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Freedom of Expression in Bangladesh’s Cyber Security Act 2023: Evaluating the Legal Framework through the Lens of International Human Rights Law Standard

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The ‘freedom of expression’ is legally covered by all applicable international human rights treaties since it appeared in Article 19 of the Universal Declaration of Human Rights. According to international norms, the right to express thoughts and beliefs belongs to a republican culture as to a person’s ability to attain their maximum potential. Ensuring this freedom is a necessary condition for fulfilling other liberties related to basic human rights like the right to education, food, employment, vote and many others. However, there is a frightening situation in Bangladesh, as the state laws are suppressing vibrant debate and disagreement on issues like corruption and state action. This paper worked on the gaps in the ‘Cyber Security Act, 2023’ of Bangladesh to explore the standard it carries regarding the freedom of expression as an international fundamental human right. Qualitative methods and analytical study of various sources, international laws and national laws were the methodology to achieve the purpose. Thus, the author found that the law has a fearful history, which is the evidence to destroy the right to freedom of expression and it itself has many drawbacks to apply the international standard of human rights laws. Based on the findings, the author recommended that Bangladesh needs to enforce effective mechanisms of international human rights law to protect this valuable right.

Keywords: *freedom of expression, cyber security act, restriction, human rights, dignity.*

INTRODUCTION

Freedom of expression is considered as one of the most important human rights in the world, and it is also a key to establishing a democratic society. In Bangladesh, in spite of being recognised by the Universal Declaration on Human Rights and the constitution of the country, the 'freedom of expression' is still in a questionable situation. As international human rights laws are established to protect every kind of rights of the people, it is a matter of concern whether the standard of such laws is actually under consideration while making laws at a national level. It is the demand of human rights emergencies that the governments must immediately implement international human rights law standards to address human rights issues. Being one of the most concerning issues, the situation of the laws behind the violation of freedom of expression is highly necessary. Analysis shows that laws related to data protection were used against the human rights defenders who usually exercised their freedom of expression to speak about any corruption or negative activities.¹

The Cyber Security Act² is inherited from the Digital Security Act 2018,³ which was known as a draconian law. Over 2,000 cases under the DSA have been prosecuted in the last few years, which has caused the detention of authors, journalists, human rights defenders, and youths.⁴ A minor was charged with insulting religious sentiments because of a Facebook post he wrote, which led to his facing up to five years in prison under the Act. In 2021, while he was a tenth grader, he was allegedly held in pre-trial custody for eight months in solitary prison.⁵ In that year, almost 83% of complaints were filed under DSA⁶ for social media posts. Police filed cases against a 1st year university student, Khadija and Major Delwar Hossain, in 2020, claiming they spread anti-government comments and damaged the nation's reputation.⁷ The plaintiffs filed

¹ Mohammad Badruzzaman, 'Controversial Issues of Section-57 of the ICT Act, 2006: A Critical Analysis and Evaluation' (2016) 21(1) IOSR Journal of Humanities and Social Sciences <<http://dx.doi.org/10.9790/0837-21126271>> accessed 10 March 2024

² The Cyber Security Act 2023

³ The Digital Security Act 2018

⁴ Ali Riaz, 'How Bangladesh's Digital Security Act is creating a culture of fear' (*Carnegie Endowment for International Peace*, 09 December 2021) <<https://carnegieendowment.org/2021/12/09/how-bangladesh-s-digital-security-act-is-creating-culture-of-fear-pub-85951>> accessed 17 March 2024

⁵ *Ibid*

⁶ The Digital Security Act 2018

⁷ 'DSA case: JnU student Khadija in Jal for 8 month, *Prothomalo* (Dhaka, 12 April 2023) <<https://en.prothomalo.com/bangladesh/udnvi77fie>> accessed 08 July 2024

the claims after observing a video of them on their smartphones. Delwar Hossain and Khadija were accused of overthrowing Bangladesh's democratic government by spreading false allegations against the prime minister and influential individuals, aiming to destroy communal harmony and spread hatred among communities. It is noteworthy to mention that Khadiza was just a host of that program and she was arrested just like an adult despite being at the age of 17 years at that time. In 2023, Adilur Rahman Khan and ASM Nasiruddin Elan were sentenced to two years of imprisonment for their report on disproportionate force against demonstrators under the Digital Security Act 2018, which has been replaced with the Cyber Security Act 2023, which still maintains oppressive aspects.

