1982). Moreover, the law must be reasonable, and the test of reasonableness considers the circumstances that necessitated the promulgation of the law, the objective of the legislation, the nature of the offences intended to be remedied by the law, the ratio of harm and beneficence inflicted by the law, whether the prescribed remedies are excessive and whether the law survives the public opinion (Narendra Kumar vs. Union of India, 1960). In those contexts, the Digital Security Act has inarguably inflicted more damage than good, and it has been repudiated from the earliest stage of its promulgation (Riaz, 2021); instead of securing the cyberspace, the statute punishes the digital form of traditional offences like defamation and sedition mostly (Amnesty International, 2021; Haque, 2018); the law is selectively applied (FIDH, 2021) as allegations are made and dropped at will (BSS, 2021), and cases are dismissed for suiting selective needs even when an offence is obvious under the provision of the statute (Bangla Insider, 2021). Besides the shortcomings of the reasonableness test, the selective implementation of the statute causes it to inherently fail the equal protection clause of the Constitution. The doctrine of equal protection dictates that persons in similar circumstances must be treated unvaryingly under the same laws (Dr. Nurul Islam vs. Bangladesh, 1981). Unlike the factum of *Sk. Fazlul Karim Selim vs. Bangladesh* (1981), therein, based on the petitioner's political background, the authentication of a newspaper declaration was refused by the

police. The state is constitutionally obliged to be fair and just, ensuring public good (*Bangladesh Bank vs. East West Property*, 2017). The statute, by virtue of its selective application or extraneous consideration, constitutes “malice in law” (*Regional Manager vs. Pawan Kumar Dubey*, 1976). Furthermore, the statute also overlooks the principle of beneficial interpretation (*AKM Nurul Alam vs. Bangladesh*, 1994). The state may elect to restrict speech on reasonable grounds. The Digital Security Act limits hate speech, but the term and its constituents remain undefined (*British Home Office*, 2021). The undefined prose displays intolerance of criticism, amounts to vagueness, and broadens discretion and interpretative aspect of it (*Amnesty International*, 2021). The Digital Security Act violates the constitutional and international standard of free speech (*Siddique & Akter*, 2016) as it restricts digital communications and digital contents (*Siddik & Rahi*, 2020). According to *Blair* (2020), the restriction on speech since the promulgation of the Digital Security Act exceeds every standard seen previously in Bangladesh. The trend of this study is evidence that the statute overtly exceeds the Constitution and invades the rights of citizens. Hence, the vires of the statute is highly questionable.

3.4. Identifying the Accused & the Accusers

To generalize, members of the intellectual society, such as academics, lawyers, authors, and especially media personnel, have been tormented the most at the hands of the Digital Security Act. Hence, disconcerting freedom of speech is permitted under the statute, which is deceptive and subtle. Observation of every unpleasant truth intellectually represented in cyberspace via words spoken or written, or by signs, or creative representations such as caricatures has always offended anyone and everyone. Disappointing enough, such has always been interpreted to be an offence under the statute. It may not be that surprising that the majority of the accusation has not been filed by the alleged victims but by anyone and everyone. Now, the question that ticks away is, who is actually offended by the alleged post? Also, how is the *locus standi* of these extra-curricular offende(e)s decided? Or rather, is the *locus-standi* valid? The answer is YES, as the prosecuting rights under the statute are exclusively reserved for the police (*Digital Security Act*, 2018).

3.4.1. The Accused & Abused Media

Stifling of the media has been in the history of Bangladesh since British colonization (*Blair*, 2020). The media has always been under inspection. Now with the concept of citizen journalism (*Ataulla & Yildirim*, 2021), statutes like the Official Secrets Act and the Digital Security Act empower the government excessively to restrict speech containing criticism under the camouflage of state security (*Brennen*, 2003). In *Hamidul Huq Chowdhury vs. Bangladesh* (1982), the Apex Court held that the foundation of a free government in a constitutional democratic society relies on the freedom of the press. Vigour and strength of civil and political institutions of a democratic society are derived from free discussions

