A man is seen behind blue metal bars, looking towards the camera with a determined expression. To the left, a professional video camera is mounted on a tripod, partially obscuring the view. The background consists of green foliage.

**PRESS FREEDOM IN BANGLADESH**

# LESSONS FROM THE DIGITAL SECURITY ACT



## A. ABOUT THE CENTRE FOR GOVERNANCE STUDIES

The **Centre for Governance Studies (CGS)** is an independent, non-profit **think tank** and research organization in Bangladesh committed to strengthening governance and supporting democratic development. CGS examines political institutions, security issues, digital governance, and human rights concerns that shape the country's rapidly changing domestic and global environment. Through research, policy analysis, and multi-stakeholder engagement, CGS works with government bodies, international partners, civil society, academic institutions, and the private sector to promote informed dialogue and policymaking. For this study, the research work from the CGS side was led by **Roman Uddin**, Research Associate and Youth Outreach Program Coordinator, and supported by **Marzana Mahnaz**, Research Associate; **Arman Miah**, Program Assistant; **Kazi Rhid**, Strategy Associate; **Sadia Tasneem**, Research Associate; **Nishat Tabassum**, Former Research Assistant; and **Kazi Israt Jahan**, Former Research Intern.

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## C. ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

**TrialWatch** is an initiative of the **Clooney Foundation for Justice (CFJ)** that provides free legal aid in defense of free speech. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. **Maneka Khanna**, Senior Legal Program Manager, led the project for the TrialWatch team and drafted the report along with **Jonathan Epps**, former Legal Fellow.

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# EXECUTIVE SUMMARY



This report analyses and assesses the enduring impact that the Digital Security Act, 2018 (DSA) has had on journalists in Bangladesh, based on a unique dataset of 451 instances in which the DSA was used against journalists nationwide between its adoption in 2018 until its repeal in 2023. On this basis, the report identifies key patterns in the prosecutions of journalists for online speech and provides recommendations for ways the current and future governments of Bangladesh can better protect media freedom, freedom of expression, and civil liberties, including with respect to the enforcement of the cyber-security law now in force, the Cyber Security Ordinance, 2025 (CSO).

The report analyses 222 cases involving 396 journalists (totalling 451 instances of criminalization) to document how the DSA's vague and overbroad provisions that criminalize offenses such as defamation, spreading misinformation, and offensive speech were applied to punish reporting and criticism online. Thirty cases were also selected for deep-dive analysis, including by interviewing the affected journalists.

The report examines patterns in substantive accusations levelled, types of charges brought, the profiles of journalists and accusers, and the process of these cases to evaluate how the DSA has been applied against journalists across Bangladesh. Our data reveals that the DSA was used as a tool of harassment and intimidation, predominantly by politicians, but also by others for personal rivalries. Journalists were arbitrarily arrested from their homes, often at odd hours, their devices were seized and they were subject to pre-trial detention. However, most cases analysed did not reach trial, making the process the punishment. The ones that did ended in acquittal, reflecting the apparently baseless nature of these cases—only one journalist in the dataset was convicted.<sup>1</sup> In many instances, the journalists claimed that the case was filed in retaliation for their work—and was not solely motivated by the reporting/social media posts that formed the subject of the complaint.

A report by TrialWatch and the Centre for Governance Studies (CGS) in November 2024 previously highlighted how cases under the repealed provisions of the Information and Communication Technology Act, 2006 (ICT Act) have continued despite lacking a legal basis because they were

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<sup>1</sup> One other journalist was convicted at trial, but her case was subsequently stayed by the High Court.

not saved by the Cyber Security Act, 2023 (CSA).<sup>2</sup> This report is the next in the series. While the interim government has recently adopted an ordinance (the Cyber Security (Amendment) Ordinance) quashing select DSA cases,<sup>3</sup> which had otherwise been permitted to proceed in recent months, and has promulgated a list of cases to be withdrawn, it is not yet clear whether this list is comprehensive, how this directive will be implemented, and, importantly, how convictions will be quashed.

Finally, the Cyber Security Ordinance continues to include several provisions susceptible of misuse, including Section 26, which criminalizes publishing or promoting “in cyberspace anything that is religious or communal hate speech or racial hatred and that . . . creates anxiety.” By using terms such as ‘anxiety,’ Section 26 brings forward some of the elements of Section 31 of the DSA, which featured prominently in our dataset, and which included vague language referring to “unrest or disorder.” Further, because an ordinance is a temporary form of Presidential legislation, if the Cyber Security Ordinance is not adopted by the incoming Parliament, it will lapse, creating further legal confusion as the flawed predecessor legislation, the Cyber Security Act, 2023, could snap back into force.

While the Cyber Security Ordinance includes a provision criminalizing the filing of false complaints, as well as one requiring that the affected person must file any complaint themselves, the extent to which these provisions act as a safeguard against the invocation of the law to settle political or personal grievances remains to be seen.

With elections only several months away, it is critical that Bangladesh consolidate reforms, mitigate remaining risks, and ensure the effective implementation of the recent amendment to the CSO. Otherwise, there is a substantial risk that the CSO could be selectively instrumentalized against critical journalists by whichever political party assumes power, as the DSA was.

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<sup>2</sup> Centre for Governance Studies et al., The Information and Communication Technology Act of 2006: Bangladesh’s Zombie Cyber Security Law, (Nov. 2024), available at [https://cfj.org/wp-content/uploads/2024/11/Bangladesh-ICT-Act-Report\\_November-2024-1.pdf](https://cfj.org/wp-content/uploads/2024/11/Bangladesh-ICT-Act-Report_November-2024-1.pdf).

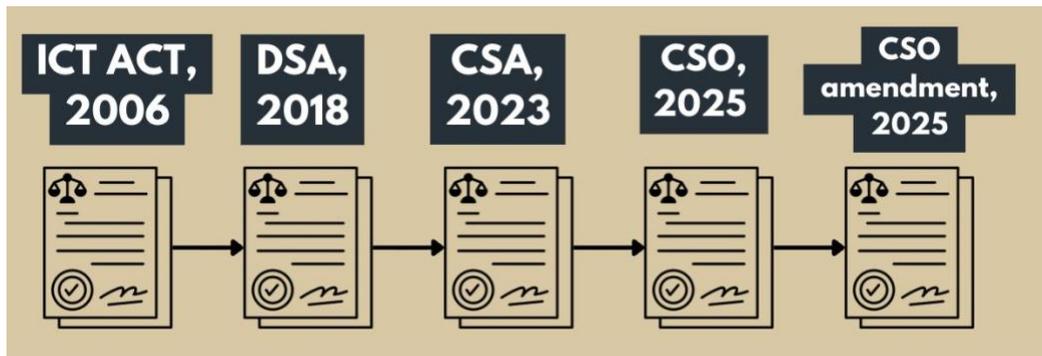
<sup>3</sup> Cyber Security (Amendment) Ordinance; The Daily Star, All DSA Cases, Convictions to Be Thrown Out, Oct. 10, 2025, available at <https://www.thedailystar.net/news/bangladesh/news/all-dsa-cases-convictions-be-thrown-out-4006211>.

# BACKGROUND



## A. Bangladesh's Succession of Cybercrime Laws

Bangladesh has had a string of cyber-crime laws, starting from the Information and Communication Technology Act, 2006, provisions of which were repealed and replaced by the Digital Security Act, 2018, which in turn was repealed and replaced by the Cyber Security Act, 2023.<sup>4</sup> Most recently, the Cyber Security Act was repealed and replaced by the Cyber Security Ordinance, 2025.<sup>5</sup>



Though each new law has been introduced as a measure of reform, the misuse of these laws to target speech online has persisted (although it is too early to tell how the Cyber Security Ordinance will be applied). This report looks at the weaponization of the Digital Security Act against journalists, and the lessons this analysis offers to protect freedom of speech in Bangladesh.

The Digital Security Act (“DSA”)<sup>6</sup> was introduced in 2018 as a response to criticism of its predecessor legislation—the Information and Communication Technology Act, 2006 (“ICT Act”). Among other criticisms, the ICT Act was condemned for being vague and overbroad—particularly Section 57, which criminalized certain forms of online

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<sup>4</sup> The Cyber Security Act, 2023 came into force on September 18, 2023.

<sup>5</sup> The Cyber Security Ordinance came into force on May 21, 2025. Note that it is possible that the CSA could snap back into place in the event that the CSO is not adopted/ratified by the incoming Parliament. See Article 93, the Constitution of the People’s Republic of Bangladesh, 1972.

<sup>6</sup> Digital Security Act, 2018, <http://bdlaws.minlaw.gov.bd/act-details-1261.html> [hereinafter “**DSA**”].

expression.<sup>7</sup> The Awami League government committed to repealing these provisions and claimed that the DSA would “establish[] balance between freedom of expression and public morality [and] interest.”<sup>8</sup>

However, the DSA maintained the substance of repealed provisions, effectively splitting what had been covered by Section 57 of the ICT Act into different offenses under the DSA and imposing even harsher penalties.<sup>9</sup> The DSA criminalized the online:

(i) publication, transmission, or propagation of “offensive, false or threatening” information to “annoy, insult, humiliate or malign a person,” with a potential three-year prison sentence;<sup>10</sup>

(ii) publication or propagation of propaganda or false information with an intention to “affect the image or reputation of the country, or to spread confusion,” with a potential three-year prison sentence;<sup>11</sup>

(iii) publication or transmission of defamatory material, with a potential three-year prison sentence;<sup>12</sup>

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<sup>7</sup> Section 57 of the ICT Act allowed for the prosecution of anyone who published or transmitted “in electronic form any material” deemed “fake and obscene,” defamatory, or otherwise likely to “deprave or corrupt” its audience, while also enabling prosecutions arising from any online material that “causes to deteriorate or creates a 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.”

<sup>8</sup> UN Human Rights Council, Bangladesh National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, U.N. Doc. A/HRC/WG.6/30/BGD/1, (Feb. 26, 2018), para. 33.

<sup>9</sup> Ali Riaz, How Bangladesh’s Digital Security Act Is Creating a Culture of Fear, Carnegie Endowment for International Peace, (Dec. 9, 2021), <https://carnegieendowment.org/2021/12/09/how-bangladeshs-digital-security-act-is-creating-culture-of-fear-pub-85951>.

<sup>10</sup> DSA, Section 25(1)(a); Section 25(2).

<sup>11</sup> DSA, Section 25(1)(b); Section 25(2).

<sup>12</sup> DSA, Section 29.

(iv) publication or transmission of information that “deteriorates ... law and order,” with a potential seven-year prison sentence;<sup>13</sup>

(v) making or instigating 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,” with a potential ten-year prison sentence;<sup>14</sup> and

(vi) publication or broadcast of information that intentionally “hurts religious sentiments or values,” with a potential five-year prison sentence.<sup>15</sup>

Many civil society organizations and international bodies raised concerns about the DSA.<sup>16</sup> In March 2023, the UN High Commissioner for Human Rights called on the Bangladeshi government to “suspend immediately its application of the [DSA],” expressing concern that the law was being used to “arrest, harass and intimidate journalists and human rights defenders, and to muzzle critical voices online.”<sup>17</sup>

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<sup>13</sup> DSA, Section 31.

<sup>14</sup> DSA, Section 21.

<sup>15</sup> DSA, Section 28.

<sup>16</sup> Riaz, *supra* note 8; Press Release, OHCHR, Bangladesh: Türk Urges Immediate Suspension of Digital Security Act as Media Crackdown Continues, (Mar. 31, 2023), available at <https://www.ohchr.org/en/press-releases/2023/03/bangladesh-turk-urges-immediate-suspension-digital-security-act-media>; OHCHR, Technical Note to the Government of Bangladesh on Review of the Digital Security Act, June 2022 [hereinafter “**OHCHR Technical Note**”], available at <https://www.ecoi.net/en/file/local/2089968/OHCHR-Technical-Note-on-review-of-the-Digital-Security-Act-June-2022.pdf>; Centre for Governance Studies, The Ordeal: Five Years of the Digital Security Act, 2018-2023, Apr. 2024, <https://cgs-bd.com/cms/media/documents/e7678484-19ac-4716-8224-be3f706bfa66.pdf>; Article 19, Bangladesh: Digital Security Act 2018, Nov. 2019, available at <https://www.article19.org/wp-content/uploads/2019/11/Bangladesh-Cyber-Security-act-2018-analysis-FINAL.pdf>.

<sup>17</sup> Press Release, OHCHR, Bangladesh: Türk Urges Immediate Suspension of Digital Security Act as Media Crackdown Continues, (Mar. 31, 2023), available at <https://www.ohchr.org/en/press-releases/2023/03/bangladesh-turk-urges-immediate-suspension-digital-security-act-media>.

In response to the widespread criticism of the DSA and in the face of mounting pressure to repeal the law, the then Government of Bangladesh (still led by the Awami League at that time) introduced the Cyber Security Act of 2023 (“CSA”). The government described the new law as a “modernized” version of the DSA without provisions that could be “misused” by anyone.<sup>18</sup> However, the CSA retained all the vague provisions outlined above, with reduced penalties as the primary change.<sup>19</sup> In addition to reducing penalties, the CSA made most offenses, barring a few,<sup>20</sup> bailable (meaning that accused persons are entitled to bail as a right and pretrial detention is not an option)<sup>21</sup> and non-cognizable (meaning that police officers must obtain a warrant to arrest individuals).<sup>22</sup>

However, the problematic offenses themselves were largely left in place. As Amnesty International reported, “the CSA repackage[d] almost all repressive features of the DSA (and Section 57 of the ICT Act that

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<sup>18</sup> Faisal Mahmud, Bangladesh to Tone Down ‘Draconian’ Digital Security Law, Al Jazeera, Aug. 7, 2023, available at <https://www.aljazeera.com/news/2023/8/7/bangladesh-to-tone-down-draconian-digital-security-law>.

