

After 47 years of independence, Bangladesh is yet to embrace freedom of expression in the real sense. Free speech, under Article 39 of its Constitution, remains a highly qualified right and is subjected to restrictions. Although the current government won the 2008 election on the popular pledge to build “Digital Bangladesh,” in the last few years, draconian laws, and its selective application, have made digital speech a heavily policed and punished arena. This is particularly manifested in Section 57 of the Information and Communication Technology Act (2006, amended in 2013), and the wider provisions in the forthcoming Digital Security Act (2018).

According to Human Rights Watch, between 2013 and April 2018, the police submitted 1,271 charge sheets against journalists and private citizens, most of them under section 57 of the Act and with many of the cases involving multiple accused. In July 2017, a Bangladesh Public Prosecutor told journalists that trials in 400 cases filed under Section 57 had begun.

Human Rights Watch also published a list of recent cases filed under Section 57, which highlights the rise in digital prosecution, which corresponds with the increase in the use of internet in the country. Bangladesh has one of the highest rates of internet usage, and Dhaka, with its 22 million active Facebook users, is the second highest Facebooking city in the world. Digital literacy in Bangladesh has unfortunately led to increasing digital prosecution, and the information highway’s productive potential is getting derailed as it becomes a surveillance and prison grid.

Even prior to the full expansion of Section 57, Bangladesh’s court systems were frequently used to curb speech and traditional journalism. In a two-week period in 2016, 67 criminal defamation cases and 16 sedition cases were filed by private citizens against Mahfuz Anam, editor of *The Daily Star*. Prothom Alo, has faced more than 100 criminal cases against its staff since 2013, half of them still waiting resolution in the court system.

One special aspect of prosecutions under Section 57 is that in addition to the state and the police, it also allows charges to be filed by private citizens. This last aspect is vulnerable to wide abuse, as personal grudges can be settled under this loophole. Cases have been filed by private citizens under Section 57 against academics such as Professor Afsan Chowdhury, co-editor of an eleven-volume history of the Bangladesh liberation war, for alleged remarks on Facebook. Section 57 was also invoked in the case of actress Nawshaba, and the arrest of photographer Shahidul Alam, for making online comments on the “Safe Roads” student protests that began towards the end of July.

Intolerance for diverse political views and opinions by a ruling party is not a new phenomenon in Bangladesh. Successive administrations have had antagonistic relationships with the media, journalists, civil society actors and even private citizens critical of the government. This was evident when the



Freedom of Expression by Khaldoon Gharaibeh

FROM DIGITAL HIGHWAY TO DIGITAL JAIL

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Bangladesh Nationalist Party (BNP) and the Jamaat-e-Islami (JI) coalition was in power between 2001 and 2006, with journalists being charged with criminal defamation and sedition cases filed against civil society members.

Similarly, under a military-backed caretaker government (CTG) in 2006-2008, the Emergency Powers Rules allowed legal action to be taken against media critics, and the military’s intelligence wing, the Directorate General of Forces Intelligence (DGFI), was known to have used threats and intimidation against journalists critical of the administration.

The end of military rule, and the electoral victory, that brought the Awami League to office in 2008 did not bring a change in this antagonistic landscape. Instead, by 2009, especially after the brutal bloodshed of the Bangladesh Rifles mutiny, the space

for criticism and dissent shrank.

The Information and Communication Technology Act (ICT) of 2006 has been part of the current administration’s policy to integrate digital communication and technology at the national and local levels with its admirable, and essential, goal of advancing development. This digital strategy has already seen dramatic progress in several socio-economic sectors including education, health, poverty reduction, women’s empowerment, food security and export-oriented garments.

But beyond the development objective, the Act was also drafted to serve as the primary legal reference for matters related to internet access, to define freedom of expression online, cover crimes committed through electronic means that do not come under the Penal Code and other legislations, and to regulate digital communications.

For instance, by defining hacking as a crime punishable by up to three years in prison or a fine of Tk 1 crore or both, the Act recognised the rights of citizens

whose rights to communicate electronically have been violated by others. Despite this, the possible role of the Act in undermining freedom of expression and speech has been the source of notable concern, particularly Section 57 of the law.

Section 57 “authorises the prosecution of any person who publishes, in electronic form, material that is fake and obscene; defamatory; ‘tends to deprave and corrupt’ its audience; causes, or may cause, ‘deterioration in law and order’; prejudices the image of the state or a person; or ‘causes or may cause hurt to religious belief.’”

The vagueness of the premises of violations outlined here are disconcerting enough, but the use of Section 57 by state and non-state actors has been even more troubling. In 2012, gangs of men organised via social networks attacked the Buddhist minority community and destroyed their temples in Ramu village, following false accusations against a Buddhist man of defamation of Prophet Mohammed on Facebook. Similar attacks against Hindu minorities took place in 2013 in the town of Santhia following the use of a fake Facebook account to create the pretext for premeditated attacks.

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Against this turbulent backdrop where misinformation and unverified images were spread through social media, the government amended the Information and Communication Technology Act, eliminating the need for arrest warrants and official permission to prosecute, restricting bail, and increasing prison terms to 14 years. Under the 2013 amendment, a person could be arrested on the basis of a complaint to the police, regardless of whether the person filing it had themselves been prejudiced, defamed or otherwise “injured” by the offending material. The Act also instituted a Cyber Tribunal to solely deal with offences under the law. This opened the door for arrests to be made for any statement that could be interpreted by any citizen as harmful.