based on the reasoning that information enriches the decision-making process achievable by freedom of the press. Free press is “the lifeblood of democracy” and is inherently responsible for raising intellectual war against any social ill or wrong and accurately informing the citizens of such ill or wrong (*State vs. Mizanur Rahman Khan*, 2018). Interference with the freedom of the press must be reasonably justified (*Barnett*, 2009: pp. 557-559). Curtailing Press freedom can be compared to trying to fit the denizens of modern civilisation into cave dwelling. IT DOES NOT WORK. The High Court Division realized the hypocritical discrepancy of the allegations against renowned photographer and social worker Dr. Shahidul Alam. The Court enlarged the accused on bail after 100 days of unlawful detention. The inconsistency of the accusation and the subject matter of the interview that birthed such allegations was visible in plain sight. The allegation made therein the *Ejahaar* was that the motive of the accused was to incite and provoke the “Safe Road” protests to overthrow the current government (*Dr. Shahidul Alam vs. State*, 2019). Shahidul Alam was asked whether the protests were only related to road safety or was it something much larger. Alam, in his reply, mentioned that the government was unelected and forcefully remained in power. He also made mentions of the lawlessness, corruption, forced disappearances, extra-judicial killings, the lack of democracy, and that the government was handling the protests of unarmed students with brute force (*Al Jazeera English*, 2018). Nowhere in that transcript is a statement that tends to incite hatred or disaffection to overthrow the government. Immediate arrest of journalists under the DSA has been discouraged by law minister Anisul Huq (*The Independent*, 2021). Investigative journalist Rozina Islam was charged for photographing government papers, and ten editors of various newspapers have been charged under the DSA (*Hussain*, 2021). The disappearance followed by the arbitrary detention of journalist Shafiqul Islam Kajol over sharing the media reports of the “entertainment scandal” of the ruling party politicians on Facebook (*Asian Human Rights Watch*, 2020). The unresolved murder of investigative journalists Sagar Sarowar and Meherun Runi, regarding which it has been remarked that the current reality of Bangladesh allows journalists to work in an unsafe environment that carries the inherent risk of attack, intimidation, and being killed (*UNHR*, 2022). The arrest of Fazle Elahi is regarding a report alleging the irregularities of a rental property owned by the daughter of a former MP (*Barkley*, 2022). **Figure 5** depicts the press freedom index of Bangladesh reported by RSF in the past 12 years.

Bangladesh has always been in the bottom tier of the media freedom index. RSF designated Bangladesh 162 in the 2022 (*RSF*, 2022) freedom index among the 180 tracked countries of the world. The trend of the graph shows that press freedom in Bangladesh has been on a constant decline. Bangladesh has jumped 50 places in the bottom tier in the past decade (*United News*, 2022a). Polemic legislations like the Information Communication Technology Act, the Digital Security Act, the Official Secrets Act, etc., effortlessly contribute towards the depreciating media freedom index in Bangladesh, silencing anyone considered a

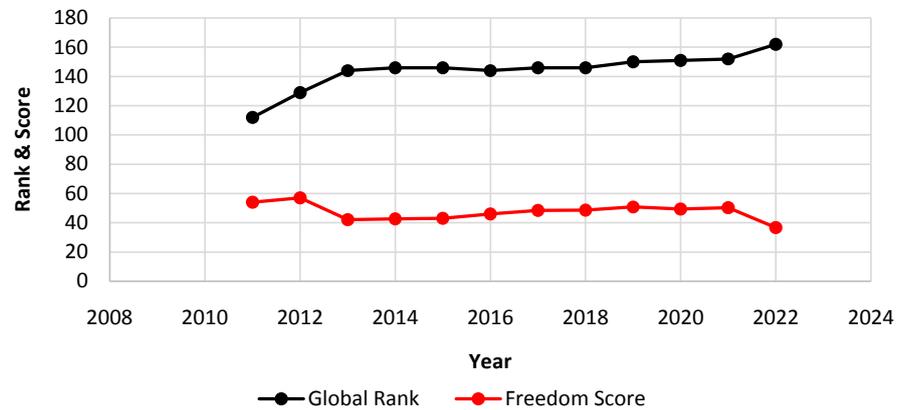


Figure 5. RSF Bangladesh press freedom (United News, 2022a).