After the proposal of CSA, human rights experts expressed their tension over the law. Amnesty International's interim deputy regional director for South Asia, Nadia Rahman, criticised Bangladesh's Cyber Security Act as an updated version of the previous oppressive law, violating freedom of expression, privacy, and liberty and incompatible with international human rights law.⁸ It is noteworthy to mention that CSA is already being used to oppress the freedom of expression. In the lead-up to the recent quota reform protest, Bangladeshi police arrested a man on 26th June under the Cyber Security Act following his expression of criticism about the quota system on Facebook.⁹ In an additional instance, on July 24, during the protests, seven individuals faced charges under the Cyber Security Act for posting 'satirical pictures and taunting' government figures, including the former prime minister.¹⁰

Considering the facts of the actual state of the right to freedom of speech, this research focuses on the gaps in the Cyber Security Act 2023 of Bangladesh and tries to explore the standard of the provisions that may be used against the constitutional right to expression. The researcher also looked into the standards of international human rights law regarding freedom of

⁸ Shaikh Azizur Rahman, 'Bangladesh Criticized Over Plan to Replace Controversial Law with One Considered Equally Repressive' *VOA News* (Dhaka, 21 August 2023) <<https://www.voanews.com/a/bangladesh-criticized-over-plan-to-replace-controversial-law-with-one-considered-equally-repressive-/7234227.htm>> accessed 16 March 2024

⁹ 'Bangladesh: Interim Government must restore freedom of expression in Bangladesh and repeal Cyber Security Act' (*Amnesty International*, 08 August 2024) <<https://www.amnesty.org/en/latest/news/2024/08/bangladesh-interim-government-must-restore-freedom-of-expression-in-bangladesh-and-repeal-cyber-security-act/>> accessed 16 March 2024

¹⁰ *Ibid*

expression in order to compare with the Cyber Security Act 2023 to evaluate the international human rights standard. The aim of this research is to deal with two research questions. Firstly, the author explores where the International Human Rights laws stand with the demand to safeguard the freedom of expression as a fundamental human right. Subsequently, the author deals with the issue that whether the Cyber Security Act 2023 in Bangladesh follows the International Human Rights Law standard or not. To achieve the aim, the research has been conducted through qualitative methods and has been based on critical and analytical studies of primary and secondary sources. The tools, such as journals, articles, local laws, writings from books, and international laws, have been discussed and analysed to achieve the purpose of this research. The national and international frameworks have been discussed from a conceptual and legal perspective. Thus, the author tried to recommend a few mechanisms based on the findings of this research.

INTERNATIONAL FRAMEWORK OF FREEDOM OF EXPRESSION

One fundamental international human right is the right to freedom of expression. It is vital to the effective functioning of civil society and republican culture. The outcome of other human rights, including the rights of women, people of race, and education, equality, a decent standard of life, and human dignity, depends on the freedom of expression. Freedom of expression imposes positive obligations on the state to facilitate access to information on the Internet and to support a child's right to engage in education, equal rights of male and female, freedom of religion and standard life.

In its broadest sense, the right to freedom of expression includes collective freedoms, including freedom of speech, opinion, press, information, assembly, association, thought, conscience, belief, gender, race and religion.¹¹ To uphold the dignity of all the human rights that come with expressing one's views, the freedom of expression took its place on an international level.¹² Thus,

¹¹ 'Module 1: Key Principles of International Law and Freedom of Expression' (*Media Defence*) <<https://www.mediadefence.org/ereader/publications/introductory-modules-on-digital-rights-and-freedom-of-expression-online/module-1-key-principles-of-international-law-and-freedom-of-expression/the-right-to-freedom-of-expression-under-international-law/>> accessed 02 August 2024

¹² *Ibid*

international human rights laws carry a standard to ensure this right, which the researcher will discuss in this chapter.

CONCEPTUAL ASPECTS

Freedom of Expression: Freedom of expression generally has an adverse effect on autonomy on the matter of governing state actions when the government wants to run a dictatorship. Otherwise, this right sets positive responsibilities on the state to promote all other rights related to human life. In general, the term 'Freedom of Expression' refers to a set of closely related rights, such as the freedom of speech, press, information, association, assembly, thought, conscience, belief, and religion. Practical circumstances frequently involve multiple privileges, even if the rights can be theoretically arranged into the four categories of expression, association, assembly, and thought, each with a particular significance.