<sup>19</sup> Transparency International Bangladesh, Digital Security Act 2018 and the Draft Cyber Security Act 2023: A Comparative Analysis, Aug. 30, 2023, available at <https://www.ti-bangladesh.org/upload/files/position-paper/2023/Position-paper-on-Digital-Security-Act-2018-and-Draft-Cyber-Security-Act-2023.pdf>; Amnesty International, Bangladesh: Open Letter to the Government: Feedback on Proposed ‘Cyber Security Act,’ Aug. 22, 2023, available at <https://www.amnesty.org/en/documents/asa13/7125/2023/en>.

<sup>20</sup> Cyber Security Act, 2023, Section 52 [hereinafter “CSA”]. Sections 17, 19, 27, and 32 of the CSA, which proscribe unlawful access to critical information infrastructure, damage to computers and computer systems, cyberterrorism, and hacking, respectively, were cognizable and non-bailable. Unlike under the DSA, the provision criminalizing hate speech or deteriorating law and order (Section 31) was made non-cognizable and bailable.

<sup>21</sup> Dhaka Tribune, Parliament Passes Cyber Security Bill 2023, Sept. 13, 2023, available at <https://www.dhakatribune.com/bangladesh/325228/parliament-passes-cyber-security-bill-2023>.

<sup>22</sup> CSA, Section 52. Under Section 42 of the CSA, police officers could still arrest individuals without a warrant where there was “reason to believe that any offence under this Act has been committed or is being committed or is likely to be committed at any place or that evidence has been lost, destroyed, erased, altered or otherwise rendered inaccessible.”

preceded it).<sup>23</sup> Although there is no publicly available official data on the cases filed under the CSA, data gathered by CGS reflects that at least 71 cases were filed under the CSA accusing 447 individuals from 18 September 2023 to 11 February 2025.<sup>24</sup> Amnesty reports that cases were filed under the CSA for posts considered defamatory or insulting towards then Prime Minister Sheikh Hasina or members of the Awami League.<sup>25</sup>

As discussed in greater detail below, the DSA ‘saved’ cases under the ICT Act—meaning that even though the DSA repealed the ICT Act, certain cases under the ICT Act were nevertheless allowed to continue. In turn, the CSA ‘saved’ cases under the DSA. This created a patchwork of cases under the various laws over time.

In June-July 2024, nationwide protests erupted in Bangladesh against the Awami League government. The protests, which were met with a brutal crackdown,<sup>26</sup> ultimately led to the ousting of the then Prime Minister Sheikh Hasina on August 5, 2024.<sup>27</sup> The President dissolved the Parliament the next day<sup>28</sup> and on August 8, 2024, a civilian interim government with Nobel Laureate Professor Muhammad Yunus at its helm was appointed to oversee a transition to fresh elections.<sup>29</sup> The interim

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<sup>23</sup> Amnesty International, Repackaging Repression: The Cyber Security Act and the Continuing Lawfare Against Dissent in Bangladesh, Aug. 8, 2024, pg. 4, available at <https://www.amnesty.org/en/documents/asa13/8332/2024/en/>.

<sup>24</sup> Centre for Governance Studies, CSA Tracker, <https://csa.freedominfo.net>.

<sup>25</sup> Amnesty International, Repackaging Repression: The Cyber Security Act and the Continuing Lawfare Against Dissent in Bangladesh, Aug. 8, 2024, available at <https://www.amnesty.org/en/documents/asa13/8332/2024/en/>.

<sup>26</sup> Harindrini Corea and Nazia Erum, What is Happening at the Quota-Reform Protests in Bangladesh?, Amnesty International, July 29, 2024, available at <https://www.amnesty.org/en/latest/news/2024/07/what-is-happening-at-the-quota-reform-protests-in-bangladesh/>.

<sup>27</sup> OHCHR, Preliminary Analysis of Recent Protests and Unrest in Bangladesh, Aug. 16, 2024, available at [https://www.ohchr.org/sites/default/files/2024-08/OHCHR-Preliminary-Analysis-of-Recent-Protests-and-Unrest-in-Bangladesh-16082024\\_2.pdf](https://www.ohchr.org/sites/default/files/2024-08/OHCHR-Preliminary-Analysis-of-Recent-Protests-and-Unrest-in-Bangladesh-16082024_2.pdf).

<sup>28</sup> Redwan Ahmed, Bangladesh Parliament Dissolved a Day After Resignation of Prime Minister, The Guardian Aug. 6, 2024, available at <https://www.theguardian.com/world/article/2024/aug/06/bangladesh-student-protesters-to-meet-with-army-chief-after-pm-resigns>.

<sup>29</sup> Ruma Paul, Nobel Laureate Yunus Takes Charge of Bangladesh, Hopes to Heal Strife-Torn Country, Reuters, Aug. 8, 2024, available at

government has promised to uphold “democracy, justice, human rights, and freedom of speech.”<sup>30</sup>

The interim government announced that the cyber-crime laws would be reviewed and directed the Law Ministry to not register cases and make arrests under the CSA.<sup>31</sup> In October 2024, the interim government announced that the CSA would be repealed<sup>32</sup> and subsequently released drafts of a Cyber Protection Ordinance, 2025 (meant to replace the CSA, and which eventually evolved into the CSO) and a Personal Data Protection Ordinance, 2025.

International civil society groups criticized these new proposed laws for being fast-tracked without sufficient transparency or consultation.<sup>33</sup> As per reports, drafts were made public only briefly in December 2024 (for three days) and again in January 2025 (for two weeks).<sup>34</sup> The draft Cyber Protection Ordinance, 2025 was also criticized for including ambiguous and overbroad provisions, including related to “cyber-terrorism” and “hurting religious sentiments,” creating significant risks of misinterpretation and misuse.<sup>35</sup> Meanwhile, despite the assurances of the interim government, cases continued to be registered under the CSA—

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<https://www.reuters.com/world/asia-pacific/bangladesh-awaits-installation-interim-government-after-weeks-strife-2024-08-08/>.

<sup>30</sup> Asia News Network, Election After Vital Reforms: Chief Adviser to Bangladesh Interim Government, Aug. 19, 2024, available at <https://asianews.network/election-after-vital-reforms-chief-adviser-to-bangladesh-interim-government/>.

<sup>31</sup> Harun Ur Rashid Swapan, Asked Not to Arrest in Cyber Case: Nahid Islam, DW, Sept. 27, 2024, available at <https://www.dw.com/bn/সাইবার-মামলায়-গ্রেপ্তার-না-করতে-বলা-হয়েছে-নাহিদ-ইসলাম/a-70348612>.

<sup>32</sup> Prothom Alo, Cyber Security Act To Be Repealed: Asif Nazrul, Oct. 3, 2024, available at <https://www.prothomalo.com/bangladesh/edlki78nav>.

<sup>33</sup> Article 19, Bangladesh: Digital Laws Must Be Transparent and Protect Free Expression, Feb. 26, 2025 [hereinafter “**Article 19 Report**”], available at <https://www.article19.org/resources/bangladesh-digital-laws-must-be-transparent-and-protect-free-expression/>.

<sup>34</sup> Article 19 Report.

<sup>35</sup> Article 19 Report; Front Line Defenders & CIVICUS, Open Letter, Bangladesh: Concerns About the Draft Cyber Protection Ordinance, (Jan. 15, 2025), available at <https://www.frontlinedefenders.org/en/statement-report/bangladesh-concerns-about-draft-cyber-protection-ordinance>.

two writers faced charges under the CSA in March 2025 for “hurting religious sentiments.”<sup>36</sup>

On May 21, 2025, the interim government of Bangladesh promulgated the Cyber Security Ordinance, 2025 (“CSO”), which came into force and repealed the CSA with immediate effect. The CSO notes that the CSA “opened avenues for potential misuse and oppression” and “restricted freedom of expression,” without sufficient “measures for safeguarding citizens” and was therefore revoked.

The CSO marks a significant departure from the previous cyber-crime laws by repealing several speech-restricting provisions of the CSA (which in turn were carried forward from the DSA and ICT Act). However, certain ambiguous provisions, including in particular a provision criminalizing “publish[ing] or disseminat[ing] . . . in cyberspace anything that is religious or communal hate speech or racial hatred and that . . . creates anxiety,” remain in the law.

The CSO also quashed cases under certain provisions of the CSA.<sup>37</sup> As discussed further below, however, there has been little clarity on exactly which ongoing cases are being or have been withdrawn or quashed.

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<sup>36</sup> Front Line Defenders, Human Rights Defender Nahid Hasan Knowledge Charged under Cyber Security Act for Hurting Religious Sentiments, available at <https://www.frontlinedefenders.org/en/case/human-rights-defender-nahid-hasan-knowledge-charged-under-cyber-security-act-hurting-religious>; New Age, Citizens Demand Withdrawal of Cases, Repeal of CSA, Mar. 7, 2025, available at <https://www.newagebd.net/post/country/259591/citizens-demand-withdrawal-of-cases-repeal-of-csa>.

<sup>37</sup> Section 50(4).

A chart mapping the provisions in the CSO against the previous cyber-crime laws is given below:

### **SPEECH-RELATED OFFENCES**

	<b>DSA (2018)</b>	<b>CSA (2023)</b>	<b>CSO (2025)</b>
<b>Offence: Publication of false, offensive, or threatening information</b>			
<b>Section of Act and details of offence</b>	<p>25 (1) (a). <i>Transmission, publication, etc. of offensive, false or threatening data-information.</i></p> <p>Intentional or knowing transmission, publication, propagation through any website or digital medium of offensive, false or threatening information to annoy, insult, humiliate or malign a person</p>		No direct corollary
<b>Punishment</b>	<p><del>III</del> Up to 3 years</p> <p>₹ up to 3 Lakh</p> <p><b>C*</b> No <b>B**</b> Yes</p> <p><small>*Cognizable offence **Bailable offence</small></p>	<p><del>III</del> Up to 2 years</p> <p>₹ up to 3 Lakh</p> <p><b>C</b> No <b>B</b> Yes</p>	
<b>Offence: False information or propaganda with anti-state sentiment</b>			
<b>Section of Act and details of offence</b>	<p>25 (1) (b). <i>Transmission, publication, etc. of offensive, false or threatening data-information.</i></p> <p>Publication or propagation of information known to be propaganda or false with the intent of harming the country's reputation or spreading confusion. Helping to spread or publish such information is also included in the offence.</p>		No direct corollary
<b>Punishment</b>	<p><del>III</del> Up to 3 years</p> <p>₹ up to 3 Lakh</p> <p><b>C</b> No <b>B</b> Yes</p>	<p><del>III</del> Up to 2 years</p> <p>₹ up to 3 Lakh</p> <p><b>C</b> No <b>B</b> Yes</p>	

	DSA (2018)	CSA (2023)	CSO (2025)
<b>Offence: Defamation</b>			
<b>Section of Act and details of offence</b>	<p>29. <i>Publication, transmission, etc. of defamatory information.</i></p> <p>The publication or transmission of defamatory information* as described in section 499 of the Penal Code (Act XLV of 1860) via a website or any other electronic format.</p> <p><small>*limited exceptions for true and/or good-faith statements regarding public officials or public questions, among others</small></p>		No direct corollary
<b>Punishment</b>	<p><del>III</del> Up to 3 years</p> <p>₹ up to 5 Lakh</p> <p><b>C</b> No</p> <p><b>B</b> Yes</p>	<p>₹ up to 25 Lakh</p> <p><b>C</b> No</p> <p><b>B</b> Yes</p>	
<b>Offence: Propaganda against liberation war, etc.</b>			
<b>Section of Act and details of offence</b>	<p>21. <i>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.</i></p> <p>Making or instigating “any propaganda or campaign against the liberation war of Bangladesh, spirit of liberation war, father of the nation, national anthem or national flag.”</p>	<p>21. <i>Punishment for carrying out any hateful, misleading and defamatory propaganda against liberation war, spirit of liberation war, Father of the Nation Bangabandhu Sheikh Mujibur Rahaman, national anthem or national flag.</i></p> <p>Offence is unchanged from DSA, with the addition of the need for the propaganda to be hateful, misleading and/or defamatory.</p>	No direct corollary
<b>Punishment</b>	<p><del>III</del> Up to 10 years</p> <p>₹ up to 1 crore</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>	<p><del>III</del> Up to 5 years</p> <p>₹ up to 1 crore</p> <p><b>C</b> No</p> <p><b>B</b> Yes</p>	

	DSA (2018)	CSA (2023)	CSO (2025)
<b>Offence: Deterioration of Law and Order</b>			
<b>Section of Act and details of offence</b>	<p>31. <i>Offence and punishment for deteriorating law and order, etc.</i></p> <p>The intentional publication or transmission through a 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.”</p>		<p>26. <i>Offence and Punishment for Publishing Information on religious or ethnic violence, hated and hate speech, etc. in cyberspace.</i></p> <p>The intentional publication or circulation of anything in cyberspace that is related to any religious or communal hate speech or racial hatred, and that causes anxiety or violence or directs disorder or criminal activities.</p>
<b>Punishment</b>	<p> Up to 7 years</p> <p>₹ up to 5 Lakh</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>	<p> Up to 5 years</p> <p>₹ up to 25 Lakh</p> <p><b>C</b> No</p> <p><b>B</b> Yes</p>	<p> Up to 2 years</p> <p>₹ up to 10 Lakh</p> <p><b>C</b> No</p> <p><b>B</b> Yes</p>
<b>Offence: Harming religious values</b>			
<b>Section of Act and details of offence</b>	<p>28. <i>Publication, broadcast, etc. of information in website or in any electronic format that hurts the religious values or sentiment</i></p> <p>Publication or broadcasting via a website or electronic format anything which “hurts religious sentiment or values” with the intention to hurt or provoke the “religious values or sentiment.”</p>		<p>26. <i>Offence and Punishment for Publishing Information on religious or ethnic violence, hated and hate speech, etc. in cyberspace.</i></p>

	DSA (2018)	CSA (2023)	CSO (2025)
			The intentional publication or circulation of anything in cyberspace that is related to any religious or communal hate speech or racial hatred, and that causes anxiety or violence or directs disorder or criminal activities.
<b>Punishment</b>	<del>III</del> Up to 5 years ₹ up to 10 Lakh <b>C</b> Yes <b>B</b> No	<del>III</del> Up to 2 years ₹ up to 5 Lakh <b>C</b> No <b>B</b> Yes	<del>III</del> Up to 2 years ₹ up to 10 Lakh <b>C</b> No <b>B</b> Yes
<b>Offence: Aiding and abetting</b>			
<b>Section of Act and details of offence</b>	35. <i>Abetment of committing an offence and punishment thereof</i>  Aiding or abetting another to commit an offence.	33. <i>Abetment of committing an offence and punishment thereof</i>  Offence unchanged from DSA.	27. <i>Aiding and abetting crime and its punishment</i>  Offence unchanged from DSA/CSA.
<b>Punishment</b>	Same punishment as principal offence.		