critic. The death of author Mushtaq Ahmed raised concerns; the information minister responding to the undeserving death of the author stated that the government has adopted precautionary measures to ensure that journalists are not victimized by the Digital Security Act (Hussain, 2021). The Chairman of the Commonwealth Press Union Media Trust, Lord Black, mentioned the tremendous crisis of leadership and economic developments ensues the commonwealth while emphasizing the direct correlation of free media to the economic health of the country and the physical health of the citizens (CPU Media Trust, 2017). No wonder Bangladesh has been in the top tier of corruption (Blair, 2020). The media landscape of Bangladesh is best defined as controlled, pressurized, and influenced (British Home Office, 2021). Websites and news outlets, as many as 59 internet protocol television channels (IPTV), 35 news sites (RSF, 2016), and others appraising the government have been blocked (Freedom House, 2022). Unreasonable restrictions have been imposed on independent media, and journalists have been prosecuted in the process shown in Figure 6 and Figure 7, indicating national and local journalists, respectively. A study conducted by the Centre for Governance Studies reveals that the media ownership pattern in Bangladesh finds its roots in political affiliations, donors, family ties, business associates of the ruling party, and licensing has been selectively approved or renewed (United States Department of State, 2021). The Watergate Scandal comes to mind as attempts were made to purchase the newspaper by Ehrlichman and Nixon, and the existing owners faced incredible difficulties with paperwork related to the renewal of the broadcast licence (Brennen, 2003). The journalist community has also alleged that alongside the DSA, the National Broadcast Policy of 2014 has also contributed to the mischief of curtailing the freedom of the press (British Home Office, 2021). Let alone an intellectual right like the freedom of speech and press, the journalist community has been constantly subjugated to intimidation, harassment, physical attacks, and in worst-case scenarios, even murdered (United States Department of State, 2021). The safety of journalists is a national responsibility. The 2016 Human Rights Council Resolution on the Safety of Journalists confers such responsibility on the state authorities to

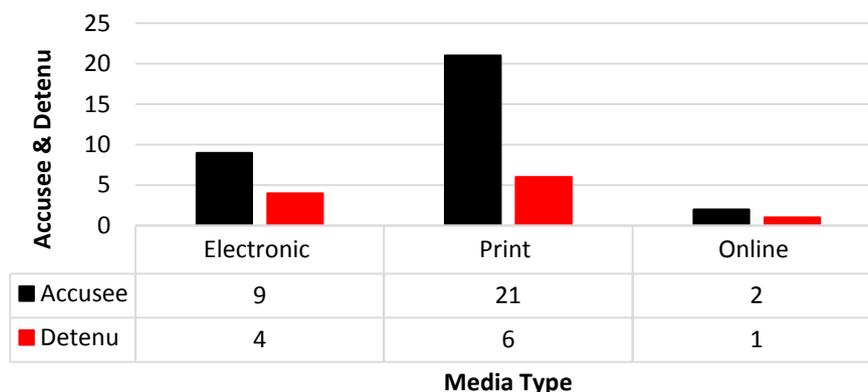


Figure 6. National journalist accusee/detenu (Riaz, 2021).

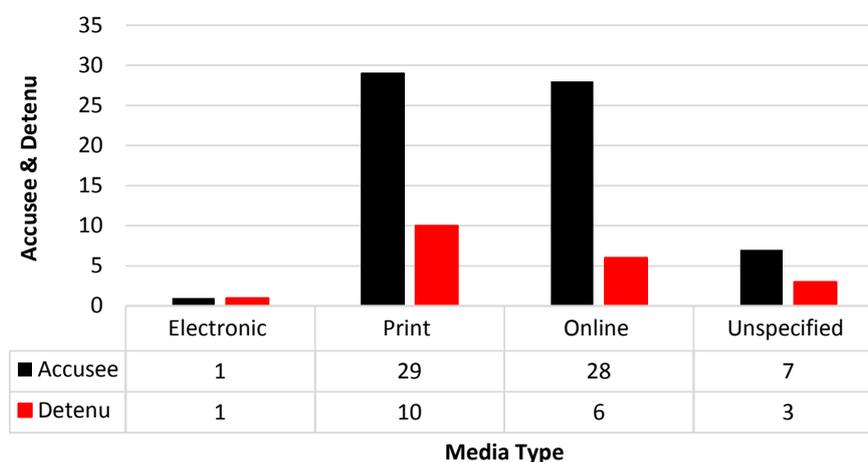


Figure 7. Local journalist accusee/detenu (Riaz, 2021).