The biggest irony is that the amendment to the ICT Act was initially inspired by communal riots and targeted violence against Indigenous Buddhist Jamma people (Ramu, 2012) and the Hindu community (Santhia, 2013). Yet, since its passage, the amendment has rarely, if ever, been used against forms of hate speech and violence directed against minority Hindu, Christian, Buddhist, or Adivasi communities. Instead, it has most been used against secular activists, bloggers, journalists, photographers, and academics.

Other detentions and arrests of bloggers, Facebook users, journalists and civil society activists who had criticised the government on social media or in the press followed. The majority of the charges involved criticism of the government, defamation, or offending religious sentiments, while the rest were allegations against men publishing intimate photographs of women without their consent.

In addition to the frequent invocation of Section 57, which has resulted in the suppression of diverse opinions in the digital space, authorities in Bangladesh have also blocked Facebook, YouTube and other social network platforms without prior notification on multiple occasions.

The frequent use of Section 57 underscores several realities:

1. The use of social media has too often led to unverified allegations and news spreading across the political landscape, exacerbating political tensions. This, in turn, has led, in some cases, to violence and human rights violations.
2. The authorities are ill-prepared to deal with online activism and hence resort to the draconian implementation of Section 57 to quell all forms of speech and freedom of expression, including political dissent and criticism of the administration.
3. The civilian population and media remain extremely vulnerable to the oppressive measures of the government legitimised by a problematic law.

There has been severe criticism of the Information and Communication Technology Act, and Sections 56 and 57

in particular, on the grounds that they challenge Article 39 of the Constitution, which guarantees freedom of expression. In 2015, prominent members of civil society filed a High Court petition against Section 57 alleging that it violated freedom of expression and had created a hostile environment that promoted self-censorship among bloggers, journalists and citizens.

In 2017, following public protest at the arrest of a reporter for a Facebook post in Khulna district, the Bangladesh government proposed replacing the Information and Communication Technology Act with the Digital Security Act, which it argued would include checks and balances on

provisions too. For instance, Section 21 of the new bill proposes a 14-year jail term for anyone convicted of “negative propaganda and campaign against liberation war of Bangladesh or spirit of the liberation war or Father of the Nation”. Section 25 (a) says publishing information that is “aggressive or frightening” is punishable by up to three years in prison, without defining how such determinations would be made. Section 28, which deals with speech that would be considered to “injure religious feelings” and carries a prison term of up to five years, requires proof of intent. The abuse of such a provision to target citizens in the context of Bangladesh raises significant concern. Section 29 focuses on online defamation but, unlike

what would constitute violations of such provisions, it is possible to extrapolate that similar to Section 57, the door to misuse of the Digital Security Act to target journalists, academics, and private citizens remains open. Combined with the harshness of the potential penalty laid out for each violation and the established record of the number of journalists, bloggers and civil society actors who have been arrested, detained and even jailed under Section 57; it is quite conceivable that the proposed law would increase the possibility of self-censorship and further curtail the right to freedom of speech and expression as guaranteed in the Constitution.

As the space for dissent narrows in neighbouring India and Pakistan,



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arrests over speech while being a timely response to cyber crimes.

Comprising 36 sections, the new Act has not yet been passed by Parliament although it has been approved by cabinet. If it becomes law, it would mean that Sections 54, 55, 56, 57 and 66 of the Information and Communication Technology Act would be technically “repealed.” But critics have expressed alarm about the draft law, claiming it is simply a redistribution of the disturbing provisions of Section 57 into four sections (21, 25, 28 and 29) and is in fact more far-reaching and draconian than its predecessor. In January 2018, the cabinet secretary stated that the Digital Security Act was not designed to target journalists. But journalists have argued that the provisions that treat “the use of secret recordings to expose corruption and other crimes as espionage” would “restrict investigative journalism and muzzle media freedom”.

There are concerns about other

the Information and Communication Technology Act, limits such charges to those that meet the requirements of the criminal defamation provisions of the Penal Code. But this still runs contrary to a growing argument in the country that defamation should be treated as a civil matter and not as a crime carrying a prison sentence. Section 31 says posting information that “ruins communal harmony or creates instability or disorder or disturbs or is about to disturb the law and order situation”, and speech that “creates animosity, hatred or antipathy among the various classes and communities”, would carry a prison term of up to 10 years. But it does not clearly define what kind of speech would be considered a threat to “communal harmony” or one that would “create instability”. Given past experience, we can expect that speech aimed toward minority populations would not be the main focus.

Given the lack of robust definitions of

Bangladesh, in its efforts to remain a democracy too should be vigilant of the slippery slope of gagging fundamental rights and freedoms in the name of “law and order” using draconian legislation. Repealing Section 57 would be a step in the right direction, but implementing the Digital Security Act with its even wider powers would usher in fresh crises. The current trend of silencing citizens through legal intimidation does not bode well for the country’s democracy. It remains to be seen whether the government can step back from the temptations of narrowing the space for public discourse, and instead step forward to harness digital technology to advance the achievements, economic growth, and promote social stability in Bangladesh in the ongoing effort to strengthen its democracy.

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