Freedom of Expression as a Pre-Requisite of Other Human Rights: One basic right that has both a communal and an individual aspect is the freedom of expression.¹³ It is a mandatory ground for the complete advancement of the human being, crucial for any community, and the base of any independent and republican civilisation. People may be at risk of enjoying their basic rights if they do not have the right to express their basic needs properly. Human rights were recognised as fundamental human rights before the enactment of the Universal Declaration on Human Rights, just because people raised their voices about their basic rights, for example, the right to education, equal employment, women's rights or any other fundamental human rights.

In 1996, the Human Rights Committee realised the necessity of this right as a component of other basic rights and incorporated it into treaties based on each individual category. It discussed that the capacity to hold other rights is not possible if one doesn't have the freedom of expression.¹⁴ The committee provided that freedom of speech is vital if one wants to effectively exercise the right to vote. The right to vote is connected to the freedom of expression or speech, as it is not

¹³ UN Human Rights Committee 2011, para 2

¹⁴ UN Human Rights Committee 1996, para 12

possible to exercise voting rights in a society where one has to fear expressing one's own political perspective or choice.

LEGAL ASPECTS

Universal Declaration on Human Rights: Following the Holocaust and its aftermath, the United Nations General Assembly enacted the Universal Declaration of Human Rights (UDHR) in 1948, declaring universal dedication to safeguarding and advancing every aspect of fundamental human rights.¹⁵ The explanations for freedom of opinion and expression are protected under Article 19 of the UDHR.¹⁶ Every person holds a fundamental right to freedom of expression, which includes being able to hold onto opinions without obstacles and the right to investigate for, receive, and disseminate thoughts and findings beyond every barrier.

Under the Universal Declaration of Human Rights (UDHR), everyone is entitled to the fundamental right to express themselves freely. Each individual possesses the privilege of being able to enjoy their liberty of beliefs and expression, which entails the capacity to do so without obstacles and having the capacity to ask for and obtain information from any medium. This UDHR provision conveys an explanation of the significance of both the right of individuals to know whatever is true and their right to convey their thoughts. Any state law that prevents someone from expressing reality turns out to be a violation of their rights. The UDHR undertook a determination to lay out this as these rights are recognised as the most fundamental human rights.

International Covenant on Civil and Political Rights: The Universal Declaration of Human Rights has been the backbone underlying laws regarding human rights since its adoption, but without imposing any legally enforceable obligations on States.¹⁷ After almost two decades, States ratified the International Covenant on Civil and Political Rights (ICCPR), which carried out Article 19 of the UDHR to incorporate the equivalent safeguards.¹⁸ The right is protected by

¹⁵ UN Human Rights Committee 1948

¹⁶ Universal Declaration on Human Rights, art 19

¹⁷ '4 permissible limitations of the ICCPR right to freedom of expression' (*Australian Human Rights Commission*) <<https://humanrights.gov.au/our-work/projects/4-permissible-limitations-iccpr-right-freedom-expression>> accessed 13 March 2024

¹⁸ *Ibid*

the ICCPR by considering a provision in its individual treaty. That secures everyone an unrestricted right to express themselves, including the freedom to search for, receive, and exchange information throughout any way one chooses, verbally, in writing, or through any additional form of communication.¹⁹ Here, it is apparent that the rights to information and expression are significant. According to General Comment No. 34 of the ICCPR, political opinion, commentary, human rights, journalism, cultural, artistic, teaching, and religious discourse, as well as offensive utterances, are all examples of the freedom of speech.²⁰ It refers to both verbal and nonverbal communication, as well as various forms of expression.²¹ However, there is another clause that sets constraints on that liberty.²² This specifies that the limitation has to be mandated by law when it comes to concerns that are critically important to retaining public order, national security, others' reputations, welfare, or ethics.²³

Freedom of Expression in Other Conventions: Besides ICCPR, numerous countries have ratified the International Convention on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). All of these conventions assure the right to speech. A total of 197 nations have ratified the mentioned international instruments. By adhering to those accords, states freely accept to abide by obligations imposed by international treaties and safeguard the fundamental freedoms they comprise.²⁴ In light of the UDHR's provision of freedom of speech and the substantial amount of treaty ratification, it has become known as the standard for human rights.