ensure such safety and prosecute all violations (Liu, Posetti, & Shabbir, 2022). Investigative journalism has always been outlasted in the country (Rahman & Rashid, 2020). Investigative journalist like Rozina Islam has given us the truth of corruption related to the national response to the COVID-19 pandemic (Hussain, 2021), the alleged corruption related to the Bangladesh energy sector that supposedly caused the murder of investigative journalists Sagar Sarowar and Meherun Runi (UNHR, 2022), the infamous Watergate scandal exposed by journalists Bob Woodward and Carl Bernstein. (Bernstein & Woodward, 2014), the alleged nuclear test in North Korea, authored by investigative journalist James Rosen (Gallagher, 2013). The press, like the judiciary, is responsible for checking and controlling the abuse of power, the press exposes the deception, and the courts enforce accountability (*State vs. Swadesh Roy Daily Janakantha*, 2016). In those regards, a controlled media fails to fulfill its obligation of informing the public of the truth (*State vs. Mizanur Rahman Khan*, 2018). The press, however, must remember to avoid commenting on any matter which is sub-judice as it tends to interfere with the decision-making of the court of justice (*Keya Cosmetics Ltd vs. Dewan Hanif Mahmud*, 2015). As recent as 13th January 2023, the journalists in Rangpur took the streets and formed a human chain

standing in consolidatory with journalists Mohiuddin Sarkar and Ripon Akondo and condemning their unlawful arrest under the Digital Security Act (*Bangladesh Pratidin, 2023*).

3.4.2. Other Professionals

Legal Practitioner Abu Bakar Siddique was arrested in Dhaka for allegedly spreading disinformation regarding the transmission of the coronavirus and defaming Obaidul Quader, the road transport and bridges minister (*Bangladesh Post, 2020*). A madrassah teacher from Bagerhat was arrested under the statute for posting offensive photos defaming Obaidul Quader (*Binodkumar Singh, 2021*). Another lawyer Shah Newaz was comprehended for sharing a post from AB News on Facebook that was satirical of Sheikh Rehana and Nixon, the current lawmaker of Faridpur 4 constituency (*Kajal, 2022*). In the aftermath of an objectionable Facebook post, as many as 90 Hindu houses were vandalised in Sunamganj. Jhumon Das, the accused, allegedly shared a photo of a donation box of a mosque in a temple (*Prothom Alo, 2022b*) that was apparently detrimental to the religious sentiments of devout Muslims. Interestingly, nine police members and 23 other government officials, illustrated in **Figure 8**, have faced accusations under the statute (*Riaz, 2021*). KUET student Jahidul Islam was brutally assaulted and shown arrested under the Digital Security Act relating to loathsome remarks on democracy and the PM's visit to India (*United News, 2022b*). The comprehensive data gathered by *Riaz (2021)* and the Centre for Governance Studies show a total of 41 accusations against educators; the majority of the accused educators, as many as 19, are madrasa teachers. Roughly 66% (sixty-six percent) of those accusations resulted in arrest. Two teachers of Farakkabad Degree College and one madrasa teacher of Farakkabad Madrasa of Chandpur were comprehended by the police for defaming political figures using counterfeit Facebook profiles; educators suffering at the hands of DSA has been demonstrated in **Figure 9**. Astonishingly, 85% (eighty-five percent) of cases under the Digital Security Act for defaming political personalities have been filed by the ruling party and its affiliates (*Islam, 2021a*).

