

Why Sampadak Parishad opposes the Digital Security Act

Reprint of what we published on 29th September, 2018

After the enactment of the Digital Security Act (DSA) in 2018, the Sampadak Parishad published an elaborate Section by Section analysis of the objectionable parts and gave a detailed response as to how this law impinged on the operation of free and independent media and why DSA should be repealed or fundamentally amended.

The experience of the last four and half years proves the correctness of our initial concerns and strengthens our demand for repealing the Act.

Originally, we reproduced the Bangla versions of the Act along with our translation as the official English translation of the DSA was not available. In the present reprint below we have replaced the Bangla text (and translation) with the official English version of DSA. For the sake of brevity and improved readability, we have also made some modifications. (Please refer to the original article through this link: <https://www.thedailystar.net/frontpage/news/why-sampadak-parishad-opposes-the-digital-security-act-1640269>)

1. The Act ends up policing media operations, censoring content and controlling media freedom and freedom of speech and expression as guaranteed by our constitution.

2. The Act gives unlimited power to the police to arrest without warrant, enter premises, search offices, bodily search persons, seize computers, computer networks, servers, and everything related to the digital platforms.

3. The Act suffers from vagueness and uses many terms that can be misinterpreted and used against the media. Laws must be clear, specific and meticulously defined. A vague law is a weapon of misuse and as such oppression of the media.

4. DSA will create an atmosphere of fear and intimidation which will make journalism and especially investigative journalism virtually impossible.

5. The law will not only create panic among media professionals, but also among all users of computers, computer networks, and related technologies.

6. The purpose of the law as mentioned in its preamble is “ensuring digital security and identification, prevention, suppression and trial of offences committed through digital device and for matters ancillary thereto”. However, its use over the last four and half years provide irrefutable proof that its purpose has been to curb freedom of the media, freedom of expression and all related freedoms.

7. The law goes against the very nature and practice of independent journalism that stands to protect people’s right to know and exposes abuse of power and corruption.

8. While other fields, like cyber security, may require “regulations” media needs “freedom”. The DSA is focused only on the “regulation” and totally neglects the “freedom” aspect that the media needs.

9. A frightening aspect of the DSA is the enormous arbitrary power given to the police who may arrest, without warrant, a journalist just on suspicion of a so-called crime that police think may be committed in the future. In practical terms, this will bring journalism under police control.

10. It is alarming that out of the 20 or so provisions of the law that deal with offences and punishments, 14 are NON-BAILABLE. Five are bailable and one can be negotiated. The lowest punishment is 1 year in prison and the highest life-term but mostly in the range of between 4 and 7 years. This will inevitably create an atmosphere of FEAR and INTIMIDATION under which normal functioning of journalism will become extremely risky if not impossible.

11. Another flaw of the DSA is the level of punishment meted out to “offenders”. Let’s take the case of the Road Safety Act which was passed along with the DSA. The former provides for a maximum punishment of 5 years for killing people in road accidents while a journalist can be punished up to life-term for violating the colonial era Official Secrets Act (1923).

SECTION BY SECTION ANALYSIS AND OUR OBSERVATIONS

Below we present a detailed analysis as to why Sampadak Parishad (Editors’ Council) considers this law to be anti-free press, against freedom of speech and antithetical to democracy. To ensure the accuracy of our analysis, we have referred to the official English text of the Act, which was published on October 6, 2019.”

SECTION 8

Power to remove or block some data-information. (1) If any data-information related to any matter under the jurisdiction of the Director General, being published or propagated in digital media, creates threat to digital security, the Director General may request the Bangladesh Telecommunications and Regulatory Commission, hereinafter referred to as BTRC, to remove or, as the case may be, block the said data-information.

(2) If it appears to the law and order enforcing force that any data-information published or propagated in digital media hampers the solidarity, financial activities, security, defence, religious values or public discipline of the country or any part thereof, or incites racial hostility and hatred, the law and order enforcing force may request BTRC to remove or block the data-information through the Director General.

(3) If BTRC is requested under sub-sections

During the Constituent Assembly’s debate on constitution framing on February 3, 1956, Bangabandhu Sheikh Mujibur Rahman addressed the Speaker and stated:

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OUR TRANSLATION

“You often say that freedom of speech means freedom of the press. Do you know that editors of East Bengal are summoned and told that you cannot print this or that. Sir, they cannot print the truth, and I can prove it.... The directive goes from the secretariat...An inspector goes on behalf of the government and says you cannot write on a specific subject....

“This must be clearly written [in the constitution] that freedom of the press will exist and they [editors] can write as they wish and they can create public opinion.”

(1) and (2), it shall, with intimation to the Government of the said matters, instantly remove or, as the case may be, block the data-information.

(4) For carrying out the purposes of this section, other necessary matters shall be prescribed by rules.

SAMPADAK PARISHAD’S COMMENT

There are two issues of concern here – the power of the Director General and the power of the law enforcement agencies. The power to block contents will hit the heart of publication either in print or online. Any report may be blocked or a photograph may be confiscated that may lead to disruption of any media outlet.