Article 15(3) of the ICESCR more particularly emphasises the freedom required for scientific research and artistic work, stating that 'the States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.'²⁵ Articles 12 and

¹⁹ International Covenant on Civil and Political Rights, art 19(2)

²⁰ ICCPR, General Comment No 34/2011

²¹ *Ibid*

²² 4 permissible limitations of the ICCPR right to freedom of expression (n 17)

²³ *Ibid*

²⁴ Module 1: Key Principles of International Law and Freedom of Expression (n 11)

²⁵ International Convention on Economic, Social and Cultural Rights, art 15(3)

13 of the UN Convention on the Rights of the Child (CRC) provide substantial rights for children's freedom of expression. According to Article 12, states parties are responsible for making the effort that children can explicitly express what they think on any issue that affects them and give their opinions sufficient consideration given their age and level of maturity.²⁶ They also have to give them the opportunity to be heard in court and on administrative actions.

Article 13 states that the children have the right to freedom of expression, which includes the unrestricted ability to explore, search for, receive, and circulate ideas and information.²⁷ Restrictions, however, can be imposed to protect the rights of others, national security, public health, public order, or morals. In 2009, the Committee on the CRC stated in General Comment No. 12 that the convention ensures that children can freely form their opinions by minimising constraints on their participation.²⁸ It encourages states to believe that children have the capacity to develop opinions, and states should not restrict opinions related to consultation when the children express their opinions in a consultation. Age has little impact on ability, and comprehension solely is adequate. Article 21 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) demonstrates significant protections for free expression and information accessibility concerning individuals who suffer from disabilities.²⁹ From the laws and views of committees regarding the interpretation, it is probable that the restriction is necessary to protect public order, national security and other concerning issues, but it cannot be in such an amount which goes against the core value of freedom of expression. International legal framework values the right with utmost respect as an essential fundamental human right which leads to the protection of people's dignity as a human being.

FREEDOM OF EXPRESSION UNDER 'CYBER SECURITY ACT,2023' OF BANGLADESH

The Constitution of the People's Republic of Bangladesh prevails over all other laws as the supreme law. Here, it is expressly stated that every citizen holds the fundamental right to freedom of speech and expression. Article 39 demonstrates this right, and the freedom of speech,

²⁶ Convention on the Rights of the Child, art 12

²⁷ Convention on the Rights of the Child, art 13

²⁸ Committee on the CRC, General Comment No 12/2009

²⁹ Convention on the Rights of Persons with Disabilities, art 21

expression, and thoughts are guaranteed.³⁰ However, these rights may be subject to any legal restrictions that are reasonable and required to uphold morality, public decency, public order, or public safety or in cases of judicial contempt, defamation, or incitement to commit crimes under Article 39(2).³¹ Human rights activists generally express their views to promote public welfare.³² Doing so, they may fall down in the limitation of security of state policy, public orders or any other limitation imposed by the provision, as there are laws to restrict them that can impose serious curtailment of their right to freedom of speech. As this paper focuses on CSA, the author tried to analyse the provisions of this Act that are related to freedom of expression.

Historical facts behind the Cyber Security Act: The current CSA has a history before it came into action. The journey started with the 'ICT Act 2006',³³ which aimed to prevent cybercrimes, but an amendment in 2013 led to increased arrests and legal action against online opinion-sharing, with 1,300 charges brought between 2013 and 2018 under a specific section. The controversial section of the law prohibits knowingly revealing offensive or inaccurate digital content affecting the state, the rule of law, or individual reputation and includes provisions for fines and incarceration as punishment.³⁴ The clause's wording suggests that ordinary internet posts can be considered cybercrime based on authorities' opinions.

To be more precise, the crime can depend on its spectators more than its illegal origins. This section was regarded as a direct danger to the freedom of speech and expression. Because of its ambiguity, it faced criticism, as human rights defenders, journalists, and any other whose motive is only based on public interest could have been penalised under this provision. The then government decided to remove the Act's troublesome portions after experiencing plenty of criticism and passed the Digital Security Act 2018³⁵, which has now been superseded by the CSA.³⁶ The government expressed that they enacted the DSA³⁷ primarily to shield citizens using

³⁰ The Constitution of People's Republic of Bangladesh 1972

³¹ *Ibid*

³² Aliur Rahman and Harun Ur Rashid, 'Digital Security Act & Investigative journalism in Bangladesh: A critical analysis' (2020) 2(2) CenRaPS Journal of Social Sciences <<http://dx.doi.org/10.46291/cenraps.v2i2.32>> accessed 13 March 2024

