

Policy Paper

Digital Security Act, 2018 How Is It Being Enforced

Ali Riaz



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The Digital Security Act has been a topic of intense discussion in Bangladesh for the past three years. The discussions began shortly after the draft law was finalized at the end of November 2017. Objections were raised against the proposed law insisting that it would impede freedom of speech and freedom of expression. Despite the criticisms and objections, the government passed this law and implemented it in October 2018. National and international human rights organizations and organizations which monitor media freedom around the globe warned of possible abuse of various sections of the law. The Editors' Council, an organization of editors of various media in Bangladesh, drew attention to the flaws of various articles of the proposed laws and discussed the potential negative impacts of these articles on the media ('Editors' Council: Why we oppose Digital Security Act', *Prothom Alo* English, September 29, 2018). Meetings between the government and the Editors' Council were held, the Editors were promised that the government would consider the opinions of the Council. However, the government implemented the law without addressing the concerns of anyone except the objections of the Police. The Parliamentary Committee recommended that in Section 43 regarding search, seizure, and arrests the Police should be required to seek permission from the Director General of the Digital Security Agency; but it was later removed at the objection of the Police. Thus, the police have been given the power to search, seize and arrest without any warrant or permission ("Nobody's objections taken into account," *Prothom Alo*, February, 27, 2021). The government has repeatedly claimed that the law is not being abused and there is no reason for anyone to be afraid of it. The Editors' Council said in May 2020 that their fears about the Digital Security Act have come to pass; "our fear is now a nightmare-reality for the mass media," it said in a statement ('Digital Security Act: Editors' Council worried over cases against journos, writer', *The Daily Star*, May 8, 2020).

After more than two years since the law went into effect there is enough information to understand what the reality has become, how widely the law is being used, who is being accused under the law, and what kind of allegations are being made. The Centre for Governance Studies (CGS) initiated a research project in February 2020 to gather information about various aspects of the law, especially the impacts of the Digital Security Act 2018. Under this project, information about cases, detentions, and legal proceedings under the Digital Security Act are gathered. This report is based on data collected from 1 January 2020 to 25 March 2021. During this period detailed information about 426 cases have been gathered. The number of total accused persons in these cases are 913. Based on these cases, the information obtained on various aspects of the application of this law has been analyzed.

Difficulties in Gathering Information

This law came into force in October 2018. When the law was proposed to the cabinet for approval in February 2018, it was feared that the proposed law contained provisions which would increase the number of cases. The anticipation was based on the experience of the existing Information and Communication Technology Act 2006 (as amended in 2013). The number of cases under the ICT Act was already on the rise. A news report published in September 2016 provided significant clues in this regard. Citing the data from Bangladesh's only Cyber Tribunal based in Dhaka writes, “The Tribunal began work with three cases in February 2013. But the following year 32 cases came to the tribunal. In 2015, 152 cases came for trial. As of September 15 of that year [2016], 156 cases reached the Tribunal. Besides, 250 cases were under investigation. In other words, a total of 593 cases are pending and under investigation” (Asaduzzaman, ‘Cases of Cyber Crimes Increasingly Exponentially’, *Prothom Alo*, September 22, 2016). According to Article 19, a total of 71 cases were filed in 2018, 35 cases of which were under the Digital Security Act (*The New Age*, ‘DSA cases, arrests treble in a year’, January 6, 2021).

In 2016, a few more things became clear. First, section 57 of this law is being used the most. A rough translation of Section 57 of the ICT Act says: “If any person deliberately publishes or transmits or causes to be published or transmitted in the website or in any other electronic form any material which is false and obscene and if anyone sees, hears or reads it having regard to all relevant circumstances, its effect is such as to influence the reader to become dishonest or corrupt, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the state or person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity will be regarded as an offence.” And for these offences, anyone can be sentenced to a maximum 14 years and a minimum 7 years of imprisonment. The accused can also be fined Tk1 crore or more. The primary objective of this section was to limit the freedom of expression of the individual. In 2016 alone, of the cases filed under the ICT Act, 94 percent were filed under the controversial section 57. Between 2012 and June 2017, 1417 cases were filed under this law, and about 65 percent of these cases were under section 57. Until section 57 was repealed in 2018, at least 37 cases were filed under section 57.