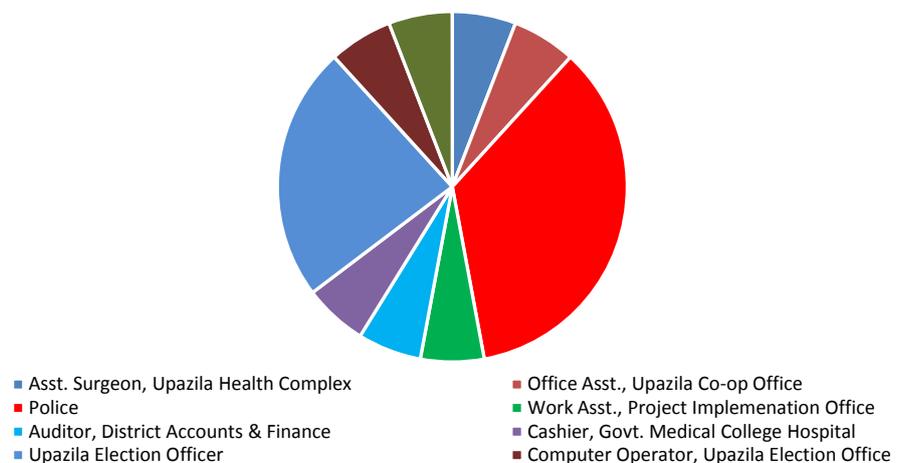


Figure 8. Public service accuser (*Riaz, 2021*).

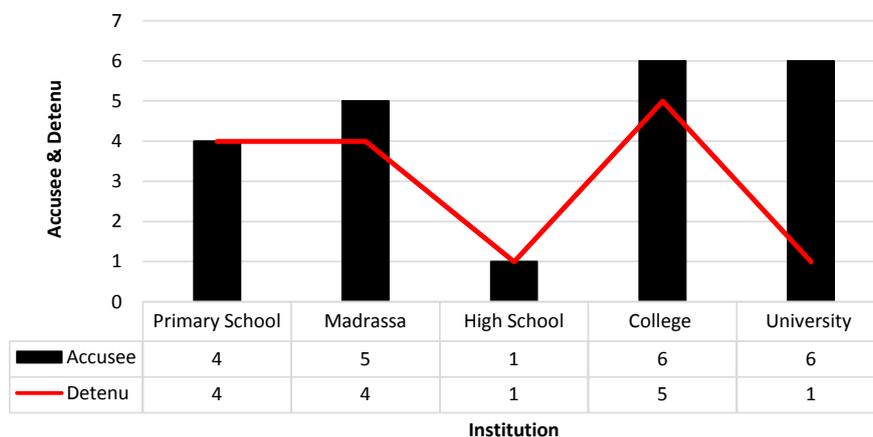


Figure 9. Accused/detained educators (Riaz, 2021).

3.4.3. The Accusers

Social media proliferation has hosted and witnessed many social movements, such as the Road Safety Movement and the Quota Movement in 2018, the protests against VAT on education in 2015, and the Shahbag Movement in 2013 (Al-Zaman, 2020). Such social movements were primarily advertised in cyberspace. Hence incurring numerous accusations and arrests under the ICT and DSA chronologically. The accusations made under the aforementioned cyber statutes are largely brought by the powerful in Bangladesh, a progressive BPL society where the poor can rarely bring a *shalish* (Lacy & Mookherjee, 2020). The trend of **Figure 10** shows that individuals forwarded as many as 170 complaints under the Digital Security Act. Who were these individuals? The safest assumption is that the majority of the complainants are associates or affiliates of the ruling party (Islam, 2021a; Daily Star, 2021b). The runners-up of the majority accusations are political, which is discussed hereafter in the succeeding section.

3.4.4. Political Accusations

Politics begets both content and conflict (Al-Zaman, 2020). The Digital Security Act played its role perfectly and has gotten the much-deserved exposure over its controversial provisions prosecuting many undeserving innocent individuals. To a large extent, Bangladeshi politics has been modulated by political participation in cyberspace (Islam, 2021a). Gowher Rizvi, the advisor of international affairs to the Prime Minister of Bangladesh, in an interview with Al Jazeera's Mehdi Hasan in a program called Head-to-Head, was enquired about the detention of renowned photographer Shahidul Alam. Rizvi acknowledged Alam as a close friend and thereafter stated that Shahidul Alam was not arrested for the interview with Al Jazeera but for spreading disinformation that endangered lives and incited violence. Astonishingly, the advisor believes and preaches that civilisation collapses without the freedom of speech and the government is responsible for protecting the citizens (Al Jazeera English, 2019). How very controversial. The allegations against Alam were dismissed as immaterial and inconsistent by the Apex Court (*Dr. Shahidul Alam vs. State*, 2019) and was enlarged on bail only