The justifications needed to remove or block content are too vague and subject to individual interpretation, leaving room for the abuse of the law. For example, if a journalist exposes corruption in a project, and this leads to the project’s financing being stopped by a donor or private investor, the journalist can be accused of “disrupting financial activities” under this law, which can then lead to the blocking or removal of their content.

SECTION 21

Punishment for making any kind of propaganda or campaign against liberation war, spirit of liberation war, father of the nation, national anthem or national flag. (1) If any person, by means of digital medium, makes or instigates to make any propaganda or campaign against the liberation war of Bangladesh, spirit of liberation war, father of the nation, national anthem or national flag, then such act of the person shall be an offence.

SAMPADAK PARISHAD’S COMMENT

We are fully committed to the preservation of the dignity and correct history of our Liberation War and given the past experience of attempts at its distortion we understand the need to do something in this regard. However, “Spirit of Liberation War” is a rather vague term. Without further defining the “crimes” under this section and clearly specifying what constitutes a “crime”, we run the risk of serious abuse of this law and harassment of journalists and the punishment is up to life-term or (and) Tk 3 crore in fine or both.

“Mukti Juddher Chetona” (Spirit of Liberation War) is a vague term and is very subjective and cases can be brought against journalists as interpretations can vary.

We reiterate that we are in favour of protecting the great legacy of our Liberation War for the future generations. However, when laws are being framed, we need to be very clear and specific. Given its present form, not only journalists but historians, researchers and even creative writers like novelists will also suffer. It may even result in people not writing or researching much on our Liberation War fearing misinterpretation and the possibility of punishment.

SECTION 25

Transmission, publication, etc. of offensive, false or threatening data-information. (1) If any person, through any website or any other digital medium, (a) intentionally or knowingly transmits, publishes or propagates any data-information which he knows to be offensive, false or threatening in order to annoy, insult, humiliate or malign a person; or (b) publishes or propagates or abets to publish or propagate

any information, as a whole or partly, which he knows to be propaganda or false, with an intention to affect the image or reputation of the country, or to spread confusion, then such act of the person shall be an offence.

SAMPADAK PARISHAD’S COMMENT

This will directly affect all investigative reporting in the media. Such reports are usually about some irregularities performed by institutions and individuals. Corrupt people will use this law to intimidate journalists and media organizations and try to prevent publication of such stories on the pretext that the reports have attacked or intimidated them. Actually, every such report can be said to fall under one or more of the above categories and can be used to harass the media.

Any investigative report that reveals corruption about a person or an institution is bound to “irritate”, “embarrass” or “humiliate” someone. This provision will make it impossible to publish any negative report about any corrupt person. This will reduce newspapers to PR outfits. Journalism of even the most rudimentary investigative nature will become impossible.

The second part of this provision talks about “spreading confusion”. Without specifying the meaning of “confusion”, it may become a weapon of media harassment. What is confusing to one may not be confusing to another. This will surely create a new avenue to intimidate the media.

Then again, what constitutes damaging the “image or reputation” of the State? Recently we have reported about the corruption in the banking sector by unscrupulous business groups. We have reported that the banks face grim crisis. Does it constitute damaging the “image or reputation”? We have reported corruption in the law enforcement agencies.



We have reported on “custodial deaths” “disappearances”, and “extra-judicial killings”. If someone interprets all these reports as damaging to the “image” of the State then this law legalises punishment of journalists and newspapers for making such reports, as all newspapers have websites.

SECTION 28

Publication, broadcast, etc. of information in website or in any electronic format that hurts the religious values or sentiment. (1) If any person or group willingly or knowingly publishes or broadcasts or causes to publish or broadcast anything in website or any electronic format which hurts religious sentiment or values, with an intention to hurt or provoke the religious values or sentiments, then such act of the person shall be an offence.

SAMPADAK PARISHAD’S COMMENT

The term “religious sentiment” is an undefined term. How can a reporter know how and when religious sentiment has been hurt? This term lends itself to diverse interpretations and no journalist will feel comfortable about reporting on such issues. This will prevent journalistic scrutiny over a large area of the society. The recent reporting on the sexual harassment by catholic priests would not have been possible if those countries had a law preventing reporting that “hurts” religious sentiments. Criticizing unlawful fatwa or women’s property rights may be interpreted by some as “hurting” their religious values. This section can lead to widespread harassment of journalists.

SECTION 29

Publication, transmission, etc. of defamatory information. (1) If any person publishes or transmits any defamatory information as described in section 499 of the Penal Code (Act XLV of 1860) in website or in any other electronic format, he shall be punished with imprisonment for a term not exceeding 3 (three) years, or with fine not exceeding Taka 5 (five) lac, or with both.

SAMPADAK PARISHAD’S COMMENT

A law already exists to deal with defamation and so a separate law for digital media is not needed. Furthermore, there is no justification for imposing harsher penalties for the same offense committed through

digital media than for print media.

SECTION 31

Offence and punishment for deteriorating law and order, etc. (1) If any person intentionally publishes or transmits anything in website or digital layout that creates enmity, hatred or hostility among different classes or communities of the society, or destroys communal harmony, or creates unrest or disorder, or deteriorates or advances to deteriorate the law and order situation, then such act of the person shall be an offence.