Second, most of the accused in these cases were acquitted. “All the accused have been acquitted in 66 percent of the cases as the allegations have not been proven in court. That means only 34 percent of the cases have been proven. Thirteen percent of the cases have been proven false at the investigation stage.” It was also learnt that “the police had submitted final reports to the court on 46 cases in the last three years as the investigation did not find any truth of the incident.” (Asaduzzaman, ‘Cases of Cyber Crimes Increasingly Exponentially’, *Prothom Alo*, September 22, 2016).

In 2018, apprehension was that the number of cases would increase if the Digital Security Act were introduced (Ali Riaz, 'For Whose Interest is the Digital security Act', *Prothom Alo*, February 3, 2018). The dire warning came to pass. In September 2020, two years after the law was enacted, the number of cases under the law has risen to more than 1,000 (Asaduzzaman, 'Digital Security Act: Cases Crossed Thousand in Two Years;', *Prothom Alo*, September 19, 2020). Data collected by the Center for Governance Studies (CGS) from the police headquarters in March 2021 shows that 126 cases were filed in 2018, 731 in 2019 and 699 as of August 2020. Altogether at least 1559 cases have been filed since the law came into force. According to the Cyber Crimes Tribunal, more than 800 cases were filed in the first nine months of 2020 (January-September 2020).

There are discrepancies among the various human rights organizations and media reports about the total number of cases. An article published in the English daily *The Financial Express* in February 2021 states that there were 630 cases in 2020 (Shahiduzzaman Khan, 'Strengthening Cyber Security Management, *The Financial Express*, February 27, 2021). Data from the Ain O Salish Kendra (ASK) shows that, there were 130 cases in 2020 (*The New Age*, 'DSA Cases, Arrest Treble in a Year,' January 6, 2021). These discrepancies are due to the absence of transparency and unwillingness of the law enforcing agencies in providing data.

What Do We Know

Researchers of the Center for Governance Studies (CGS) under the Digital Security Act research project have gathered information from - 1) Government-approved print and electronic media; 2) the accused or their family and friends; 3) the lawyer of the accused; and 4) police station and other concerned departments. After collecting the data, accuracy of these data has been checked to the highest extent possible before entering a database which is publicly available through a website (<https://freedominfo.net/>). (The website is updated regularly as new information is received and processed). Details of 426 cases filed between January 1, 2020 to March 25, 2021 have been gathered. A total of 913 people have been accused in these cases. Based on these cases, this report has been prepared highlighting various aspects of the application of this law.

Who is being Accused, Who is Being Detained

Of the 913 accused, information about the occupations of 733 have been gathered. According to this information, 11 percent of the accused are politicians, and more than 10 percent are journalists. Among those whose occupations are known, they constitute 14.1 percent and 13.2 percent, respectively (Table-1).

Table 1 - Profession of the accused

Professions		% of Total	% of Known
Journalist	97	10.6	13.2
Educator	22	2.4	3.0
NGO & Activist	5	0.5	0.7
Politician	104	11.4	14.1
Student	30	3.3	4.1
Govt. Employee	17	1.9	2.3
Private Employee	14	1.5	1.9
Businessman	15	1.6	2.0
Legal Practitioners	3	0.3	0.4
Other Profession	429	47.0	58.3
Profession Not Found	177	19.4	

We have been able to identify the age of 299 of these accused. It shows that the most accused are between the ages of 26 and 40, about 46 percent. If we consider the age from 18 to 40, it stands at more than 80 percent (Table-2).

Table 2 - Age of the accused

Age Group		% of Total	% of Known
Below 18	9	1.0	3.0
18-25	103	11.3	34.4
26-40	139	15.2	46.5
41-55	45	4.9	15.1
Above 55	3	0.3	1.0
Age Not Found	614	67.3	

According to the available information, 273 have been arrested. From these we have collected occupational information of 240 persons. About 13 percent of them are journalists and 11.3 percent are politicians. Interestingly, although more cases are filed against the politicians, it is the journalists who get arrested more. Then students and teachers are next highest numbers (Table-3).