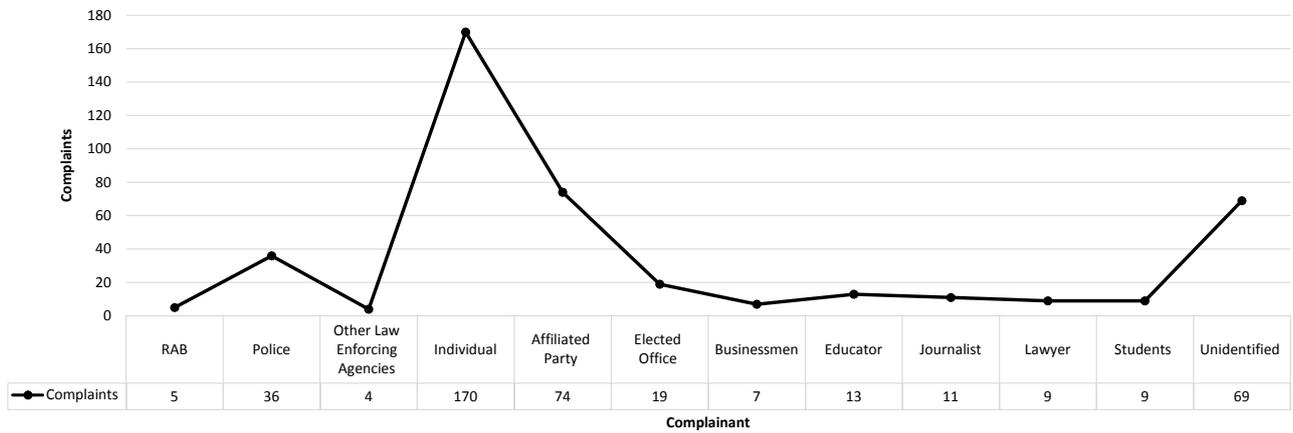


Figure 10. Identification of the complainants (Riaz, 2021).

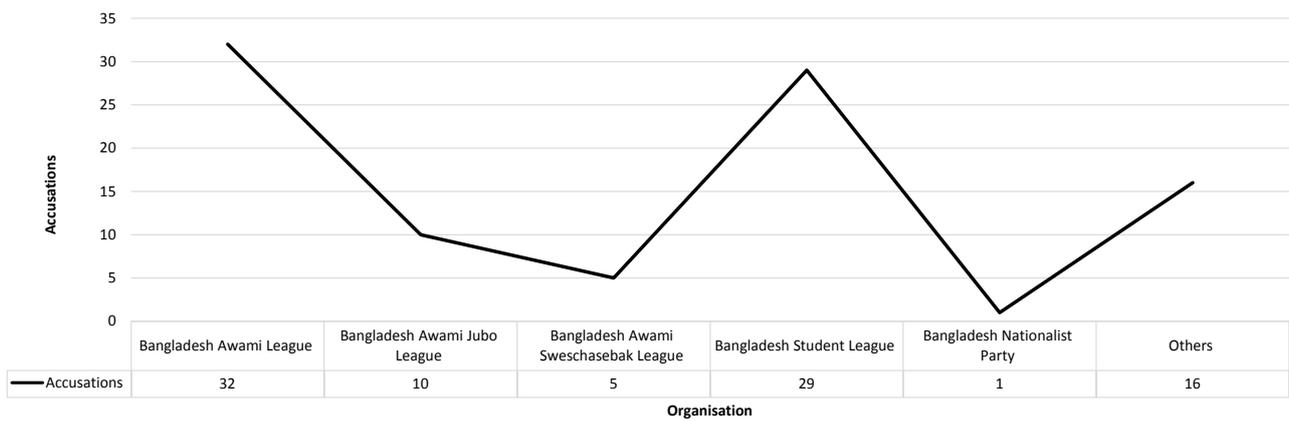


Figure 11. Accusations by a political organization (Riaz, 2021).