## NON-SPEECH OFFENCES

	DSA (2018)	CSA (2023)	CSO (2025)
<b>Offence: Collection and use of identity information</b>			
<b>Section of Act and details of offence</b>	<p>26. <i>Punishment for unauthorized collection, use etc. of identity information.</i></p> <p>Offence includes collecting selling, possessing, providing, or using another person's identity information without lawful authority.</p>		No direct corollary
<b>Punishment</b>	<p><del>III</del> Up to 5 years</p> <p>₹ up to 5 Lakh</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>	<p><del>III</del> Up to 2 years</p> <p>₹ up to 5 Lakh</p> <p><b>C</b> No</p> <p><b>B</b> Yes</p>	
<b>Offence: Fraud</b>			
<b>Section of Act and details of offence</b>	<p>23. <i>Digital or electronic fraud.</i></p> <p>The commission of fraud using a digital or electronic medium.</p>		<p>22. <i>Crime and punishment of fraud in cyberspace.</i></p> <p>No change in offence from DSA/CSA.</p>
<b>Punishment</b>	<p><del>III</del> Up to 5 years</p> <p>₹ up to 5 Lakh</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>	<p><del>III</del> Up to 5 years</p> <p>₹ up to 5 Lakh</p> <p><b>C</b> No</p> <p><b>B</b> Yes</p>	<p><del>III</del> Up to 5 years</p> <p>₹ up to 50 Lakh</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>
<b>Offence: Identity fraud or personation</b>			
<b>Section of Act and details of offence</b>	<p>24. <i>Use or exhibition of personal identity information of another person.</i></p> <p>Intentional or knowing holding the identity or exhibiting the personal information of another person in order to deceive or cheat; or holding the personal identity of another person by forgery in order to get a benefit or cause harm.</p>		No direct corollary
<b>Punishment</b>	<p><del>III</del> Up to 5 years</p>	<p><del>III</del> Up to 5 years</p>	

	DSA (2018)	CSA (2023)	CSO (2025)
	₹ up to 5 Lakh <b>C</b> Yes <b>B</b> No	₹ up to 5 Lakh <b>C</b> No <b>B</b> Yes	
<b>Offence: Hacking</b>			
<b>Section of Act and details of offence</b>	<p>34. Offence related to hacking and punishment thereof.</p> <p>Hacking—defined as “to destroy, cancel or change any information of the computer data storage, or to reduce the value or efficacy of it or to cause harm in any way” or “to cause harm to any computer, server, computer network or any other electronic system by gaining access thereto without ownership or possession”—is, itself, an offence.</p>	<p>32. Offence related to hacking and punishment thereof.</p> <p>No change in offence from DSA.</p>	<p>17. Punishment for unlawful access or hacking, etc. to critical information infrastructure</p> <p>Merged with unlawful access to critical infrastructure.</p> <p>Intentionally accessing critical information infrastructure: (a) illegally; or (b) illegally and by doing so, stealing, destroying, deleting, altering, or reducing the value or usefulness of any information in the data repository, or generating new data through artificial intelligence agents or otherwise causing damage, or concealing, destroying or altering computer source code, or attempting to conceal, destroy or alter said code, program, system or network or assisting another to do so.</p>

	DSA (2018)	CSA (2023)	CSO (2025)
<b>Punishment</b>	<p>III Up to 14 years</p> <p>₹ up to 1 crore</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>		<p>(a) III Up to 5 years</p> <p>₹ up to 50 Lakhs</p> <p>(b) III Up to 7 years</p> <p>₹ up to 1 crore</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>
<b>Offence: Terrorism</b>			
<b>Section of Act and details of offence</b>	<p>27. <i>Offence and punishment for committing cyber terrorism.</i></p> <p>(a) Creates an obstruction to legal access, or effects illegal access, to any computer or network with an intention to jeopardize the integrity, security and sovereignty of the State and to create a sense of fear or panic in the whole or part of the public; or</p> <p>(d) intentionally or knowingly accesses, or interferes with, any computer or network, any protected data-information or computer database, or gains access to any such protected data information or computer database, which may be used against friendly relations with another foreign country or public order, or may be used for the benefit of any foreign country or group.</p>		<p>23. <i>Crime and punishment for committing cyber terrorism.</i></p> <p>Offence is very similar to DSA/CSA, some slight changes.</p> <p>The original limb (d) is qualified to permit access under that limb where done as a whistleblower in the larger public interest.</p>
<b>Punishment</b>	<p>III Up to 14 years</p> <p>₹ up to 1 crore</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>		<p>III Up to 10 years</p> <p>₹ up to 1 crore</p> <p><b>C</b> Yes</p> <p><b>B</b> No</p>

## B. Laws Repealed; Cases Continue

Despite repeal of the laws, cases registered under the ICT Act and the DSA have continued to-date (although it remains to be seen how the new amendment to the Cyber Security Ordinance dismissing DSA cases and quashing sentences will be implemented).

As noted above, the repeal and savings clause of the DSA permitted cases pending under the ICT Act to continue if they had reached a certain stage.<sup>38</sup> Subsequently, the DSA was itself repealed by the CSA. The CSA contained its own savings clause, which allowed all cases filed under the DSA to continue.<sup>39</sup> As a result, a majority of the cases under the DSA continued despite repeal of the law. Official figures suggest that around 6,000 cases, accounting for 86 percent of the cases filed under the law, were still “awaiting disposal” at the time of repeal.<sup>40</sup> The savings clause of the CSA allowed all of these cases to continue even if the investigation or trial process had not commenced.<sup>41</sup> As a consequence, the Bangladeshi government under the Awami League continued framing charges against individuals under the DSA several months after the law’s repeal.<sup>42</sup> The

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<sup>38</sup> Section 61 of the DSA states that “[t]he proceedings or cases initiated before, or taken cognizance by, the Tribunal under the repealed sections ... shall, if pending at any stage of trial, continue as if the said sections had not been repealed.”

<sup>39</sup> CSA, Section 59.

<sup>40</sup> The Daily Star, 86pc DSA Cases Pending Disposal: Law Minister, Sept. 10, 2023, available at <https://www.thedailystar.net/news/bangladesh/news/86pc-dsa-cases-pending-disposal-law-minister-3415241>.

<sup>41</sup> CSA, Section 59(3).

<sup>42</sup> Amnesty International, Repackaging Repression: The Cyber Security Act and the Continuing Lawfare Against Dissent in Bangladesh, Aug. 8, 2024, pg. 6, available at <https://www.amnesty.org/en/documents/asa13/8332/2024/en/>; see also New Age, Online Activist Pinaki, Ex-JCD Leader Ashik Charged in DSA Case, Apr. 28, 2024 (police submitted a charge sheet against Ashik under the repealed DSA based on spreading “false and deceptive information” on social media), available at <https://www.newagebd.net/post/country/233832/charges-pressed-against-online-activist-pinaki-ex-jcd-leader-ashik-in-dsa-case>; Prothom Alo, ‘রংপুর ডিজিটাল ডিরাপত্তা আইরের মামলায় সাংবাদিক কারাগার’ [Journalist in Jail in Rangpur Digital Security Act Case], Feb. 4, 2024 (in February 2024, the Rangpur Cyber Tribunal sent the editor of a local newspaper to prison after his bail application was denied in a court hearing for a DSA case filed against him), available at <https://www.prothomalo.com/bangladesh/district/kl13f7e3gr>.

savings clause of the CSA did not mention cases pending under the ICT Act.

After the fall of the Awami League government, the interim government announced plans to withdraw all pending speech-offence related cases under the three cyber laws—the ICT Act, the DSA and the CSA.<sup>43</sup> The Cyber Security Ordinance, 2025 specifically quashes cases pending under the speech-restrictive provisions of the CSA but did not mention cases pending under the DSA or the ICT Act.<sup>44</sup> The most recent amendment to the Ordinance dismisses cases pending under certain, but not all, provisions of the DSA.<sup>45</sup> It too does not mention cases pending under the ICT Act.

As the TrialWatch and CGS report published in November 2024 highlights, there is no legal basis for cases under the ICT Act to continue since the DSA (which saved cases under the ICT Act) itself was repealed by the CSA, and the CSA was silent on cases under the ICT Act.

This principle applies to cases under the DSA as well—these cases continued on the basis of the savings clause in the CSA, which now stands repealed by the CSO. The CSO does not save ongoing cases under the DSA. This provides a further basis for dismissal of the cases, in addition to the recent amendment to the CSO (and applies to all cases, not just those under identified sections), and is discussed further below.

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<sup>43</sup> Dhaka Tribune, Speech Offence Cases Under Cyber Laws to be Withdrawn, Arrestees to be Released, Sept. 30, 2024, available at <https://www.dhakatribune.com/bangladesh/crime/360234/speech-offence-cases-under-cyber-laws-to-be>.

<sup>44</sup> Cyber Security Ordinance, 2025 [hereinafter “**CSO**”], Section 50.

<sup>45</sup> Cyber Security (Amendment) Ordinance, 2025 states that “any case or other proceedings pending in any court or tribunal or any case or proceedings under investigation . . . for the commission and abetment of the offence referred to in sections 21, 24, 25, 26, 27, 28, 29 and 31 of the Digital Security Act, 2018 . . . shall be quashed and no further proceedings shall be taken in respect thereof and the sentence and fine imposed by any court or tribunal under the said sections shall be deemed to be quashed.”

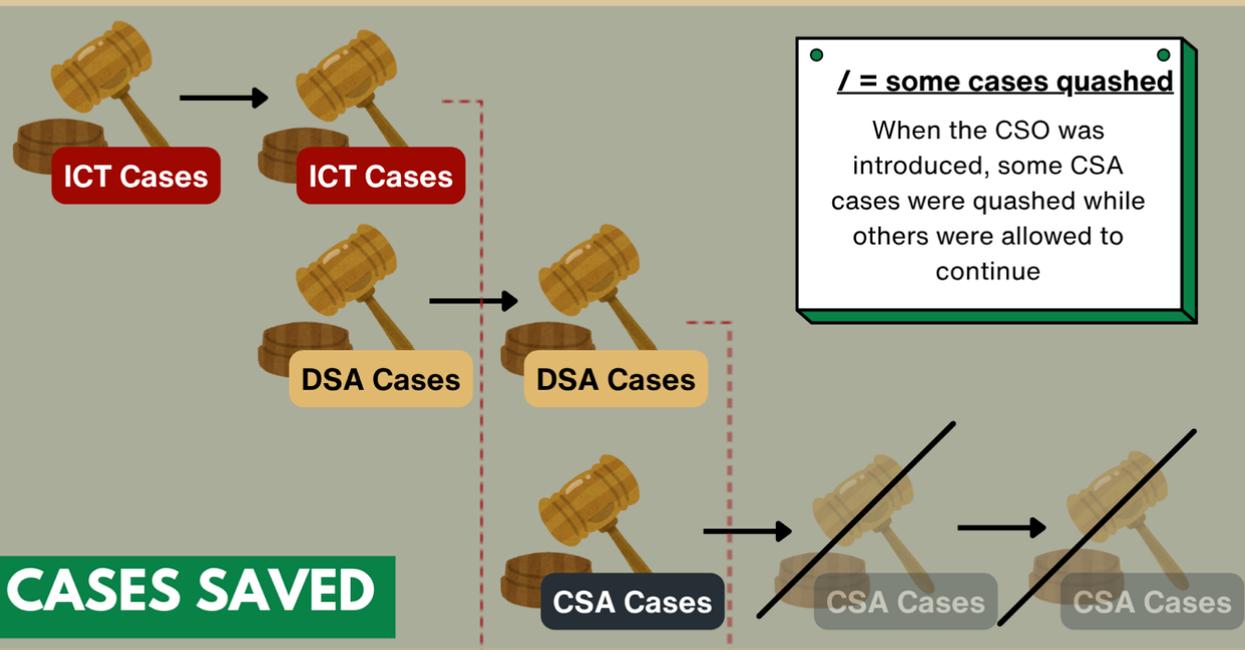
**ICT ACT,  
2006**

**DSA,  
2018**

**CSA,  
2023**

**CSO,  
2025**

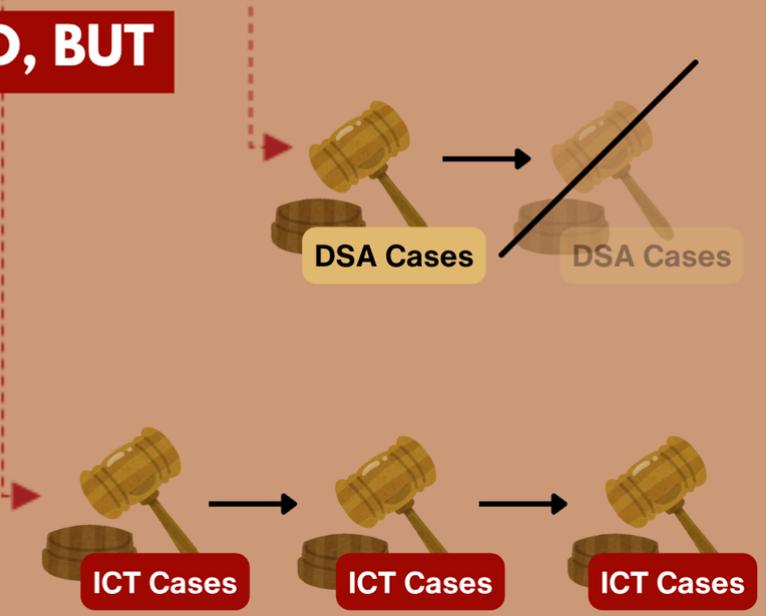
**CSO  
amendment,  
2025**



**CASES SAVED**

**CASES NOT SAVED, BUT STILL CONTINUE**

When the CSO was amended, some DSA cases were quashed while others were allowed to continue (with no legal basis)



While the CSO ostensibly quashes all cases under the speech-restrictive provisions of the CSA (and now under the DSA), there is no official or publicly accessible list detailing which cases have been withdrawn. In fact, in June 2025, an 18 year old was arrested under the CSA for an “offensive” Facebook post—suggesting it was still being invoked despite its repeal.<sup>46</sup> And prior to the CSO amendments, and even under this current government, cases under the DSA remained pending.<sup>47</sup>

Further, given that the CSO is an ordinance, if it is not adopted by the incoming Parliament, the status of cases that are not *actually withdrawn* and sentences that are not *actually quashed* could be uncertain.