³³ The Information and Communication Technology (ICT) Act 2006

³⁴ The Information and Communication Technology Act (Amendment) 2013, s 57

³⁵ The Digital Security Act 2018

³⁶ The Cyber Security Act 2023

³⁷ The Digital Security Act 2018

digital platforms from cybercrimes by changing certain portions of the ICT Act. Punishment for those who commit such crimes was guaranteed by this statute, and they decided to take the lead in enacting this legislation in order to protect the country's digital security. As there were disputes about the ICT Act³⁸, they passed the DSA³⁹, which was ultimately accepted as a new face with the prior hazards. It's dangerous how the DSA affected freedom of expression. Certain elements of the Act were designed to protect data while simultaneously presenting potential risks to reporters, human rights activists and even the general public who simply shared views on the internet.

A photojournalist was arrested 53 days after disappearing from Dhaka and charged with three offenses under the DSA, resulting in ten months in custody. He was charged by three individuals who filed those cases against him. Among them, two were leaders of the Mahila League, an associate body of the Awami League, and a member of the Awami League.⁴⁰ After several incidents, the UN High Commissioner for Human Rights requested the immediate suspension of the Act due to its use in arresting, harassing, and intimidating journalists and human rights defenders.

The Cyber Security Act: Following an enormous selection of international criticism associated with the previous law, discussions to repeal the law with a new one called 'The Cyber Security Act'⁴¹ occurred. Since the DSA⁴² put individuals in threat, certain of its provisions came up for modification, and as a consequence, the new Act incorporates certain amended sections. In accordance with section 8 of the Act, law enforcement agencies 'subject to data analysis have reason to believe' that any information released or distributed via digital or electronic media could have an impact on the nation's or any region's economic activity, security, defense, cohesion, or religious practices.⁴³ Law enforcement organisations may ask the Bangladesh Telecommunication Regulatory Commission, via the Director General, to delete or ban such

³⁸ The ICT Act (Amendment) 2013

³⁹ The Digital Security Act 2018

⁴⁰ Ahmadul Hassan, 'Police-ruling party men are defendants in 47pc DSA cases' *Prothomalo* (Dhaka, 19 September 2022) <<https://en.prothomalo.com/bangladesh/o42q79f1nl>> accessed 15 March 2024

⁴¹ The Cyber Security Act 2023

⁴² The Digital Security Act 2018

⁴³ The Cyber Security Act 2023, s 8

information if it incites racial hatred or violates public order or values. No specific ground for such belief is mentioned here. Section 29 of the Act states that, for defamation, one will have to face the consequences of giving a fine and not imprisonment.⁴⁴ In general, this may seem like an exemption from punishment, but imposing a fine cannot make it a clear exemption without giving any grounds for defamation. Anyone can use this language as per their interpretation.

Section 42 of the Act still carries arrest and search without warrant, which is an extremely arbitrary and violative provision to the right to freedom of expression.⁴⁵ According to this section, the police may search and detain a person without a warrant. Having no clear language to what extent a person can enjoy the constitutional right to freedom of expression, no clear definition of national security, and draconian provisions still creates confusion about this law's further application, as the former regulatory body already used it against people who just wanted to gain their rights.

COMPARATIVE ANALYSIS OF THE INTERNATIONAL STANDARD AND CYBER SECURITY ACT OF BANGLADESH

What is the Standpoint of the International Human Rights Legal Framework for the Right to Freedom of Expression? Under International standards, Political participation, criticism on one's own opinions and on public issues, prospecting, the argument of human rights, the press, literary and creative endeavours, education and religious discussion these belong to the different kinds of expression that are entitled to protection.⁴⁶ Following the rule of UDHR, the legally binding ICCPR sets a standard for states to uphold the right. The 'freedom to look for, receive, and share information and ideas of all kinds, regardless of boundaries, whether it be verbally, in writing or in print, in the form of art, or through any other means of communication of one's preference' is enshrined in the ICCPR's characterisation of freedom of expression.⁴⁷ This preserves every form of expression, including non-verbal expressions through sculpture and spoken, form of writing, and visual communication. It is important to note that ICCPR does not