Table 3 - Professions of the Arrestees

Professions		% of Total	% of Known
Journalist	31	11.4	12.9
Educator	15	5.5	6.3
NGO & Activist	3	1.1	1.3
Politician	27	9.9	11.3
Student	17	6.2	7.1
Govt. Employee	5	1.8	2.1
Private Employee	7	2.6	2.9
Businessman	6	2.2	2.5
Legal Practitioners	2	0.7	0.8
Other Profession	127	46.5	52.9
Profession Not Found	33	12.1	

As for the age group of the arrestees, more than 80 percent are between the ages of 18 and 40. It is noteworthy that about 3 percent of them are under 18 years of age (Table-4).

Table 4 - Age of Arrestees

Age Group		% of Total	% of Known
Below 18	4	1.5	2.9
18-25	42	15.4	30.0
26-40	71	26.0	50.7
41-55	22	8.1	15.7
Above 55	1	0.4	0.7
Age Not Found	133	48.7	

Journalists of Which Media are Being Accused and Detained

According to the data we have gathered, 97 journalists have been accused. Among them, we have details about 90 journalists' media affiliation - 32 are associated with national level media, and 58 are local journalists. Online media journalists from outside Dhaka have been accused the most. Of the 90 people, majority of them are associated with the print

media - a total of 50, more than a half of all. The second highest number of journalists are associated with online media, a total of 30, almost one-third (Table-5).

Table 5 - Workplace of Accused Journalists

National Journalist	Electronic Media	9
	Print Media	21
	Online Media	2
Local Journalist	Electronic Media	1
	Print Media	29
	Online Media	28
Not Specified		7
	Total	97

The number of detained journalists is 31, of whom 17 are not associated with the national level media (Table-6).

Table 6 - Workplace of Detained Journalists

National Journalist	Electronic Media	4
	Print Media	6
	Online Media	1
Local Journalist	Electronic Media	1
	Print Media	10
	Online Media	6
Not Specified		3
	Total	31

Cases Against & Detention of Teachers

Our database has information about 22 accused teachers. It shows that most of the cases have been against college and university teachers. Of the total accused teachers, 27 percent are college teachers and 27 percent are university teachers (Table-7).

Table 7 - Workplace of accused teachers

Categories of Educator	Number
Primary School Teacher	4
High School Teacher	1
College Teacher	6
University Teacher	6
Madrassah Teacher	5
Total	22

A total of 15 teachers have been arrested in different cases. College teachers have been detained the most. One-third of the detained teachers are college teachers and 26.66 percent are madrassah teachers (Table-8).

Table 8 - Workplace of detained teachers

Categories of Educator	Number
Primary School	4
High School	1
College	5
University	1
Madrassah	4
Total	15

Accused Government Employees

Of the 733 accused in the 426 cases, there are 17 government employees, 6 are members of the police force (Table-9)

Table 9 - Workplace of accused Government Employees

Categories of Educator	Number
Assistant Surgeon of a Upazila Health Complex	1
Office Assistant of a Upazila Cooperative Office	1
Bangladesh Police	6
Work Assistant in the Office of a Project Implementation Officer (PIO)	1
Working as ‘Auditor’ in a District Accounts and Finance Office	1
Working in the position of ‘Cash Government’ at a Medical College Hospital	1
Upazila Election Officer	4
Office Assistant/ Computer Typist of a Upazila Election Office	1
Unknown	1
Total	17

Who are the Accusers?

The details of the 426 cases we have gathered show that most of the cases have been filed as personal complaints. However, it is not always that the victims of some wrongdoings have lodged the complaints. It has been found that a significant number of complainants have been filed by individuals alleging defamation of other individuals. The identities of the accusers we have gathered in 357 cases show that law enforcing agencies (Police, RAB, and others) have filed 45 cases, 12.6 percent of the cases in our database (Table-10). There are 74 people associated with political parties and 19 people are elected representatives - a total of 93 people are involved in politics in one way or the other.