### C. Ongoing Criminalisation of Journalism in Bangladesh

This report analyses cases filed under the DSA against journalists to identify the risks to freedom of expression that potential cases under the CSO may pose, along with any ongoing cases under the ICT Act, DSA, and CSA.

More broadly, journalists perceived as supportive of Sheikh Hasina and her government have been at severe risk of criminalization since the interim government took over in August 2024.<sup>48</sup> On August 21, 2024, Farzana Rupa, a former principal correspondent at Ekkator TV, and Shakil Ahmed, Rupa’s husband and former head of news at Ekkator, were

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<sup>46</sup> Daily Star, 18-Yr-Old Lands in Jail Over ‘Offensive’ FB Post on Abu Sayed, June 28, 2025, available at [https://www.thedailystar.net/news/bangladesh/crime-justice/news/18-yr-old-lands-jail-over-offensive-fb-post-abu-sayed-3927821?fbclid=IwQ0xDSwLNA3JleHRuA2FibQlxMQABHvU7kAiGtQeZdFNR3c63Te7WxdkG3n\\_4BmE8ITeum8nse\\_3dv5ARGvYisy4-\\_aem\\_7xJbo0BWHR9yikMKy-2U7Q](https://www.thedailystar.net/news/bangladesh/crime-justice/news/18-yr-old-lands-jail-over-offensive-fb-post-abu-sayed-3927821?fbclid=IwQ0xDSwLNA3JleHRuA2FibQlxMQABHvU7kAiGtQeZdFNR3c63Te7WxdkG3n_4BmE8ITeum8nse_3dv5ARGvYisy4-_aem_7xJbo0BWHR9yikMKy-2U7Q).

<sup>47</sup> See, e.g., Sangbad Sangstha, Court Issues Arrest Warrant Against Naem Nizam, 2 Others in DSA Case, New Age, July 27, 2025, available at <https://www.newagebd.net/post/country/271309/court-issues-arrest-warrant-against-naem-nizam-2-others-in-dsa-case>.

<sup>48</sup> Committee to Protect Journalists, Journalists Supportive of Ousted Bangladesh Leader Targeted with Arrest, Criminal Cases, Sept. 19, 2024 [hereinafter “**CPJ Report**”], available at <https://cpj.org/2024/09/journalists-supportive-of-ousted-bangladesh-leader-targeted-with-arrest-criminal-cases>; see also Abdul Rahman, Bangladesh’s Interim Government Accused of Political Persecution of Journalists, People’s Dispatch, Sept. 17, 2024, available at <https://peoplesdispatch.org/2024/09/17/bangladeshs-interim-government-accused-of-political-persecution-of-journalists>.

arrested.<sup>49</sup> Their phones and passports were confiscated by police, and both are facing charges of instigating murder during the protests that led to the overthrow of Hasina.<sup>50</sup> On September 16, 2024 three other journalists—Mozammel Babu, Mahbubur Rahman and Shyamal Dutta—were arrested.<sup>51</sup> In August 2024, a complaint was filed before the International Crimes Tribunal, Bangladesh against 52 individuals, including over two dozen senior journalists, in connection with alleged crimes against humanity and genocide during the protests.<sup>52</sup> And 28 journalists are facing investigations in connection with the protests based on a criminal complaint submitted by a teacher—the charges against the broader group of 109 people include abduction, assault and publication of misinformation surrounding the July protests.<sup>53</sup> Most recently, Reporters Without Borders has reported that Monjurul Alam Panna was arrested and detained under Bangladesh’s anti-terrorism law “after being invited to speak as a journalist at a roundtable debate about Bangladesh’s war of liberation and the constitution.”<sup>54</sup>

The targeting of these journalists is indicative of a larger, more systemic trend of arbitrary arrests and systemic prosecutions over the past several months. Between August 6 and September 25, 2024, police lodged cases against 92,486 people, most of them related to murder of persons who

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<sup>49</sup> Prothom Alo, Journalist Couple Shakil Ahmed and Farzana Rupa Detained, Aug. 21, 2024, available at <https://en.prothomalo.com/bangladesh/ru0pZR91if>.

<sup>50</sup> Reporters Without Borders, Bangladesh: Journalists Farzana Rupa and Shakil Ahmed Must be Released, Aug. 27, 2024, available at <https://rsf.org/en/bangladesh-journalists-farzana-rupa-and-shakil-ahmed-must-be-released>.

<sup>51</sup> CPJ Report.

<sup>52</sup> The Daily Star, Crimes Against Humanity: Hasina, Over Two Dozen Journos Sued in ICT Case, Aug. 29, 2024, available at <https://www.thedailystar.net/news/bangladesh/crime-justice/news/crimes-against-humanity-hasina-over-two-dozen-journos-sued-ict-case-3689551>.

<sup>53</sup> International Federation of Journalists, Bangladesh: 28 Journalists Under Investigation, Sept. 9, 2024, available at <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/bangladesh-28-journalists-under-investigation>.

<sup>54</sup> Reporters Without Borders, Journalist Arrested After Taking Part in Roundtable, In New Use of Bangladesh’s Anti-Terrorism Law, Nov. 12, 2025 (noting that after spending 75 days in jail, he was released on bail), available at [Journalist arrested after taking part in roundtable, in new use of Bangladesh’s anti-terrorism law](#).

died in the protests in June-July 2024.<sup>55</sup> Several of the complainants in these cases have reported not knowing who was named as the accused when they filed the case, noting that the police or local politicians simply told them to “sign the papers.”<sup>56</sup> As per one report, 182 journalists have been targeted with criminal cases from August 2024-March 2025.<sup>57</sup> Apart from criminalization, the interim government has also revoked press accreditations for journalists, drawing widespread condemnation.<sup>58</sup> Journalists have also been subject to physical attacks from state and non-state actors.<sup>59</sup>

These developments underscore the concern that overbroad digital speech laws remain dangerous, regardless of which political party is in power, and make clear the urgent need to protect journalists from abusive prosecutions.

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<sup>55</sup> Human Rights Watch. *After the Monsoon Revolution: A Roadmap to Lasting Security Sector Reform in Bangladesh*, Jan. 27, 2025, available at <https://www.hrw.org/report/2025/01/27/after-monsoon-revolution/roadmap-lasting-security-sector-reform-bangladesh>.

<sup>56</sup> *Id.*

<sup>57</sup> Zyma Islam, *World Press Freedom Day: 266 Journalists Face Criminal Cases So Far*, Daily Star, May 3, 2025 (“This newspaper has found that at least 266 journalists have been implicated in various cases related to the events of July and August last year.”), available at <https://www.thedailystar.net/news/bangladesh/crime-justice/news/world-press-freedom-day-266-journalists-face-criminal-cases-so-far-3885366>, see also Rights and Risks Analysis Group, *Bangladesh: Press Freedom Throttled Under Dr. Muhammad Yunus*, May 3, 2025, available at <https://www.rightsrisks.org/wp-content/uploads/2025/05/Bangladesh-Press-Freedom-Throttled-Under-Dr-Mohammed-Yunus.pdf>.

<sup>58</sup> AP, *Rights Groups Condemn Bangladesh for Cancelling Accreditation of 167 Journalists*, Nov. 13, 2024, available at <https://apnews.com/article/bangladesh-press-accreditations-c6084ebc9dd6cee9c87101961d031f97>.

<sup>59</sup> Reporters Without Borders, *Bangladesh: Violent Attacks on Journalists Are Surging, Government Must Take Action*, Feb. 14, 2025, available at <https://rsf.org/en/bangladesh-violent-attacks-journalists-are-surging-government-must-take-action>; Amnesty International et al., *Bangladesh: Interim Government Should Protect Freedom of Expression and Opinion*, Mar. 21, 2025, available at <https://www.amnesty.org/en/wp-content/uploads/2025/06/ASA1391652025ENGLISH.pdf>.

## METHODOLOGY



To gather data for this project, researchers utilized a live case tracker<sup>60</sup> to identify 451 instances where the DSA was used against journalists in Bangladesh since the law's enactment in 2018. The dataset comprised 222 cases against 396 journalists: leading to 451 incidents of criminalization (referred to as the “**dataset/primary dataset**”). These different numbers are due to the following factors: (1) in over 100 cases, two or more journalists were implicated in the same case, and (2) an individual journalist sometimes faced multiple charges in different cases. Therefore, each time a journalist faced a criminal case was recorded as a separate incident—leading to a total of 451 incidents of criminalization (referred to as “**incidents/instances**”).

The dataset comprised details regarding: the journalist/accused person (age and gender), the complainant (gender, profession and political affiliation, if any), the criminal complaint (date filed, police station, and district), status of the case, and pre-trial detention (where available and if any). Efforts were made to include cases from all 8 divisions in Bangladesh and outside the largest cities.

This data was last updated in June-July 2024. The data was gathered using public sources, and consequently the date of the last available news report/public information for cases varies (i.e., for some cases the most recent information is from 2019). Further, because of the use of public sources, it is likely the data underrepresents cases against journalists in smaller towns or those that received lesser public attention.

Out of 222 cases, 30 were selected for deep-dive study (referred to as “**case studies**”). These case studies reflected a cross-section of journalists: 10 journalists hailed from major cities (such as Dhaka, Rangpur, Khulna); nine from smaller cities (such as Thakurgaon, Kishoreganj); 10 from towns (such as Chatmohar, Gaibandha, Trishal) and one from a village. For each of the case studies, the journalist(s) were interviewed and comprehensive documentation of their case was obtained, including complaints, First Information Reports (FIR), chargesheets, detention orders, bail orders, stay orders and court judgments, where available. These cases were analysed across many factors, including the work-profile of the journalist, substance of the allegations, the circumstances of arrest, the course the case took and its

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<sup>60</sup> DSA Tracker, <https://freedominfo.net/>.

impact on the journalists. However, certain information—for example whether a warrant was presented during an arrest, whether family members were informed of an arrest, and the nature of legal representation obtained—was difficult to analyse as this information was not clearly stated in the records. For each case study, the documents available differed, and publicly available sources were used to supplement information about the case, where available and reliable.

For the 30 case studies, we identified and categorized the substance of the allegations. The cases where the allegations in the complaint/FIR concerned the journalist’s professional work—reporting on public interest issues or sharing news about such issues—were categorized as “**core journalistic work.**” Among these cases, those involving commentary on/criticism of the government or government functionaries were also identified as a sub-category.

The cases where the allegation in the complaint was not directly tied to journalistic work were categorized as “**other activity**”—this included allegations that the journalist defrauded the complainant or took photos without consent or made social media posts in their personal capacity.<sup>61</sup> In several interviews, journalists who faced such cases stated that the complaints were, in fact, filed in retaliation for their reporting—those were identified as such. Finally, the cases where the allegations in the complaint/FIR concerned a post/article on social media were categorized as “**social media**”—these cases cut across both the aforementioned categories. A detailed analysis of these categories is included in “Basis for Charges” section of the report.

It should be noted that the data in this report is by no means an exhaustive list of cases filed against journalists under the DSA; rather, this is meant to provide a sense of the ways the law was abused, and draw lessons for the future.

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<sup>61</sup> In some cases, journalists denied making the posts alleged; however, the cases were categorized on the basis of the substance of allegations.

## OVERVIEW: THE USE OF THE DSA AGAINST JOURNALISTS



As the Media Reform Commission recently found, a “major obstacle to objective and independent journalism is the abuse of power. Those in power often misuse laws and policies to silence dissent and favour political, financial, or social loyalists. Over the past 15 years, repressive laws and government regulations have been used to crush criticism and nurture favouritism.”<sup>62</sup> The Digital Security Act was among such laws.

The DSA has been criticized in particular for its vague and expansive provisions, which led to the “criminalis[ation of] various legitimate forms of expression[,]with overly harsh sentences.”<sup>63</sup> As noted by the OHCHR, these provisions were “not sufficiently precise to allow the public, and those executing the law, to understand what kind of expression under the law [wa]s restricted,” leading to arbitrary application and the stifling of speech.<sup>64</sup>

Further, many DSA offenses were non-bailable, which coupled with the police’s “unfettered” powers to arrest, raised concerns of “automatic pre-trial detention” for those charged under the DSA.<sup>65</sup>

Combined, these factors led to the DSA serving as a convenient tool for the authorities to press criminal charges against government critics.<sup>66</sup>

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<sup>62</sup> The Report of the Media Reform Commission, Mar. 22, 2025, pg. 20 [hereinafter the “**Media Reform Commission Report**”].