⁴⁴ The Cyber Security Act 2023, s 29

⁴⁵ The Cyber Security Act 2023, s 42

⁴⁶ UN Human Rights Committee 2011, para 11

⁴⁷ International Covenant on Civil and Political Rights, art 19(2)

ignore reputation or national security, as it has a rule for the states to enact laws to restrict the right on the grounds of reputation or national security.⁴⁸ In general, these may lead to misunderstandings when it comes to discussing corruption or other detrimental actions that affect other human rights because states may interpret reputation or national security in accordance with their authority. However, a statement from the Human Rights Council can help to dispel this confusion. It states that any limitations on the right to free speech that a state party imposes to protect its reputation or national security must not compromise the fundamental right to free speech in the first place.⁴⁹ These concerns of boundaries and entitlements must not be violated by each other. The restriction needs to be enforced through statute to prevent entities from intervening inappropriately. Laws that restrict the freedom of expression must be clear, comprehensible, and transparent so that everyone can adjust their actions correctly. When they embrace their constitutionally guaranteed freedom of expression respectively, they must be able to reasonably understand the impact of their conduct. The CRC committee also emphasises the interpretation of the restriction in such a balanced manner without totally ignoring it. Given how frequently treaties and other soft legal instruments articulate the worth of freedom of expression, it can also be considered a fundamental of customary international law, regardless of whether it is clearly protected by a substantial body of treaty law.⁵⁰ Freedom of expression has been explicitly stated in the majority of human rights treaties, including those that are devoted to the defense of the rights of certain groups, such as women, children, and individuals with disabilities. Restriction cannot be the weapon of the regulatory body to suppress the right, and rather, it is mandatory to impose restrictions clearly with the core focus on the demand that freedom of expression must not be hampered.

Does the Cyber Security Act 2023 of Bangladesh comply with the International Human Rights standard? Section 29 of the law exempts from imprisonment in defamation cases that may not protect the right to expression as a whole for the presence of a huge fine and imprisonment on defaulting payment of the fine in the provision.⁵¹ While it was needed to ensure that the law adheres to its international and national commitments to freedom of expression and does not

⁴⁸ International Covenant on Civil and Political Rights, art 19(3)

⁴⁹ Human Rights Committee, General Comment No. 34, note 4, para 21.

⁵⁰ Module 1: Key Principles of International Law and Freedom of Expression (n 11)

⁵¹ The Cyber Security Act 2023, s 29

renew the previous law's clauses, this comes as another chapter of fear in reality. If any powerful party feels aggrieved for truth and files a case for defamation, is there any scope to interpret the language of CSA section 29 in favour of freedom of expression? For the language, any powerful entity can hide its wrongs and simply file a case. Another section is in action, and it is easy to criminalise a person for expressing views or following the professional conduct of the investigation and disseminate it to the public platform.⁵² The ability to erase data from digital media is granted by Section 8 of the CSA bill. According to this section, law enforcement agencies 'subject to data analysis have reason to believe' that any information released or distributed via digital or electronic media could have an impact on the nation's or any region's economic activity, security, defense, cohesion, or religious practices. If such material violates morals or public order or incites hatred towards people of racial, law enforcement organisations may request via the Director General of the BTRC to block or remove those data. However, it doesn't clarify what will be called a threat or having an impact. Another clause adopted by the new Act further grants the police to execute any kind of arrest and search without a warrant. Section 42, being in action, journalists cannot perform their duties as well as would face restrictions to express their views based on the investigation.⁵³ Since the bill's introduction, there have been worries. Critics argue that despite the name may change, the basic principles of the law remain largely the same as before. There are concerns about how this legislation might be utilised as an instrument of hindering the freedom of speech and silencing opposing views. The law includes measures granting the authorities the power to proclaim any views of protesters to be illegal. Such clauses may unintentionally violate basic freedoms and rights. This can be illustrated by two facts. Firstly, the law may threaten the constitutional right of people to assemble together and express questions on issues when their own interest is questionable for an action of the state. Secondly, the provisions jeopardise journalistic aims by undermining the confidentiality of sources and preventing them from disseminating the findings on matters of public interest. This analysis clearly shows that this is not the principle on which basis International Human Rights Law upheld the right to freedom of expression and encouraged states to do so. A state is liable under UDHR as a customary international law to ensure all the