Table 10 – Identities of the Accusers

		% of Total	% of Known
RAB	5	1.2	1.4
Police	36	8.5	10.1
Other Law Enforcement Agencies	4	0.9	1.1
Individuals	170	39.9	47.6
Party affiliated	74	17.4	20.7
Any Elected Office Held	19	4.5	5.3
Businessman	7	1.6	2.0
Educator	13	3.1	3.6
Journalist	11	2.6	3.1
Legal Practitioners	9	2.1	2.5
Student	9	2.1	2.5
Unknown	69	16.2	

Of those who are involved with political parties, 76 are found to be directly involved with the ruling party and its affiliates. In other words, 82 percent of the accusers that we have been able to identify are the leaders and workers of the ruling party (Table-11).

Table 11 - Political identities of the accusers

		% of Total	% of Known
Bangladesh Awami League	32	34.4	34.4
Bangladesh Awami Jubo League	10	10.8	10.8
Bangladesh Awami Swechasebak League	5	5.4	5.4
Bangladesh Student League	29	31.2	31.2
Bangladesh Nationalist Party (BNP)	1	1.1	1.1
Others	16	17.2	17.2

Of the nineteen (19) elected representatives identified, the details show that most of them are the Chairmen of the Union Parishad. However, it is noteworthy that there are 3 Members of Parliament among them (Table-12).

Table 12 – Identities of Elected Representatives

Categories of Educator	Number
MP	3
City Mayor	1
Municipality Panel Mayor	2
Ward Councilor	4
Chairman Of Union Parishad	6
Chairman of Upazila Parishad	2
Vice Chairman of Upazila Parishad	1
Total	19

What are the Accusations, Who are the Accused, Who are the Accusers

There are 22 sections in the Digital Security Act-2018 which deals with offenses and penalties; but the details of the cases show that 16 sections have been used. In some cases, cases have been filed against the same person under multiple sections. (Table-13).

Table 13- How many cases under which section

Article	Number of Cases	Number of Accused
21	3	35
22	3	13
23	10	46
24	16	78
25	37	112
26	8	13
27	1	1
28	13	15
29	39	91
30	2	3
31	29	57
32	1	5

Article	Number of Cases	Number of Accused
33	1	4
34	1	10
35	18	92
36	1	5

Section 29 has been used in the largest number of cases. 39 cases have been filed under this section, in which 91 people have been accused. This section deals with publishing, broadcasting & disseminating defamatory information. [It says 29(1),” If a person commits an offence of publication or broadcast defamatory information as described in section 499 of the Penal Code (Act XLV of 1860) in any website or in any other electronic format then he will be sentenced to a term of imprisonment not exceeding 3 (Three) years or fine not exceeding Tk.5 (Five) lac or both.” 29(2) says,” If any person commits the offence mentioned in sub-section (1) second time or repeatedly, he will be sentenced to a term of imprisonment not exceeding 5 (Five) years or fine not exceeding Tk.10 (Ten) lac or both.”]

But considering the number of accused persons, section 25 is being used the most; a total of 112 people have been accused in 37 cases. This section deals with publishing, sending of offensive, false or fear inducing data-information, etc. [It says 25(1), “If any person in any website or through any digital medium – a) Intentionally or knowingly sends such information which is offensive or fear inducing, or which despite knowing it as false is sent, published or propagated with the intention to annoy, insult, humiliate or denigrate a person or b) Publishes or propagates or assists in publishing or propagating any information with the intention of tarnishing the image of the nation or spread confusion or despite knowing it as false, publishes or propagates or assists in publishing or propagates information in its full or in a distorted form for the same intentions, then, the activity of that person will be an offence under the Act. (2) If any person commits any offence mentioned within sub section (1), the person will be penalized with imprisonment for a term not exceeding 3 (three) years or fine not exceeding 3 (three) lacs taka or with both. (3) If any person commits the offence mentioned in sub-section (1) for the second time or recurrently commits it then, he will be punished with imprisonment for a term not exceeding 5 (five) years or with fine not exceeding 10 (ten) lacs taka or with both.”] So far, this section has been the most discussed and objected among the sections.

We have explored the professional identities of the accused under these two sections. Of the 91 accused in 39 cases under Section 29, 89 have been identified. Most of them are politicians - 40; then there are the journalists - 14 people (Table-14).

