



LAW REFORM

Calls for overhauling the Cyber Security Act 2023

Above all, the CSA should be revised to align with international human rights standards, ensuring that Bangladesh's legal framework remains coherent with global norms and conventions.

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Whilst reviewing the Cyber Security Law of 2023, we should first analyse the Digital Security Act (DSA) of 2018. Since its inception, the DSA has faced widespread criticism for being used as a tool to suppress freedom of speech, expression, press, and human rights. Critics argued that the law failed to ensure effective online safety, safeguard critical national infrastructure (CNI), or protect personal data and fundamental rights. The vague definitions of crimes and broad scope for interpretation within the DSA led to the targeted criminalisation of free speech, causing immense suffering for individuals. This, in turn, fostered an atmosphere of fear, self-censorship, and insecurity, particularly among the media, academia, researchers, and civil society organisations. In reaction to growing criticisms, the then Awami League government replaced the DSA with a new piece of legislation – the Cyber Security Act 2023 (CSA). However, the pressing question is: does the CSA truly surpass its problematic predecessor?

In fact, the CSA is largely an updated version of the DSA with only minor modifications. Some of these changes include the removal of penalties for second-time offences in certain sections, while others only reduce prison sentences or increase fines in specific cases. With these rather trivial changes, in most cases, the contents of the two laws are identical, meaning that the CSA essentially presents a rebranded version of the DSA with minimal substantive differences—akin to the idea of 'old wine in new bottles.'

The DSA faced extensive criticism, particularly for restricting the freedoms of thought, conscience, speech, expression, and the press, as recognised in Article 39

of Bangladesh's Constitution and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh is party. Hence, the UN Office of the High Commissioner for Human Rights (OHCHR), the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Editor's Council of Bangladesh, Transparency International Bangladesh (TIB), Amnesty International, and European diplomats have repeatedly called for the repeal or substantial amendment of several sections of the DSA. These include sections 8, 21, 25, 28, 29, 31, 32, 43, and 53.

Since the CSA appears to continue the repressive nature of its predecessor, retaining almost all its provisions with only minor changes, organisations such as Amnesty International, the Bangladesh Association of Software and Information Services (BASIS), the Forum for Freedom of Expression Bangladesh (FExB), along with individual writers have recently called for its repeal.

Under Chapter VII, sections 39-54 of the DSA (aligned with sections 38-53 of the CSA), which share similar headings, subheadings, and content, the DSA granted extensive powers to law enforcement agencies. Moreover, the previous regime used the DSA as a tool for intimidation, with many cases being filed by its party activists under this law. Consequently, the DSA came to be widely regarded as a 'draconian' law, significantly affecting the lives of numerous individuals.

Arguably, by retaining most of the notorious provisions of the DSA, the CSA is also viewed as a similarly draconian law. In light of the aforementioned contexts, we advocate either the repeal or substantial amendment of the problematic sections of the CSA. If the interim government chooses to amend the

Cyber Security Act 2023 (CSA) as promised by the current Advisor to the Ministry of Posts, Telecommunications, and Information Technology, we call for its comprehensive review involving legal experts, human rights groups, journalists, and other stakeholders. The interim government should also consider the following recommendations:

To combat cybercrime effectively without suppressing freedom of speech, expression, press, and human rights, the CSA should focus exclusively on addressing cybercrimes and avoid encompassing broader content-related offences. Clear and precise definitions for key terms and offences should be included in the enactment to avoid misinterpretation and misuse.

The classification of bailable and non-bailable offences should also be reevaluated to ensure individuals are not subjected to prolonged pre-trial detention for non-violent offences. While addressing cybercrime is critical, the CSA's punishments should be proportionate and not excessively punitive. The law should emphasise rehabilitation and deterrence rather than solely focusing on retributive measures.

Above all, the CSA should be revised to align with international human rights standards, ensuring that Bangladesh's legal framework remains coherent with global norms and conventions. Implementing public awareness campaigns, strengthening the independence of the judiciary, and establishing a mechanism for periodic reviews are also essential to ensure the effectiveness and fairness of the CSA. Most importantly, systems for government accountability and oversight in enforcing the CSA should be established to prevent its misuse for political purposes.

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EQUALITY AND LAW

On menstrual leave policies

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Menstrual leave implies time offs for female employees while they experience menstrual pain. Dysmenorrhea or period cramp is a common phenomenon for a vast swathe of menstruating women. According to the American College of Obstetricians and Gynecologists, menstrual pain is so severe for some people that they are unable to perform regular activities for several days.

Many countries have already implemented menstrual leave policies and shown a steadfast commitment to addressing and prioritising women's health in the workplace. Indonesia, for instance, has incorporated a menstrual leave policy. The policy, which was introduced in 1948 and restructured in 2003, states that female workers experiencing menstrual pain are not obliged to work on the first two days of their cycle. In South Korea, Article 73 of the Labour Standards Act provides for monthly "physiologic leave," under which all female workers can avail of a day's leave every month. Similarly, Zambia, Taiwan, Vietnam, and Spain have also introduced progressive menstrual leave policies in recent times.