<sup>63</sup> OHCHR Technical Note.

<sup>64</sup> *Id.*

<sup>65</sup> Section 43 of the DSA granted wide discretion to the police to conduct warrantless searches, seizures and arrests, while Section 53 of the law made several offences, namely Sections 17, 19, 21, 22, 23, 24, 26, 27, 28, 30, 31, 32, 33 and 34, non-bailable. *See id.* This is discussed further *infra*.

<sup>66</sup> *See, e.g.,* Ali Riaz, How Bangladesh’s Digital Security Act Is Creating a Culture of Fear, Carnegie Endowment for International Peace, Dec. 9, 2021, available at <https://carnegieendowment.org/2021/12/09/how-bangladesh-s-digital-security-act-is-creating-culture-offear-pub-85951>; Zillur Rahman, The New CSA: A Draconian Law Made More ‘Efficient,’ The Daily Star, Aug. 24, 2023, available at <https://www.thedailystar.net/opinion/views/news/the-new-csa-draconian-law-made-more-efficient-3401151>; Bilal Hussain, Advocates Question Whether Reforms Will Offer Bangladesh Media Greater Protection, VOA News, Aug. 18, 2023, available at

Previous data gathered by CGS shows that of the over 1,500 individuals charged under the DSA between October 2018 and September 2023 whose professions were known, close to 30 percent were journalists and more than 30 percent were politicians.<sup>67</sup> And out of the 859 cases where the filer of the complaint was identified by CGS, 22 percent of cases were filed by law enforcement agencies and almost 40 percent were filed by individuals affiliated with political parties, with the vast majority of these individuals affiliated with the ruling Awami League.<sup>68</sup>

The sections below do a deep dive into these trends, specifically on the use of this law against journalists, based on the dataset of 222 DSA cases against 396 journalists as well as the 30 case studies.



## A. Temporal and Geographical Distribution of Cases

A majority of the DSA cases against journalists in our dataset were filed in 2020 and 2021. Indeed, this corroborates reports of an uptick in DSA

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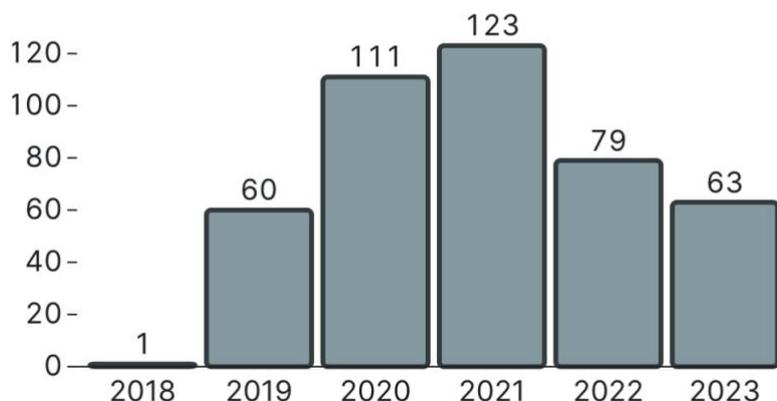
<https://www.voanews.com/a/advocatesquestion-whether-reforms-will-offer-bangladesh-media-greater-protection/7231154.html>.

<sup>67</sup> Centre for Governance Studies, *The Ordeal: Five Years of the Digital Security Act, 2018-2023*, Apr. 2024, pg. 10, <https://cgs-bd.com/cms/media/documents/e7678484-19ac-4716-8224-be3f706bfa66.pdf>.

<sup>68</sup> See *id.* pg. 18.

cases for allegedly spreading misinformation about COVID-19 or criticizing the Government's response to the pandemic.<sup>69</sup>

### Number of instances by year



Note: 14 instances did not have information about the year

For instance, Ikhtiyar Uddin Azad faced charges under multiple provisions of the DSA for a Facebook post that criticized food shortages during the pandemic, allegedly suggesting that the situation had driven someone to commit suicide.<sup>70</sup> The FIR in his case said that through his post, the journalist had published false information, and in doing so, “discredit[ed] the image of the state and the government, creat[ed] fear and panic

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<sup>69</sup> See OHCHR Technical Note; Committee to Protect Journalists, *Bangladeshi Journalists Face Physical Attacks, Legal Cases, and Detention Amid COVID-19 Pandemic*, July 23, 2020, available at <https://cpj.org/2020/07/bangladeshi-journalists-face-physical-attacks-legal-cases-and-detention-amid-covid-19-pandemic/>.

<sup>70</sup> FIR 20/194, Patnitala Police Station, May 13, 2020, Ikhtiyar Uddin Azad. According to the journalist, his post was corroborated by news accounts in several other publications. See Interview, Ikhtiyar Uddin Azad. He also indicated that he believed the case had been filed because he had exposed “corruptions and irregularities of various government officials and the local leaders and activists of the ruling Awami League and the Bangladesh Chhatra League.” See *New Age*, *Journalist’s Acquittal Comes After 8-Month Detention, 3yr Legal Battle*, Feb. 8, 2023, available at <https://www.newagebd.net/article/193875/journalists-acquittal-comes-after-8-month-detention-3yr-legal-battle>.

among the public, attempt[ed] and aid[ed] the deterioration of law and order.”<sup>71</sup> The FIR itself did not provide any other details.

In another case concerning the response to the pandemic, three journalists were criminalized for a report on the availability of food in a hospital ward.<sup>72</sup> They had reported that though the daily allocation for food was supposed to be Taka 300, COVID-19 patients were only being given Taka 70 worth of food, and patients were resorting to having food brought from home, which in turn created a greater risk of infection.<sup>73</sup> In that case, the complaint was filed by a hospital superintendent, but the chargesheet even admits that in fact “we can find out that in the month of June/2021, due to the lock down situation in Thakurgaon district, due to insufficient supply in the market, there was a slight disruption in the supply of food for 2/1 days.”<sup>74</sup> At the same time, one of the three journalists, Tanvir Hasan Tanu, said that while at the police station, the police were consulting an MP, suggesting a political valence to the case, too.<sup>75</sup>

With respect to the geographical distribution: a majority of the incidents occurred in the following divisions:<sup>76</sup> Chattogram (115); Dhaka (102); Rangpur (54); Sylhet (49) and Barishal (41).<sup>77</sup> This broadly tracks the population of these divisions, with Dhaka, Chattogram, and Rangpur three

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<sup>71</sup> FIR 20/194, Patnitala Police Station, May 13, 2020, Ikhtiyar Uddin Azad.

<sup>72</sup> FIR 7/206, Thakurgaon City Police Station, July 9, 2021, Tanvir Hasan Tanu, Rahim Shuvo, and Abdul Latif Litu.

<sup>73</sup> Chargesheet No. 141, June 23, 2022, Tanvir Hasan Tanu, Rahim Shuvo, and Abdul Latif Litu. One of the journalists had apparently sought treatment at the hospital and had observed irregularities giving rising to the reporting. See Interview, Rahim Shuvo (indicating that one of his fellow journalists had sought treatment at the hospital).

<sup>74</sup> Chargesheet No. 141, June 23, 2022, Tanvir Hasan Tanu, Rahim Shuvo, and Abdul Latif Litu.

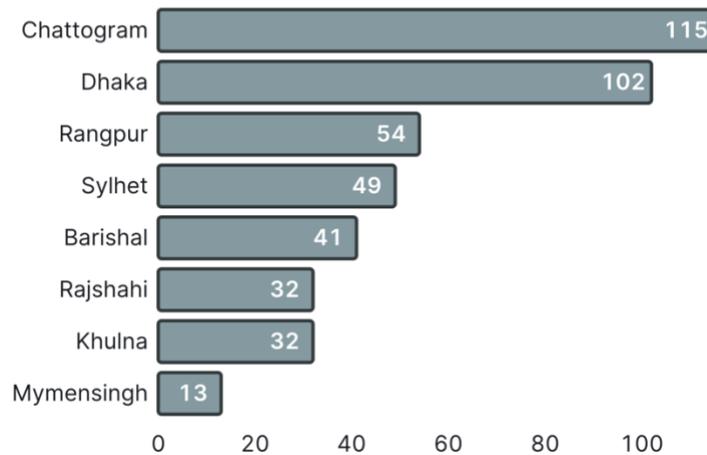
<sup>75</sup> Interview, Tanvir Hasan Tanu. One of the other two journalists offered a similar explanation, indicating that a local MP was the president of the hospital committee. Interview, Rahim Shuvo.

<sup>76</sup> As of 2024, there were eight divisions of Bangladesh, each named after the major city within its jurisdiction that also serves as the administrative seat of that division. Each division is divided into several districts, which are further subdivided into upazilas (sub-districts).

<sup>77</sup> In the chart below, the numbers do not add up to 451 instances because this information was not available for all cases.

of the four most populous divisions. That is, this suggests that the DSA was widely used across Bangladesh, and its invocation against journalists was not confined simply to the capital.

### Number of instances by division



Taken together, these trends paint a picture of a widely-used tool, responsive to the political issues of the day (such as COVID-19).

## B. Profiles of Complainants

The DSA has been criticized for being used as an instrument of harassment by the then ruling party and its affiliates to stifle dissent.<sup>78</sup> This is borne out by our data: the largest number of the cases in our dataset were filed by politicians (73 of 222). Close to 70% of these politicians were affiliated with the then ruling party, the Awami League, at least according to public sources.<sup>79</sup> The second largest category of complainants in our dataset were government employees (34 cases).<sup>80</sup>

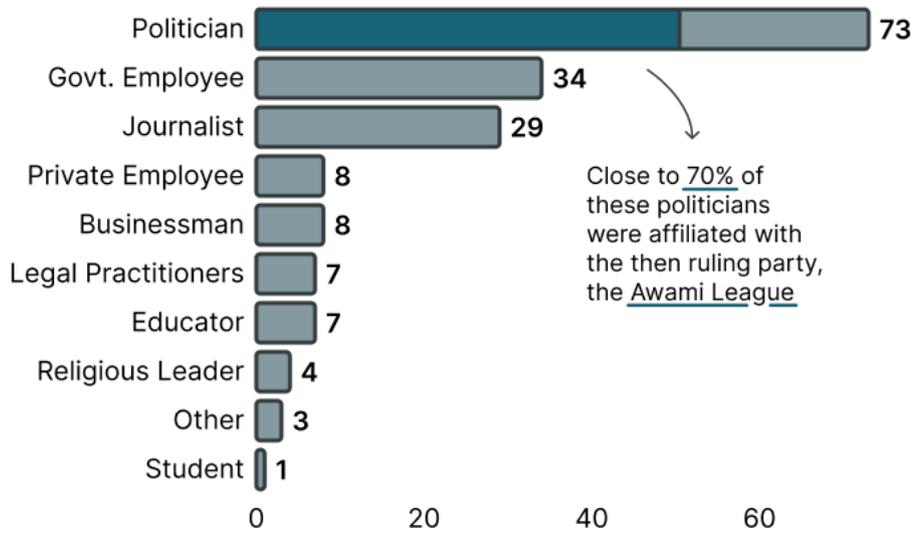
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<sup>78</sup> This is also consistent with findings by the Media Reform Commission, which noted data to the effect that “influential ruling party figures filed 47 percent of the cases” under the DSA. Media Reform Commission Report, pg. 69.

<sup>79</sup> Anyone holding a position within the official Awami League or its associated groups (such as the student wing, youth wing, labour wing, etc.) was categorized as a “politician affiliated with the Awami League.”

<sup>80</sup> In the chart below, the numbers do not add up to 222 cases because this information was not available for all cases.

### Number of cases by the complainant profession



Among the 30 case studies analysed, almost 50% of the cases were filed by politicians or family members of politicians.

Among these cases, 20 of 30 cases concerned core journalistic work—the journalists faced cases for reporting on issues such as police abuse, public service delivery failures, and allegations of corruption. Among these 20, more than 50% were likewise filed by politicians/family of politicians.

In one case a member of the Bangladesh Awami Swachasebak League, the volunteer wing of the Awami League, filed a complaint against a journalist reporting on alleged corruption regarding the distribution of rice.<sup>81</sup> The complaint specifically stated that “giving the above false and baseless information, my political party, the Bangladesh Awami League is defamed, is for the malicious purpose of degrading law and order and spreading social provocation by degrading the image of my political party Bangladesh Awami League.”<sup>82</sup>

<sup>81</sup> FIR 12/59, Baliadangi Police Station, April 17, 2020, Rahim Shuvo. The journalist had allegedly characterized the complainant as a ‘rice thief.’

<sup>82</sup> Complaint as the basis for FIR 12/59, Baliadangi Police Station, April 17, 2020, Rahim Shuvo. In this case, sacks of rice were discovered, and the journalist published an article entitled “630 bags of rice found in the godown of the brother of the President of the Volunteer League.” *See also id.* (“[B]ecause it publishes news and information with purpose, it is read by many people and many indecent and inexcusable comments are made about Bangladesh Awami League and me, which is an offence under the

In another case, a journalist posted online about concerns regarding the alleged diversion of funds from a construction project. In response, a councillor in the district filed a complaint alleging that the social media posts in question were “false propaganda” and because the “posts of the defendant are viewed by thousands of people and various comments are made . . . . the honour of the Honourable Mayor and other councillors along with me is extremely damaged.”<sup>83</sup>

In a third case, journalist MD Hedait Hossain Molla was charged with violating the DSA for reporting on alleged voting irregularities.<sup>84</sup> Molla was stationed at the District Commissioner’s officer to hear the results of the 2018 parliamentary elections. For one of the seats a first set of results showed the opposition party and the Awami League as close, but when the final results were announced, the number of votes for the opposition party had gone down, and the total number of votes received appeared to be more than the total number of voters. The District Commissioner did not respond to a question regarding these discrepancies, but amended results were later announced. The next day the District Commissioner called Molla and demanded an apology, which the journalist declined to give.<sup>85</sup> The complaint alleged that Molla had called the “fair” election into question in an “evil” attempt to affect the law and order situation.<sup>86</sup> This case was filed by an officer from the upazila (sub-district).<sup>87</sup> Ultimately, Molla was acquitted in the case.<sup>88</sup>

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Digital Security Act. I and my political party are not involved in the incident in any way.”). This same journalist was among the three facing charges for the reporting on food irregularities in the COVID ward of a hospital. See *supra*.