Table 14 - Professional identity of the accused under section 29

Professions	Number
Journalist	14
Educator	5
NGO & Activist	0
Politician	40
Student	2
Govt. Employee	0
Private Employee	1
Businessman	0
Legal Practitioners	1
Other Profession	26
Profession Not Found	2
Total	91

Section 25 is the most controversial Section of the law, and widely discussed. The number of accused is 112 in 37 cases under the Section 25; we have been able to gather the professional identities of 108 people. Among them 37 are politicians and 12 are journalists (Table-15).

Table 15 - Professional identity of the accused under section 25

Professions	Number
Journalist	12
Educator	3
NGO & Activist	4
Politician	37
Student	1
Govt. Employee	5
Private Employee	1
Businessman	2
Legal Practitioners	1
Other Profession	42
Profession Not Found	4
Total	112

In all those cases filed under these two sections, the professional attachments of the accusers were found to be 38 in section 29 and 36 in section 25. It has also been found that the majority of the accused were politicians in both the 29 section of the Act and the 25 section of the Act (Table-16 and Table-17).

Table 16 - Professional identity of the accusers under Section 29

Professions	Number
Journalist	4
Educator	4
NGO & Activist	0
Politician	14
Student	1
Govt. Employee	2
Private Employee	1
Businessman	0
Legal Practitioners	3
Other Profession	9
Profession Not Found	1
Total	39

Table 17 - Professional identity of the complainants under section 25

Professions	Number
Journalist	3
Educator	4
NGO & Activist	0
Politician	11
Student	1
Govt. Employee	5
Private Employee	1
Businessman	1
Legal Practitioners	1
Other Profession	9
Profession Not Found	1
Total	37

Cases, Investigation Reports and Bail

Both the rising number of cyber security-related cases and the increasing number of arrests made in the past years are deeply worrying. In most cases more than one person is being accused; consequently, there are more accused than the number of cases. But there is only one court (i.e., The Cyber Tribunal) for trying these cases and the number of cases settled shows that the government is not pro-active in settling the cases. The Cyber Security Court was established on July 28, 2013. As of February 2021, only 260 cases were settled. So far, convictions have been made in only 21 cases - 20 under the ICT Act and only one under the Digital Security Act. In 2020, the court dismissed cases against the accused in 125 cases; in 114 cases the government failed to prove the allegations against the accused. The protracted nature of the trial is a major weakness of the judicial system in Bangladesh, but this argument cannot be considered acceptable in this case, as many of the accused are detained without trial: the accused continues to face intimidation in the society as many of the cases are closely tied to politics.

It is also worth noting that since the police can detain someone without a warrant, in many instances, the cases are being filed after the arrest. But after filing the case, the police are required to file the investigation report based on which the charge will be formed. The law stipulates that an investigation report must be submitted within 60 days. If necessary, the investigating officers can seek an extension of 15 days from the authorities. After 75 days, they will have nothing to do. It then falls under the jurisdiction of the tribunal. But over the last two years, we have seen that in many cases, even if the investigation report is not given within the stipulated 75 days, the accused is still in custody and effectively being punished before the trial. In this context, we must remember Mushtaq Ahmed, who was detained for 10 months after being arrested under the Digital Security Act and died in prison. Do we know how many are languishing in jails under these kinds of situations?

Another thing that warrants our attention is the question of bail. Under the law 14 sections are non-bailable. However, in the case of any non-bailable law, a court can grant bail to an accused if it so desires. That is why many of the accused have been granted bail under this Act, while many have not. The issue has come to the fore in recent times because the court had rejected Mushtaq Ahmed's bail application six times. However, the court has granted bail to several others in the same case. After Mushtaq's death, one of the accused in the case, cartoonist Ahmed Kabir Kishore, was granted bail after 300 days in jail. There is a lack clarity as to why the court grants bail to some who are accused under the same section while some are denied, often repeatedly.

Conclusion

This research report discusses some of the ways in which the Digital Security Act 2018 has been used in the last two and a half years. The information gathered highlights the extent to which this law is used. Data shows that has disproportionately impacted the journalists, particularly local journalists, and younger population. This also shows that the law has become a major obstacle to freedom of expression and that activists and supporters of the ruling party have been able to create a frightening situation using the law.



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