SAMPADAK PARISHAD’S COMMENT

A news concerning discrimination of Dalits, or ethnic groups and exploitation of disadvantaged groups may be interpreted as causing disaffection between different sections of the society. Any news highlighting plights of the people of Chittagong Hill Tracts may be interpreted as “creating unrest” among different communities. Similarly, news about possible labour unrest, impending hartal or demonstration can be construed as reports that are “creating law and order situation” and thus bring action under this law. There could be a story that a person has died in a demonstration which may later prove to be untrue. Will the media be “guilty of spreading rumour”? Such errors regularly occur in reporting which are corrected immediately. In Bangladesh death figures from floods, cyclones or even roads accidents vary. Government figures are always at variance with privately gathered figures. In such cases according to the DSA, media can be sued for “spreading rumour”. Sometimes reports may forecast certain developments which may not exactly happen later. That also can be considered as “spreading rumour”. Thus, we find this section as seriously jeopardizing freedom of journalism.

SECTION 32

Offence and punishment for breaching secrecy of the Government. (1) If any person commits or abets to commit an offence under the Official Secrets Act, 1923 (Act No. XIX of 1923) by means of computer, digital device, computer network, digital network or

Procedure;

(b) to seize the computer, computer system, computer network, data-information or other materials used in committing the offence or any document supportive to prove the offence; (c) to search the body of any person present in the place;

(d) to arrest any person present in the place if the person is suspected to have committed or be committing an offence under this Act.

(2) After concluding search under sub-section (1), the police officer shall submit a report on such search to the Tribunal.

SAMPADAK PARISHAD’S COMMENT

This is by far the most dangerous of the provisions of the law.

This empowers the police to enter any premises, search any computer system, seize any computer network and its servers, bodily search any body and also ARREST anybody on suspicion.

First, the threat of arrest without warrant will naturally prevent a journalist from doing their work. When police get the power to arrest without warrant, and on mere SUSPICION then media freedom will be buried under this law. Given the fact that 14 out of 20 provisions of punishment are NON-BAILABLE the threat of arrest becomes like the “Damocles’ Sword” constantly hanging over the head of every journalist, causing mental stress. This will prevent all forms of real journalism and make our media nothing more than public relations and propaganda outlets.

Even if the law is not implemented (and why not if the law exists?) the environment of fear will prevent journalists from doing their job. The fear of arrest will become a regular part of the “mental environment” and desist a journalist from taking legitimate risks that he or she regularly take to file their stories. The “emotional stress” that it will create should not be underestimated. It can easily be expected that people in power will abuse this law, provoke or “manage” law enforcers to threaten or even arrest journalists for any story that will reveal something that the rich and powerful will want to hide.

The most dangerous side of this law is that since every newspaper and TV station works on digital system, by giving the power to confiscate a computer, a network of computers including servers, the law enforcing agencies have been given, in effect, the power to shut down a newspaper or TV station or a news portal by confiscating its computers, computer system, computer network and other equipment. Thus, without closing down a media outlet, this clause opens up the possibility of stopping the publication of a newspaper or the operation of a TV station by the law enforcing agencies.

SECTION 53

Offences to be cognizable and bailable. – In this Act –

(a) the offences specified in sections 17, 19, 21, 22, 23, 24, 26, 27, 28, 30, 31, 32, 33 and 34 shall be cognizable and non-bailable;

(b) the offences specified in clause (b) of sub-section (1) of section 18, sections 20, 25, 29 and sub-section (3) of section 47 shall be non-cognizable and bailable;

(c) the offences specified in clause (a) of sub-section (1) of section 18 shall be non-cognizable, bailable and subject to the permission of the court, be compoundable; and

(d) the offences, if committed by a person for the second time or more, shall be cognizable and non-bailable.

SAMPADAK PARISHAD’S COMMENT

Under this law out of the 20 or so provisions dealing with crimes and punishment, 14 are cognizable and NON-BAILABLE. Given the fact that police have the power to arbitrarily arrest without warrant and on mere suspicion, this law presents a real threat to media freedom as so many offences have been made cognizable and non-bailable.

CONCLUSION

1. The Digital Security Act (DSA) clearly violates the citizens’ Constitutional Right to freedom of speech and expression and freedom of the press, guaranteed in our most sacred document, the Constitution, with reasonable restrictions.

2. This law violates the spirit of our Liberation War and the high ideals of freedom that our martyrs laid down their lives for.

3. This law is against the fundamentals of democracy, democratic governance and all the rights that our people fought for repeatedly during our struggle against the Pakistani rule and against all martial law regimes after 1971.

4. The Digital Security Act is against all the fundamental values of ethical and independent journalism.

5. The Digital Security Act is in contradiction with the Right to Information Act.

We have explained in detail and made a section-by-section analysis as to why the Digital Security Act is against our Constitution, against our fundamental rights, against freedom of speech and freedom of press and as such against democracy.

It is thus that the Sampadak Parishad is forced to reject this law.

The quotation from the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman (published in the highlighted box), must guide us in the matter of protecting the freedom of the press.