⁵² The Cyber Security Act 2023, s 8

⁵³ The Cyber Security Act 2023, s 42

outlined human rights of the convention. However, when the question is about the right to freedom of expression in Bangladesh, state law itself is creating an opportunity for the regulator body to hinder the right, while it was supposed to enable the right with a balanced standard under international law. The former government did not have the intention to uphold freedom of speech, and rather, it created scope to stop people from raising their voices in the name of security. It is a known fact that the DSA⁵⁴ was abolished because of the consequences of people's outrage, media activism, and strong criticism by international bodies. The former law minister stated that the DSA did not come as a way to hinder the rights to freedom of the press and freedom of expression, but surprisingly, the journalists and human rights activists continued to be harassed and imprisoned. As the draft CSA⁵⁵ was in discussion of concern, he assured all concerned authorities that the new law would be optimistic. But the reality came as different as a whole, as seen during the recent quota reform movement. By the name of law, the former government harassed the protesters while they were merely expressing their thoughts on social media. These activities do not go with the standard of international human rights law, as the freedom of expression is recognised by the United Nations system as a basic and significant right, and the international legal framework stands on the fact that, with the guidance of the freedoms of expression, assembly, and association, it empowers citizens to actively participate in public affairs, exercise their right to vote, and have equal access to public service through open conversation, discussion, and self-organised processes, which are essential for a person's dignity as a citizen. The Cyber Security Act, as well as its history, have only been seen to oppress the dignity of citizens, which is just the opposite of the international standard of human rights.

CONCLUSION

It is indeed noteworthy to stand with the fact that freedom of expression cannot be curtailed by the name of statutory law when it itself is related to many other valuable and essential fundamental rights and also with the dignity of citizens in a state. The scenario in Bangladesh is not less than a real nightmare for the negative application on citizens by the ICT Act, DSA, and now CSA, and the aim of this paper was to identify where the application goes against people

⁵⁴ The Digital Security Act 2018

⁵⁵ The Cyber Security Act 2023

despite the state being obliged under international law. After conducting the research, the researcher has found the following findings:

The CSA has taken the place of the DSA, just with certain alterations regarding specific portions; the content of the clauses has remained largely unaltered. It also worked on decreasing the fines and penalties. Before the CSA had been authorised, the former Law Minister of the then government announced that the sanctions under sections 25 and 32 of the DSA would be decreased.⁵⁶ Subsequently, he met with heads of civil society groups, vital UN bodies, and stakeholders concerning the CSA and those discussions were covered in the media.⁵⁷ They were consistently assured by the minister that the new legislation was going to adhere to democratic principles and were given the opportunity to express their views. However, they had no access to the draft legislation in all of its parts. It is probable to draw the conclusion from this point of view that language change or no scope of misinterpretation of wrong motives were of little significance. Since the wording of the planned law has not been transformed, Amnesty International has written to the ICT ministry of that time to raise queries.⁵⁸ The correspondence pointed out that while the proposed restrictions on free speech in the draft CSA are subject to constitutional boundaries, they are illegal under international laws. In addition, the current Act contained the DSA clause allowing police to conduct an arrest or search without a warrant, being necessary to be amended in the current Act. The head of advocacy at the International Press Institute praised the replacement of the DSA after the initial announcement but emphasised that the government should make sure the CSA maintains its national and international freedom of expression obligations and does not extend DSA terms.⁵⁹ Human rights concerns were brought up during a roundtable discussion on the DSA's repeal and the release of the new CSA law.⁶⁰

⁵⁶ 'Cyber Security Act: What we know so far' *The Daily Star* (Dhaka, 07 August 2023)

<<https://www.thedailystar.net/news/bangladesh/news/cyber-security-act-what-we-know-so-far-3388746>> accessed 19 March 2024

⁵⁷ Mahfuz Anam, 'Column by Mahfuz Anam: DSA to CSA, A sham of reform' *The Daily Star* (Dhaka, 01 September 2023) <<https://www.thedailystar.net/opinion/views/the-third-view/news/column-mahfuz-anam-dsa-csa-sham-reform-3407896>> accessed 08 September 2024

⁵⁸ Cyber Security Act: What we know so far (n 56)

⁵⁹ 'International Press Institute Welcomes Repeal of Bangladesh's Digital Security Act' *The Wire* (2023) <<https://thewire.in/media/international-press-institute-bangladesh-digital-security-act>> accessed 19 March 2024