<sup>83</sup> Complaint.

<sup>84</sup> Interview, MD Hedait Hossain Molla; FIR 06/221, Batiaghata Police Station, December 31, 2018, MD Hedait Hossain Molla.

<sup>85</sup> Interview, MD Hedait Hossain Molla.

<sup>86</sup> Complaint as the basis for FIR 06/221, Batiaghata Police Station, December 31, 2018, MD Hedait Hossain Molla.

<sup>87</sup> Complaint as the basis for FIR 06/221, Batiaghata Police Station, December 31, 2018, MD Hedait Hossain Molla.

<sup>88</sup> Cyber Tribunal Verdict, October 7, 2020.

The same holds true for cases brought for social media activity<sup>89</sup>—21 of the 30 cases in our case studies were brought for social media activity. Out of these, the majority were brought by politicians and government employees.

For instance, in one case a journalist, Lutfur Rahman Shawon, allegedly posted a picture on Facebook of the then Prime Minister Sheikh Hasina with the caption “[a]ll the courts are now under Hasina’s skirt (petticoat)”<sup>90</sup> (although it was unclear whether in fact Shawon had even made this post).<sup>91</sup> In response a leader of the Awami league student wing filed a complaint alleging that the post in question caused “the dignity of the head of state and the people in the country and abroad [to be] constantly being undermined. Because of this, as a good citizen of the state and a member of Bangladesh Chhatra League, my image or reputation is also getting damaged.”<sup>92</sup>

Our data also revealed that journalists were most likely to be arrested/detained in the cases filed by politicians and government employees.

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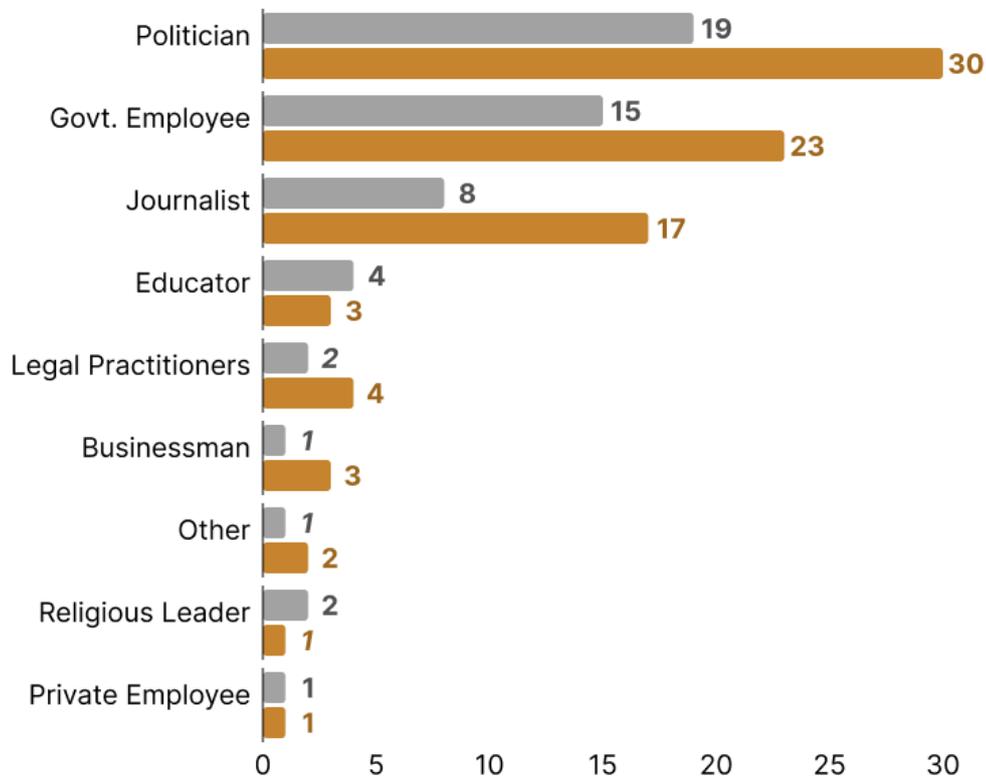
<sup>89</sup> Cases where the complaint/FIR concerned a post/article on social media – this included those that related to core journalistic work as well as others. In some cases the journalists denied making the said posts—hence the cases were categorised as per the allegations in the complaint.

<sup>90</sup> FIR 20/355, Chhatak Police Station, December 25, 2021, Lutfur Rahman Shawon.

<sup>91</sup> Forensic Report on Facebook Activity of Lutfur Shawon, Issued By IT Forensic Branch, CID Bangladesh, April 20, 2022.

<sup>92</sup> Interview, Lutfur Rahman Shawon; Complaint as the basis for FIR 20/355, Chhatak Police Station, December 25, 2021, Lutfur Rahman Shawon.

**Cases that resulted in arrest/detention by profession of complainant**



Note: cases that did not have information of the profession are not included in this chart

In one case, Azharul Haque reported on alleged police corruption. According to Haque, he was arrested and then aggressively questioned by five to six officers while blindfolded and the police officers made use of electric shocks during questioning. He also said that the questioning revolved around whether he had anti-government sentiment.<sup>93</sup>

Our data also revealed that many cases appear to have been filed to intimidate and harass journalists for personal rivalries. Indeed, journalists themselves were the complainants in 28 cases in our dataset. As the recent Media Reform Commission report notes, “political division and conflicts of interest have become prominent among journalists. . . . [and]

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<sup>93</sup> Interview, Azharul Haque.

[p]ress clubs, intended as recreational and social gatherings for journalists, have similarly become a cause of disunity.”<sup>94</sup>

For instance, in one case a fight broke out at the Rangpur Press Club.<sup>95</sup> One of the journalists who had been attacked, Afroza Sarkar, said that ‘she never imagined her colleagues would torment and assault her, let alone raise their hands against her and strike her in the back with an iron chair.’ Sarkar reported that three of her fingers on her left hand were fractured. She then went on a Facebook Live during which she identified the alleged attackers, one of whom was a former member of the Press Club who had previously been expelled.<sup>96</sup> For this Facebook Live upload, Sarkar faced three complaints—from at least one of the alleged attackers and one of their former wives.<sup>97</sup>

Likewise, in Shawon’s case (involving the alleged remark suggesting that the courts were beholden to Prime Minister Hasina), Shawon explained in an interview that in addition the case’s political valence, he suspected it had been filed due to the complainant’s affiliation with a rival press club.<sup>98</sup>

A significant minority of cases were filed by private employees, educators, lawyers and businessmen (30 of the 222 in total). A case was lodged for reporting about a powerful businessman who had allegedly disregarded COVID-related restrictions on bus operations. According to reporting at that time, “police had seized the buses of [the businessman] while they

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<sup>94</sup> Media Reform Commission Report, p. 140.

<sup>95</sup> See *generally* Dhaka Tribune, ARTICLE 19 Concerned over Violence Against Female Journo in Rangpur, Sept. 26, 2021, *available at* <https://www.dhakatribune.com/bangladesh/nation/259696/article-19-concerned-over-violence-against-female>.

<sup>96</sup> FIR 126/22, Rangpur Kotwali Police Station, February 13, 2022, Afroza Sarkar; Interview, Afroza Sarkar.

<sup>97</sup> Interview, Afroza Sarkar.

<sup>98</sup> Interview, Lutfur Rahman Shawon.

were transporting people from Gaibandha to Dhaka during the lockdown,”<sup>99</sup> and the journalist had reported on these dynamics.<sup>100</sup>

In another case, a journalist faced charges under the DSA after publishing a report alleging corruption/preferential treatment given to a restaurant owned by the daughter of a former Member of Parliament (MP). The case was filed by the owner of the restaurant.<sup>101</sup>

And in a third case, a journalist and several others were charged with violating the DSA for criticism of magistrates. The journalist had been fined for a driving infraction, and then allegedly broadcast criticism on Facebook Live.<sup>102</sup> While the chargesheet does not specify what was said—alleging vaguely that the defendant said “various insults about the mobile court, various bad comments about the District Commissioner . . . , various malicious and false/defamatory statements about the learned magistrates, raising questions about the jurisdiction of the mobile court and deliberately defaming the mobile court by making various falsehoods”<sup>103</sup>—the journalist alleges that he was targeted for failing to refer to the magistrate as ‘sir.’<sup>104</sup>

Four cases were also filed by religious figures—in one case, journalist Henry Swapon faced a case brought by a local religious leader for posts critical of the Catholic church in the area.<sup>105</sup> Swapon said he thought the

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<sup>99</sup> Rummana Foisal Nafiu, Gaibandha Journalist Arrested Under Digital Security Act, Dhaka Tribune, May 26, 2020, available at <https://www.dhakatribune.com/bangladesh/nation/210945/gaibandha-journalist-arrested-under-digital>.

<sup>100</sup> Interview, Sirajul Islam Ratan.

<sup>101</sup> Interview, Fazle Elahi.

<sup>102</sup> Interview.

<sup>103</sup> Chargesheet.

<sup>104</sup> Interview.

<sup>105</sup> See Dhaka Tribune, Poet Henry Swapon Jailed in Digital Security Act Case, May 14, 2019, available at <https://www.dhakatribune.com/bangladesh/nation/176883/poet-henry-sawpon-jailed-in-digital-security-act>.

case was retaliation for his reporting on alleged corruption within the church.<sup>106</sup>

This pattern reinforces broader concerns about the DSA being used as a tool to shield public officials from scrutiny and stifle dissent, particularly in the context of social media expression, but also a vessel for settling scores.

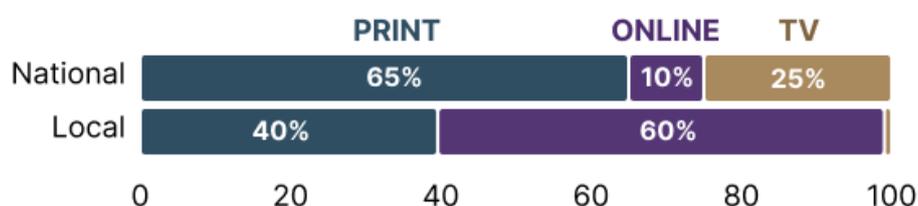
### C. Profiles of the Accused Journalists

In 209 incidents, the accused journalists had a national reach, and in 197 incidents the journalists had a local reach.

National and local level journalists could be further categorised by the medium they worked for: at the national-level, print media accounted for 65%; broadcast/TV for 25%; and online media publications for 10% of the incidents.

At the local-level, online media formed the majority—close to 60%; print media accounted for 40%; and broadcast/TV comprised only 1% of the incidents. In 45 incidents, data was not available.

#### Share of journalists by the medium they worked for



The percentages sum up to more than 100% due to rounding

Overall, journalists working in print faced a higher proportion of criminal cases—48% of the total in the dataset; online media journalists comprised 29% of the dataset; and broadcast journalists 12%.

This may indicate the surge in growth in print publications in recent years. According to the 21st Annual South Asia Press Freedom Report, as of 2022, “Bangladesh has 3,176 registered newspapers and magazines of

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<sup>106</sup> Interview, Henry Swapon.

which 1,279 are dailies.”<sup>107</sup> The recent Media Reform Commission report noted that “in 1982, only a dozen dailies were published in Dhaka, and the total number of newspapers and magazines across the country stood at 604. Today, the number stands at 3,270, including 1,371 in Dhaka.”<sup>108</sup>

At the same time, according to Freedom House, “[t]he increased use of social media platforms for sharing news and the emergence of blogs and independent online media outlets have brought new voices to the fore. The ability to access localized information and create content in Bengali has contributed to the popularity of local blog-hosting and online news services, as well as Bengali-language YouTube content.”<sup>109</sup> Perhaps these trends—along with the relatively smaller number of currently-operational private TV stations<sup>110</sup>—explain the relative proportion of cases against print and digital outlets.

In 70% of the incidents, journalists facing criminal cases were in the age range of 30-50 (where information was available). And while the journalists in the dataset were predominantly male, at least 12 journalists facing DSA charges were women.

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<sup>107</sup> South Asia Press Freedom Report 2022-2023, available at <https://samsn.ifj.org/SAPFR22-23/bangladesh/>.

<sup>108</sup> Media Reform Commission Report, p. 18.

<sup>109</sup> Freedom House, Bangladesh: Key Developments, June 1, 2023 – May 31, 2024, available at <https://freedomhouse.org/country/bangladesh/freedom-net/2024>.

<sup>110</sup> The Media Reform Commission report states that “34 are operational,” Media Reform Commission Report p. 51.