In India, there are no governing laws or centralised directions for 'paid menstruation leave'. However, Bihar and Kerala are two Indian states that have introduced menstrual leave policies for women. On 8 July 2024 the Supreme Court of India directed to frame a model policy on menstrual leave for women employees by consulting States and other stakeholders.



A three-judge Bench headed by the Chief Justice of India acknowledged that a judicial mandate on menstrual leave could potentially discourage employers from hiring women. Instead, it suggested that the government should take the lead in formulating a policy that balances the needs of women with concerns about

As menstrual awareness is a significant concern for women's right to health, it is high time that Bangladesh adopted policies or enacted laws relating to menstrual leave. Such policies can potentially contribute to a more inclusive and equitable work environment.

workforce participation.

In the context of Bangladesh, there is no comprehensive legal framework governing menstruation leave. The Labour Act of 2006 which regulates the country's labour and employment conditions, has no mention of menstruation leave. This leaves menstrual health issues ignored within the legal landscape. Article 32 of our Constitution provides the protection of the right to life and personal liberty. Adequate provisions for menstrual health, including menstrual leave, could be argued as necessary to ensure that women can fully exercise their rights to health and work without undue hardship. In the case of *Bangladesh National Women Lawyers Association v Bangladesh (2009)*, it was emphasised that fundamental rights guaranteed in the Constitution, which include the principle of gender equality, should cover a wide range of gender-related needs. Although this decision did not expressly address menstrual leave, it highlights the necessity for legislative measures encompassing all aspects of gender equality, which may include menstrual leave.

As menstrual health is a significant concern for half of our population, it is high time that Bangladesh adopted policies or enacted laws relating to menstrual leave. Such policies can potentially contribute to a more inclusive and equitable work environment.

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LAW VIEWS

Crimes during and after a revolution

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With the participation of students and people from all walks of life, the students and masses have brought down the previous regime. While we look forward to a new start, we must not forget the atrocities, violence, and crime spree that took place during and after the uprising.

There is a common understanding that no liability is incurred during a revolution if the revolution is successful. This understanding does not represent any general principle of law, but rather a necessary reality. It is understandable that while a revolution is underway, revolutionaries and protesters usually

prohibits the trial of such offenses now, it is obvious that a successful revolution will not regard such actions as crime, as they were "the necessary evil" to topple the regime. A failed revolution will surely result in such crimes being tried and severely punished but a successful one will choose to elude them either by inaction or a general amnesty.

However, mindless acts of vandalism, arson, killings, etc., having no connection to the goal of the revolution, can and should certainly be tried, whether they are perpetrated by protesters, the agents of the toppled regime, or any third party with other motives. Political offences do not involve the most serious and violent



charged with genocidal murders or rapes committed during our Liberation War.

Regarding the atrocities and crimes that take place in the event of the success of a revolution, and thereafter—all perpetrators, whether they are the revolutionaries, agents of the toppled regime, or thirty party—everyone can and should be held liable. It is a common scenario that a revolution's success most often leads to people venting their suppressed anger and frustration violently, against the people who have wronged them in the past or

were somehow connected with the toppled regime. However, such acts, if they lead to crimes, can and ought surely to be tried in a court of law. Regrettably, revolutionaries most of the time enjoy impunity. It is necessary to punish all perpetrators of post-revolution violence, as it is a sine qua non for sustaining the continued success of the revolution.

Moreover, regime change following a revolution can result in the enactment of new laws. Ex post facto laws, i.e., laws that retroactively change the legal

consequences of acts committed before the enactment of the law, cannot be enacted in Bangladesh to penalise any act. Article 35 (1) of the Constitution of Bangladesh prohibits conviction of any act if it did not result in a violation of a law in force at the time of the commission of the act. Similarly, the provision also provides that no one can be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence. However, a combined reading of articles 47 and 47A suggest that these protections do not apply to those who have been accused of genocide, crimes against humanity, war crimes, and other crimes under international law. As such, genocide, crimes against humanity, war crimes, etc. committed during a revolution could be tried with ex post facto laws as well as the existing laws.

By and large, all revolutions aim to remove the prevalent injustices and discrimination in society and to establish the rule of law. And it is imperative to hold all the perpetrators of violent crimes accountable, to achieve this goal.

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resort to measures that violate existing laws and government directives. For instance, unlawful assembly, violations of curfew, riots, etc. are common occurrences during a mass uprising. Although no law

crimes of a legal order. Following the independence of Bangladesh in 1971—a successful revolution, the Government of Bangladesh granted a general amnesty, but the same did not extend to those

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