after 100-plus days of unlawful detention and brutal torture (Amnesty International, 2021). Opposition BNP alleged that with the enactment of the Digital Security Act, speaking freely and criticising the ruling party can only be done after looking left and right, i.e., ensuring the environment is safe (The Financial Express, 2022). Every individual is political irrespective of active political participation; political discussions related to revenues, authority, sanctions, et cetera., based on the growth of digitalization, have been stimulated and punished in Bangladesh (Kenski & Jamieson, 2014). Astonishingly, 85% (eighty-five percent) of cases under the Digital Security Act have been filed by the ruling party and its affiliates. As many as 71 cases have been filed for defaming the Prime Minister and 41 for defaming other ministers (Islam, 2021a). The upsurge of modernisation allowed every citizen to perform journalistic roles. The majority of the cases associated with politics end with detention and custodial torture without a trial (Riaz, 2021). Figure 11 & Figure 12 highlights accusations under the statute by various active political entities; 82% (eighty-two percent) of such accusations belong to the various organizations of the ruling party. The existing situation of the country after the enactment of the DSA has been described as “nightmare reality” by the Editor’s Council (Islam, 2021b). They say the functioning of democracy

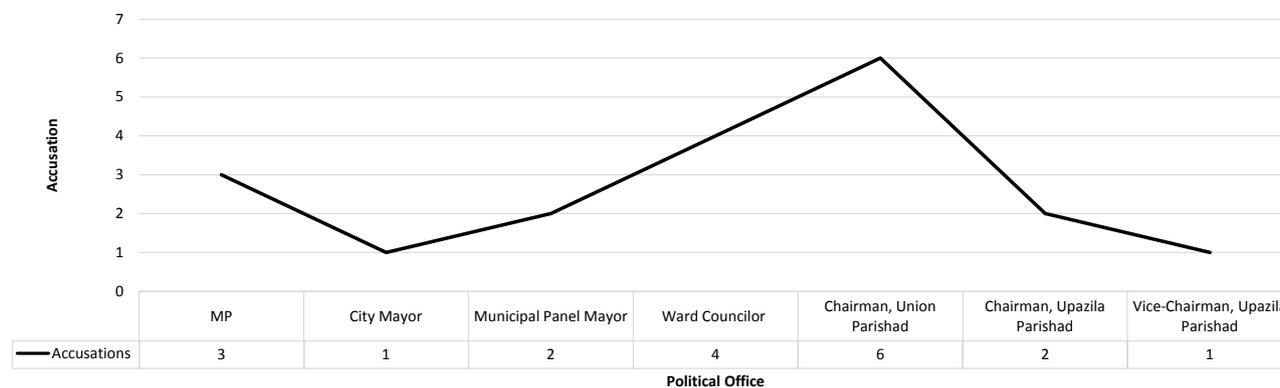


Figure 12. Political office of the complainants (Riaz, 2021).

thrives in an environment of free frank discussions (Sheikh Fazlul Haque vs. State, 1970) like political discussions. Given that every individual is political and participates in politics directly or indirectly by voting, paying taxes, etc. should always have a political say.

4. Conclusion

Irrefutably, Digital Bangladesh has been transcending into reality. A reality where information has become accessible, and communication has enhanced at the cost of freedom of speech and the right to criticism. This study is evidence that the safety of cyberspace in Bangladesh is ensured by prosecuting defamation and sedition. Unsurprisingly, corruption is upper echelon while the freedom score of the State is bottom tier, and the rule of law is in jeopardy. Additionally, the cyber statutes colossally fail the equality clause, fail the test of reasonableness of a statute, and invade privacy which in turn makes the vires of the statute questionable. Shonar Bangla (Golden Bengal) cannot be obtained through intolerance to criticism and lawlessness but rather the inverse. The argument behind such is that Bangladesh is a democratic state that permits oppositional activities, freedom of speech and optimistically embraces the right to criticism. Undoubtedly, all the above is ascertained in black and white.