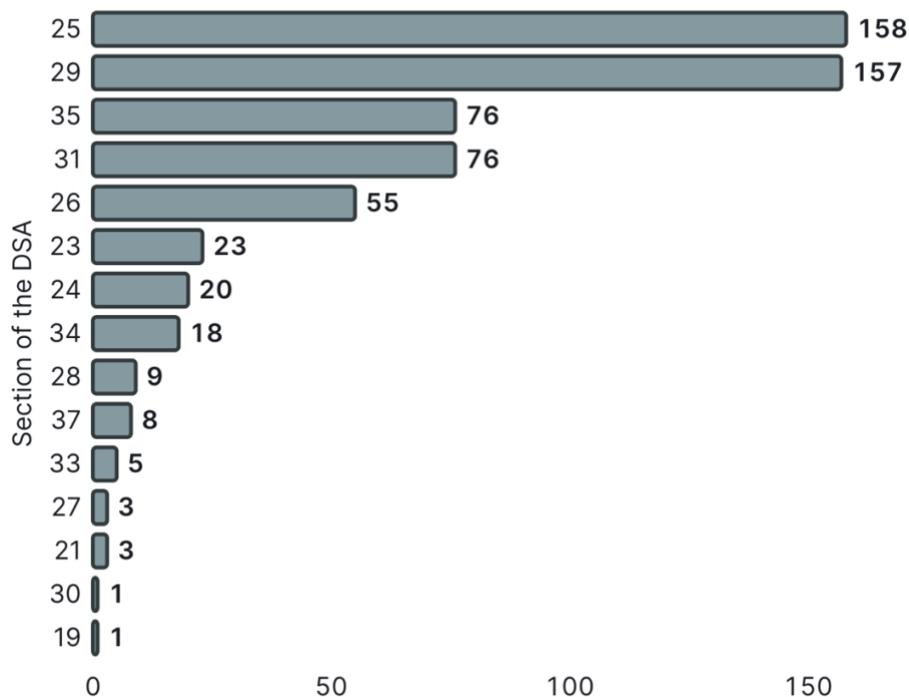
# THE LAW: PROVISIONS OF THE DSA AND THEIR WEAPONIZATION AGAINST JOURNALISTS



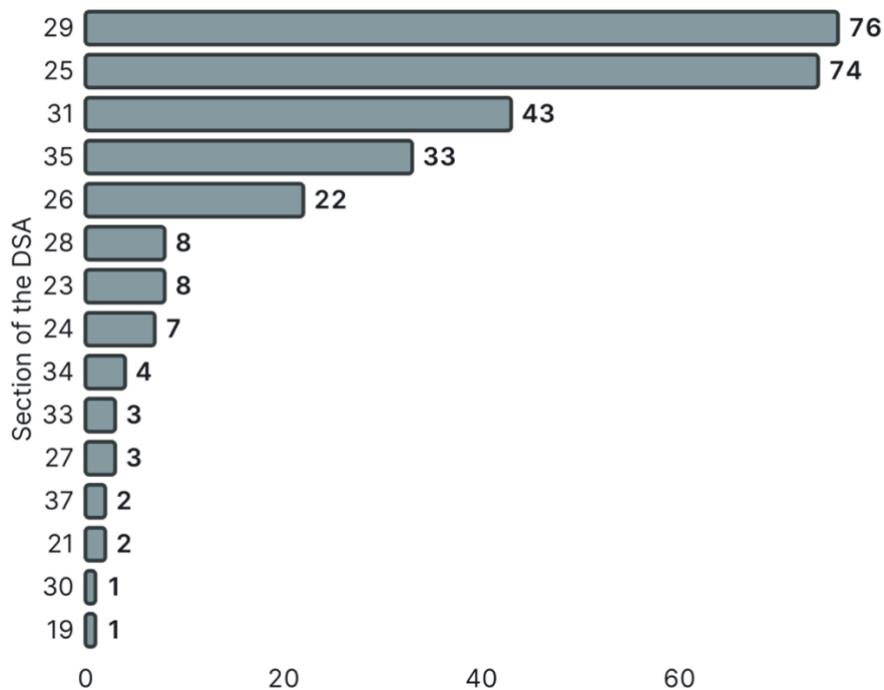
Data on the provisions invoked was available for 176 of the 451 incidents of criminalization. Analysis of this data reveals several important trends: (1) the provisions most invoked against journalists invoked are vague and especially easy to weaponize; (2) journalists faced multiple offenses in many cases, even though prosecuting the same speech for these multiple offenses was not necessarily logical—in particular, bailable offenses were seemingly arbitrarily clubbed with non-bailable provisions, leading to pre-trial detention of journalists; and (3) non-speech offenses, which have not received much attention in the debates regarding the misuse of the DSA, were also invoked relatively frequently against journalists.

The two provisions most weaponized against journalists were Section 25 (offensive, false or threatening information with intention to annoy or insult a person or false information or propaganda to affect the reputation of the country) and Section 29 (defamatory information)—both were invoked over 150 times (in over 70 cases).

Number of instances invoking specific sections of the DSA



### Number of cases invoking specific sections of the DSA



Section 31, which deals with publishing or spreading information that creates enmity or deteriorates law and order, was invoked 76 times (43 cases). Section 35, which deals with the offence of abetment (instigating, engaging with or aiding the commission of an offence) was also invoked 76 times (33 cases).

The remaining offences that were used most against journalists were not offences restricting certain kinds of expression, but ‘non-speech’ offences including: unauthorised use/collection of identity information,<sup>111</sup> digital fraud,<sup>112</sup> identity fraud/personation<sup>113</sup> and hacking.<sup>114</sup> For instance, Section 26 (unauthorized use/collection of identity information) was invoked 55 times in 22 cases. That section provides that “[i]f any person without any legal authority collects, sells, takes possession, supplies or

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<sup>111</sup> Section 26.

<sup>112</sup> Section 23.

<sup>113</sup> Section 24.

<sup>114</sup> Section 34.

uses any person’s identity information, then, that activity of that person will be an offense under the Act.”

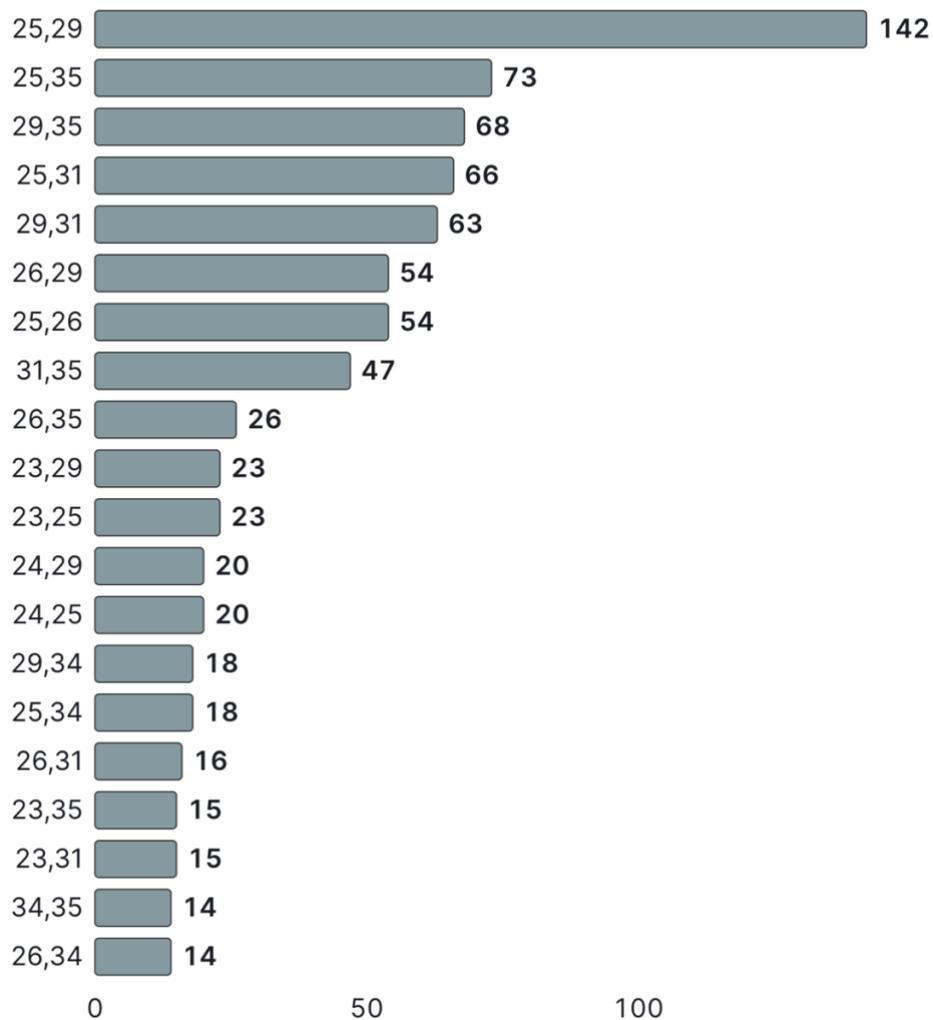
Most cases invoked multiple offences—in 95% of instances, the case included more than one offence. This indicates that the authorities concerned do not generally narrow down (or likely carefully consider) the offence to be applied to the allegedly ‘criminal’ activity of the journalist, but rather slap a wide range of offences against them, creating a further chilling effect.

For instance, Sections 25 and 29 were charged together in over 140 incidents. But other offenses were clubbed with less of a logical nexus.

This chart shows the offences most frequently charged together.

### Offences most frequently charged together

Top 20 combinations



For instance, in Molla’s case (for reporting on apparent voting irregularities), the FIR was registered under Sections 25, 31, 33, and 35 of the DSA.<sup>115</sup> It is not clear why the journalist’s reporting should constitute both offensive or false information and unlawful access to official information (Section 33).

Section 25 and 31 were also often charged together. But these two offenses are conceptually distinct: Section 25(1)(a), at least, concerns an individual and their reputation or reaction whereas Section 31 (speech creating enmity, hatred or hostility among people) concerns community reaction.

For instance, K M Belal Hossen Swapon was charged with violating Sections 25 and 31 for publicizing a request for a proper investigation into an allegation that a political candidate had been accused of rape. The FIR alleged that the journalist had “undermin[ed] law and order including defamation of character by publishing defamatory false threatening information.”<sup>116</sup> But it is far from obvious why an alleged false statement about someone would undermine law and order—rather, the chargesheet simply asserts that due to the post, “there was tension in the area.”<sup>117</sup> The chargesheet itself is highly prejudicial, stating that “it is known that the arrested accused . . . is a clever fake news presenter.”<sup>118</sup> The journalist was ultimately acquitted in this case.<sup>119</sup>

Indeed, in some cases, the chargesheet appears to indicate that provoking criticism of someone should be deemed tantamount to creating disorder. For instance, in Shawon’s case (involving the comment about the courts being ‘under Sheikh Hasina’s skirt’), the complaint alleges that “there has been an adverse reaction among the members of Bangladesh Awami League and Chhatra League and various affiliated organizations.

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<sup>115</sup> FIR 06/221, Batiaghata Police Station, December 31, 2018, MD Hedait Hossain Molla; Chargesheet No. 36/1, March 23, 2020, MD Hedait Hossain Molla.

<sup>116</sup> Interview, K M Belal Hossen Swapon; FIR 16/225, Chatmohor Police Station, December 26, 2020, K M Belal Hossen Swapon.

<sup>117</sup> Chargesheet No. 131, July 18, 2021, K M Belal Hossen Swapon.

<sup>118</sup> Chargesheet No. 131, July 18, 2021, K M Belal Hossen Swapon.

<sup>119</sup> Rajshahi Cyber Tribunal Verdict, [Date Unclear].

As a result, the harmony of the area is destroyed and there is a fear of creating instability or chaos.”<sup>120</sup>

The sections that follow provide analysis of the core provisions invoked against journalists and then highlights those that have been carried forward in the CSO.

## **A. Provisions**

### **Sections 25 and 29**

#### ***The Law***

Section 25(1)(a) and Section 29 both deal with speech against an individual—Section 25(1)(a) criminalizes spreading or publishing data/information that is known to be “offensive, false or threatening in order to annoy, insult, humiliate or malign a person,” while Section 29 criminalises publishing or transmitting defamatory information online—based on the offence of defamation in Section 499 of the Bangladesh Penal Code. Notably, the sentences for defamation in the DSA are harsher than those in the Penal Code: up to three years and/or a fine, and up to five years and/or a fine if repeated in the DSA, as opposed to two years and/or a fine and an exception on the basis of public interest, in the Penal Code.

Section 25(1)(b), by contrast, makes publishing or spreading propaganda or false information with an intention to affect the image or reputation of the country, or to “spread confusion,” punishable with a potential three-year prison sentence. Unlike Section 25(1)(a), this section appears to be focused on the effect of speech on the wider community.

The wide scope of Section 25—insofar as its provisions apply both to speech about an individual and affecting communities—made it especially susceptible to weaponization. Importantly, the authorities did not clearly specify whether charges were filed under Section 25(1)(a) or 25(1)(b)—leading to further confusion and arbitrariness in its implementation.

One important distinction between Sections 25 and 29 is that the former does not appear to have any exception for true statements. By contrast,

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<sup>120</sup> Complaint as the basis for FIR 20/355, Chhatak Police Station, December 25, 2021, Lutfur Rahman Shawon.

Section 29, because it refers to Section 499 of the Penal Code, incorporates a limited defense of truth.

### ***Trends from Data and Case Studies***

Section 25 and 29 were invoked by all kinds of complainants—politicians, government employees, journalists, lawyers, educators and businessmen.

For instance, journalist Abu Taiyub Munshi published an article about a mayor with the title “Bond License Managing Director is Khulna City Mayor? 2.5 million taka fine for customs evasion, 5.53 million taka claim. Bond license was cancelled.”<sup>121</sup> The article alleged that a company with which the mayor had been or was affiliated had been involved in a customs duty evasion scheme, pointing to a document with the mayor’s signature on it. The mayor in turn filed a complaint alleging that the article constituted “yellow journalism” and was “false and misleading.” The FIR in the case was registered under Sections 25, 29, 31, and 35 of the DSA, claiming that the article created a “conspiracy to create hatred in the public mind by disseminating false, baseless, offensive and defamatory information through digital devices.”<sup>122</sup>

As indicated by this FIR, in many of the cases, the concepts of ‘offensive’ and ‘defamatory’ speech are conflated, a public reaction is presumed, and any speech or reporting deemed unwelcome is characterized as violating both Sections 25 and 29.

Journalists charged with both Sections were often subject to pre-trial detention—over 80% of the incidents where journalists were arrested and the provision was known included Sections 25 and 29, despite the fact that these offences were bailable. This can be explained by the fact the cases often also included a non-bailable offence, such as violations of Section 23, 24, 26, 31, 31 or 34.