⁶⁰ 'Cyber Security Act: Make bail for accused pending trial the norm' *The Daily Star* (Dhaka, 23 August 2023) <<https://www.thedailystar.net/news/bangladesh/news/cyber-security-act-make-bail-accused-pending-trial-the-norm-3400886>> accessed 19 March 2024

The editor of 'Daily Aijker Patrika,' Professor Dr. Golam Rahman, contended that the CSA throws suspicion on the continual existence of legitimate communication, comparable to the public's rejection of the preceding DSA and ICT Act. Moreover, the analysis shows that the law doesn't follow international standards to maintain freedom of expression. After passing the law with existing gaps, the U.S. Embassy criticised the new legislation for criminalising freedom of expression, retaining non-bailable offences, and potentially allowing misuse for arrest detention, and they confirmed that it did not go through any critics before passing. Amnesty International stated in a briefing that the Cyber Security Act 2023 is an extension of previous unjust laws in Bangladesh that have consistently assisted the state's crackdown on freedom of expression and human rights.⁶¹ They expressed this particular view after witnessing the law's use during the student-led quota-reform protests. The law does not contain any expressive provision about children as to what extent they can exercise freedom of expression and what the limitation is as per their age and maturity level. Like the ICT Act section 57⁶² and Digital Security Act, this current Act is another hindrance to the freedom of expression and other related human rights for every citizen other than the powerful regulatory body. This law was nothing but a power of only the regulator body, as the former government repeatedly failed to adhere to international law standards despite their assurance.

Analysing the history behind the Cyber Security Act 2023, its current provisions, and international human rights law standards, here are a few recommendations to ensure freedom of expression as a fundamental human right in this new Bangladesh.

- Cyber Security laws are indeed essential in this digital era, and there are some provisions to protect the cyber security of people and provisions against potential hate speech are also in the Act, but the current Act itself carries a heinous past history of using against people as per regulator body's own motive, the entire Act should be abolished, and a new fresh law should be introduced with all the necessary provisions. Thus, the stakeholders need to focus on the matter that the provisions carrying potential threats to the freedom

⁶¹ Bangladesh: Interim Government must restore freedom of expression in Bangladesh and repeal Cyber Security Act (n 9)

⁶² The ICT (Amendment) Act 2013, s 57

of expression should not be reopened, and not a single provision should be there, which may be a way of misuse or misinterpretation by the powerful entity or regulator as per their motive.

- Until a new law comes, it is essential to make sure that the current CSA does not unintentionally or intentionally curtail fundamental rights or give regulators enormous control, it must be endorsed through rigorous surveillance and continuous assessment by not only national groups but also international scholars. The government should provide sufficient opportunities for stakeholders to review and provide input on the Act with an intent to focus on the gaps so that the application doesn't go against international standards.
- Clear definitions of public interest, national security, reputation and defamation must be given. Establishing a balance between individual rights and national security is extremely challenging, but it is vital in the age of becoming digital. So, an unbiased and expert team can be incorporated to make a proper balance on this point.
- No provision should be present in a law where the children's freedom of expression has no consideration, as well as their age and maturity level, before using the law against them as a weapon of the regulatory body. It is mandatory to take the children into consideration in the law as Bangladesh is obliged under the CRC to give children all the human rights they are entitled to under the CRC.

To uphold the constitutional right to freedom of speech, press, and expression, it is necessary to amend the laws that hamper the vital role of human rights activists through the collection and revelation of any information for the public interest. The right to freedom of expression is a fundamental international human right essential for civil society and republic functioning.⁶³ It impacts other rights like women's rights, education, equality, and human dignity. The state must facilitate access to information and support children's rights, women's rights and all other basic human rights through freedom of speech, opinion, press, belief and religion. Regarding the Cyber Security Act and freedom of expression in Bangladesh, as people are reluctantly still incapable of finding optimism, it appears that misery will keep happening if the wrong intention

⁶³ Mahmudul Islam, *Constitutional law of Bangladesh* (2nd edn, Mullick Brothers 2003)

behind the law is not changed. It is probable to conclude that the changes are largely symbolic rather than real. Few provisions now allow for bail, and sentences that were previously of higher range and completely out of proportion have occasionally been shortened, changes like these cannot actually ensure human rights when provisions are being used through the large scope of misinterpretation or higher opportunity of the regulator body to stop anyone from disseminate a corruption or anything that would take them under questionable situation in front of the world. Here comes the necessity to abolish this law to uphold the freedom of expression as a fundamental human right.