Nevertheless, it is utmost misfortunate that reality strongly disagrees understood from the trend of this study. Independent journalism is frowned upon, and robust criticism is nipped. In most cases, alleged perpetrators are arrested before the offence is confirmed through investigation. Now, with the recent amendment of the Evidence Act in August 2022, allowing admissibility of digital records and recognizing it as the traditional equivalent of a document while attaching discretionary presumption to digital communication intensifies the menaces, as discretion can inflict justice and injustice. Referring to the fact that freedom of speech since the promulgation of the Digital Security Act has been at its lowest since the independence of Bangladesh, it is only deserving that freedom of speech is celebrated. Hence:

Freedom of Speech, My Beloved Friend.

Apologies that you have been the Victim of the Technological Trend, and the Political Advancement.

The Trend that Pledged your Safety and Outreach.

Apologies again that your Trust was Breached.

The Trend that Tormented and Strangled you to Death.

Apologies with Hopes of you Rejuvenating under our breath.

The sestet above alludes to the fond memories of freedom of speech. Additionally, the overall status of freedom of speech by best depicted by the following scenario: here lies the body of Freedom of Speech, finely fitted in dissent, wrapped in public opinion, and fragranced in political discussions. Freedom of speech fought the war of cyberspace against the Digital Security Act through many grave wounds and was captured and brutally tormented before being strangled to death. Hence, to commemorate the bravery and immortalize the sacrifices of Freedom of Speech, lets us observe silence, an eternal silence.

5. Recommendations

This section has been divided into two broad categories; the first element identifies the relevant setbacks of the legislation, while the second contains recommendations for the stakeholders, especially for the legislative and the executive branches of the People's Republic of Bangladesh.

5.1. Identifying the Drawbacks

The major setbacks of the Digital Security Act of 2018 are viz.

- 1) The statute is excessively broad, allowing it to be misinterpreted.
- 2) The statute has been misused, abused, and misapplied.
- 3) The statute undermines the nation's commitment to international instruments.
- 4) The statute is filled with undefined vague provisions to consider an example usage of the term "offensive," "knows to be," in Section 25.
- 5) Fabricated allegations under the statute are in abundance.
- 6) Unlawful detentions and custodial torture without a trial have been the soul of the execution of this statute.
- 7) Freedom of speech in cyberspace has been curtailed to the degree of criminalizing free speech.

The statute has equated public opinions and political discussions with sedition and almost stripped media freedom.

5.2. Commendations for Improvements

The backlash faced by the Digital Security Act can be resolved by:

- 1) Limiting discretion: Permitting excessive discretion enables the possibility of excessive abuse. The vague sections of the statute that allows excessive discretion should be specified; undefined provisions should be allocated definite meaning.

2) Proper implementation: Arrest of non-cognizable offences like sedition, defamation should not be exercised without a proper warrant and the arrestee(s) must be presented to the nearest court within 24 hours.

3) Adhere to *Stare-Decisis*: For every detention that exceeds the 24-hour limitation, and the accused is lawfully remanded, the detaining authority must adhere to the directives laid down by the Apex Court in *Bangladesh vs. BLAST (2017)* [69 DLR (AD), p. 63].

4) Respect Privacy: Every piece of electronic digital equipment, like computers, laptops, tablets, mobile phones, etc., is private personal property. The statute should be amended to respect privacy and search, and seizure of such personal properties must be conducted by executing a warrant.

5) Allow growth of democracy: Democracy thrives where dialogues are held, and ideas are exchanged. The abuse of the statute should be discarded completely. Thus, allowing public opinion and political discussions to flourish which in turn informs the government of the needs, necessities, and requirements of the society.

6) Allow uninterrupted functioning of the media and media coverage of the truth.

7) Amend defamation to be a tortious civil liability.

8) Ensure that the statute adheres to the constitutional standard and the international standard of free speech.

Acknowledgements

The author(s) take due cognizance of the blessings showered by Allah, the Eternally Gracious, the Everlasting Merciful. This research could not have achieved its results without open access to late **Advocate S.M Nazrul Islam Thandu's** law library, Ullapara. In due recognition of such, the author(s) salute the ethical professional accomplishments of the late learned Advocate and pray for his honour in the hereafter.

Conflicts of Interest

Conflict of interest between the author(s) is non-existent.

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