For instance, in the case involving posting of allegations regarding diversion of funds from a construction project, the journalist spent 12 days in jail because the FIR included not only Sections 25 and 29, but also

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<sup>121</sup> Complaint as the basis for FIR 25/140, Khulna Sadar Police Station, April 20, 2021, Abu Taiyub Munshi; Interview, Abu Taiyub Munshi.

<sup>122</sup> FIR 25/140, Khulna Sadar Police Station, April 20, 2021, Abu Taiyub Munshi; Interview, Abu Taiyub Munshi; Complaint as the basis for FIR 25/140, Khulna Sadar Police Station, April 20, 2021, Abu Taiyub Munshi.

Section 26, which criminalizes use of personal information without permission. The basis for this latter charge was that the journalist had posted photos of the political figures he had written about without obtaining their permission.<sup>123</sup> A forensic report that confirmed he had ‘intentionally’ collected the pictures was apparently enough of a predicate for this charge<sup>124</sup>—despite the fact that under international human rights standards, the publication of news-worthy photographs about public officials is protected by the right to freedom of expression.<sup>125</sup>

### ***International Human Rights Analysis***

Sections 25 and 29 are both inconsistent with international standards and constitutional decisions by courts in other jurisdictions.

**First, as to Section 25(1)(a), the terms used, such as ‘offensive,’ are too vague** to comply with the requirement that any restriction on the right to freedom of expression be “provided by law.” This principle requires that the law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly ... [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”<sup>126</sup> Courts in several other jurisdictions have struck down similar ‘offensive communication’ provisions on vagueness grounds. For instance, the Indian Supreme Court found unconstitutional Section 66A of India’s Information Technology Act, which criminalized the use of communication devices to transmit “any information that is grossly offensive or menacing and character ... or any [electronic communication] for the purpose of causing annoyance.” The Court reasoned that “expressions such as ‘grossly offensive’ or

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<sup>123</sup> Interview; Complaint; Chargesheet.

<sup>124</sup> Chargesheet.

<sup>125</sup> European Court of Human Rights (Grand Chamber), Axel Springer v. Germany, App. No. 39954/08, Feb. 7, 2012, paras. 90-91 (recognizing “the contribution made by photos or articles in the press to a debate of general interest” and stressing that in balancing the right to freedom of expression against the right to privacy, “[t]he role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion . . . [and] a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures.”).

<sup>126</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011 [hereinafter “**General Comment No. 34**”], para. 25.

'menacing' are so vague that there is no manageable standard by which a person can be said to have committed an offence or not to have committed an offence."<sup>127</sup> Likewise, the Constitutional Court in Uganda found that Section 25 of the Computer Misuse Act No. 2 of 2011, which criminalized 'offensive communication' (in particular, using "electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication"), "does not specify what conduct constitutes offensive communication,"<sup>128</sup> and is "not clear and without knowing the ingredients of an offence, one cannot meaningfully prepare his/her defence."<sup>129</sup> On this basis, the Court concluded that "the words used under Section 25 are vague, overly broad and ambiguous" and the law "gives the law enforcer the discretion to pick and choose what qualifies as offensive."<sup>130</sup> It went on to hold that the law was null and void.<sup>131</sup> Most recently, in Malaysia, the Court of Appeal struck down a similar provision in its Communication and Multimedia Act, 1998, finding that the law "does not provide any standards as to what amounts to offensive or what would amount to an intent to annoy. When all types of speeches could potentially be offensive if a single person finds it so then freedom of speech has become illusory and enforcement becomes arbitrary."<sup>132</sup>

Second, as to Section 25(1)(b), many of the same concerns obtain—in particular, as to the vagueness of terms such as 'propaganda or false,' 'spread confusion' and 'affect the image of the nation.' The Indonesian Constitutional Court, for instance, recently struck down a law that had

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<sup>127</sup> See Indian Supreme Court, *Shreya Singal v. Union of India*, Writ Petition (Criminal) No. 167 of 2012 (2015).

<sup>128</sup> Constitutional Court of Uganda, *Karamagi et al. v. Attorney General*, Judgment, Constitutional Petition No. 5 of 2016, pg. 15.

<sup>129</sup> *Id.*, at pgs. 11-12.

<sup>130</sup> *Id.*, at pg. 12.

<sup>131</sup> *Id.* at pg. 16. See also High Court of Kenya at Nairobi, *Andare v. Attorney General et al.*, Judgment, Apr. 19, 2016, paras. 77-78 (striking down a law that criminalized "send[ing] a message or other matter that is grossly offensive or of an indecent, obscene or menacing character" or "send[ing] a message that [a person] knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person.").

<sup>132</sup> Court of Appeal, *Heidy Quah Gaik Li*, Judgment, No. B-01(A)-514-10/2023, para. 73.

criminalized “[a]ny person disseminating news or issuing information that can cause disruption among the public, while such person ought to expect that such news or information is false.” The Court found that the wording of the provisions—“false news or information” and news “that is uncertain, or news that is exaggerated”<sup>133</sup>—was ambiguous “due to the difficulty of determining the standards or parameters of the ‘truth’ of the information.”<sup>134</sup> The Court acknowledged that the “the judgement of whether that information is ‘true’ or ‘exaggerated’ is highly dependent on the judgement of legal subjects who have different backgrounds [and] religious, cultural and social values.”<sup>135</sup> Likewise, the East African Court of Justice has held that a provision of Tanzanian law that purported to criminalize publications “likely to cause fear and alarm to the public” was unlawfully vague.<sup>136</sup>

Moreover, the UN Human Rights Committee has been clear that “States parties should not prohibit criticism of institutions, such as the army or the administration” and that “[t]he penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.”<sup>137</sup>

Both sub-sections also **refer to ‘information.’** As Article 19 notes, criminalising the spreading of “false information” is problematic because facts are not easily distinguishable from opinions.<sup>138</sup> And indeed, the European Court has found that the criminalization of ‘information’—by failing to draw this distinction—is an “indiscriminate approach to the

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<sup>133</sup> This language is found in another sub-section of the provision.

<sup>134</sup> Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, para. 3.18.2,

<sup>135</sup> *Id.*

<sup>136</sup> EACJ, Media Council of Tanzania and Ors. v. Attorney General of the United Republic of Tanzania, Reference 2 of 2017, [2019] EACJ 2, Mar. 28, 2019 (First Instance Division), available at <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2019/05/Referene-No.2-of-2017.pdf> (see also case cited therein).

<sup>137</sup> General Comment No. 34, paras. 38, 42.

<sup>138</sup> Article 19, Bangladesh: Digital Security Act 2018, Legal Analysis (November 2019), pg. 16, available at <https://www.article19.org/wp-content/uploads/2019/11/Bangladesh-Cyber-Security-act-2018-analysis-FINAL.pdf>.

assessment of speech” and a per se violation of the right to freedom of expression.<sup>139</sup>

Third, as to Section 29, the UN Human Rights Committee has recommended that **defamation be decriminalised**,<sup>140</sup> and in any event, defamation should never be sanctioned with imprisonment, as the DSA permits. Further, Section 29 cross references Section 499 of the Penal Code, which has its own flaws.

Under international law, “penal defamation laws[] should include such defences as the defence of truth.”<sup>141</sup> The Human Rights Committee has found a violation of Article 19 when a radio commentator was convicted under a defamation law that permitted the proof of truth only under restricted conditions.<sup>142</sup> In a case where an Angolan journalist was charged with defamation for alleging corruption against the President, the Committee emphasized the importance of the defence of truth, finding an Article 19 violation because the “proposed truth defence against the libel charge was ruled out by the Courts.”<sup>143</sup> The Committee also expressed “concern” that South Korea’s defamation law allowed for criminal

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<sup>139</sup> See, e.g., ECtHR, *Gorelishvili v. Georgia*, App. No. 12979/04, Sept. 5, 2007, para. 38; ECtHR, *Fedchenko v. Russia*, App. No. 33333/04, June 28, 2007, para. 37.

<sup>140</sup> General Comment No. 34, para. 47.

<sup>141</sup> See General Comment No. 34, para. 47; see also Amal Clooney & David Neuberger, *Freedom of Speech in International Law*, Oxford University Press, pgs. 114–116 (2024).

<sup>142</sup> UNHRC, *Adonis v. Phillipines*, U.N. Doc. CCPR/C/103/D/1815/2008/Rev.1, Oct. 4 to Nov. 4, 2011, para. 3.5 (The law in consideration in this case was “[A]rticle 354 of the Revised Penal Code, according to which ‘every defamatory imputation is presumed to be malicious, even if true, if no good intention and justifiable motive for making it is shown, except in the following cases ... 2. A fair and true report, made in good faith, without any comments or remarks of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.’”).

<sup>143</sup> UNHRC, *Marques de Morais v. Angola*, U.N. Doc. CCPR/C/83/D/1128/2002, Mar. 29, 2005, para. 6.8.

prosecution for true statements, “except when such statements are made solely for the public interest.”<sup>144</sup>

Section 499 of the Penal Code only permits a defence of truth “if it be for the public good that the imputation should be made or published.” This is the kind of limitation to the defence that is inconsistent with international standards.

### **Current Position**

Neither Section 25 nor 29 is included in the CSO. Nevertheless, defamation continues to be an offence under the Bangladesh Penal Code, punishable with two years imprisonment,<sup>145</sup> and has been used in the past “frequently” against critical journalists.”<sup>146</sup>

Further, cases in our dataset suggest that Section 26 of the CSO will continue to be a threat. Section 26 provides, “[i]f any person intentionally or knowingly or under a pseudonym illegally enters his own or another’s ID and publishes or circulates or causes to be published in cyberspace anything that is related to any religion or communal hate speech or racial hatred and which creates violence or creates anxiety or directs disorder or criminal activities, then such an act shall be considered” an offense. While many of the elements of Section 26 are successors to elements of Section 31 of the DSA (discussed next), the concept of ‘creating anxiety’ is similar to the notion of ‘spreading confusion’ found in Section 25(1)(b) of the DSA.

Indeed, in one case under Section 25 (among other provisions, including Section 31), the chargesheet alleged the defendant had propagated “false information, which has created confusion in the public mind, created an unstable, chaotic environment”<sup>147</sup>—effectively merging the violation of Section 25 (creating confusion) with the violation of Section 31

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<sup>144</sup> UNHRC, Concluding Observations on the Fourth Periodic Report the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4, Dec. 3, 2015, para. 46; Amal Clooney & David Neuberger, *supra*, pg. 115.

<sup>145</sup> The Penal Code, 1860, Sections 499 and 500.

<sup>146</sup> Amnesty International, Caught Between Fear and Repression: Attacks on Freedom of Expression in Bangladesh, (May 2017), pg. 8, available at <https://www.amnesty.org/en/documents/asa13/6114/2017/en/>.

<sup>147</sup> Chargesheet No. 36/1, March 23, 2020, MD Hedait Hossain Molla.

(deteriorating the law and order situation). This suggests that the ‘creates anxiety’ element of the new Section 26 may be used in some similar ways to Section 25, although Section 26 is restricted to various forms of alleged hate speech.

## **Section 31**

### ***The Law***

Section 31, which relates to spreading or publishing material that “creates enmity, hatred or hostility among different classes or communities,” creates “unrest or disorder” or “deteriorates the law and order situation,” was invoked 76 times in the dataset (in 43 cases).

Section 31 permits harsh sentences—imprisonment of up to 7 years. This is harsher than the two-year prison sentence prescribed in the Penal Code for a similar offence—Section 153A (promoting enmity or hatred between different classes). Further, Section 31 is a non-bailable offence, meaning those charged with the provision can be subject to pre-trial detention.

### ***Trends from Data and Case Studies***

Section 31 was often clubbed with Sections 25 and 29 (66 and 63 times respectively). As discussed above, this is surprising given that Section 31 is a public order provision, whereas Section 29 and Section 25(1)(a) deal with speech about or directed toward an individual. Section 31 was also invoked in close to 80% of the incidents filed by government employees; and 55% of those filed by politicians.

Journalists facing charges under Section 31 were more likely to be arrested and detained pending trial—70% of the incidents involving Section 31 led to pre-trial detention (where information was known).<sup>148</sup>

The cases show how speculative the threshold for registering a case was. For instance, in Ikhtiyar Uddin Azad ‘s case (relating to alleged food shortages during the height of the COVID-19 outbreak), an FIR was registered on the theory that the post “discredit[ed] the image of the state and the government, create[d] fear and panic among the public, [and] attempt[ed] and aid[ed] the deterioration of law and order.”<sup>149</sup> The FIR

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<sup>148</sup> In 30 of the 76 incidents where Section 31 was invoked, information on pre-trial detention was not known.

<sup>149</sup> FIR 20/194, Patnitala Police Station, May 13, 2020, Ikhtiyar Uddin Azad.

offered no explanation for why criticism of the government's response to a pandemic would necessarily lead to panic and deterioration of the law and order situation.

Likewise, in the case against three journalists for reporting on alleged reduced food quantities in the COVID-19 ward of a hospital, the chargesheet simply said that “[b]y grossly tarnishing and defaming the image of the representative of the contracting organization and spreading the said defamatory, false information degrading the law and order by publishing and spreading rumours, public distrust towards Modern District Headquarters Hospital during the current epidemic of Covid-19 virus, hostility between the public of different classes or communities, hatred, public anger, hatred and confusion in the said hospital due to deterioration of law and order, it is necessary to take legal action against the reporters of the said reports along with their accomplices.”<sup>150</sup>

Likewise, journalist Abu Zafar faced charges under Section 31 for a piece about alleged corruption by the Officer in Charge (OC) of an area.<sup>151</sup> Interestingly, it was not the officer himself who filed the complaint, but the organizer of the local Swecchasebak league (the volunteer wing of the Awami league).<sup>152</sup> The theory of the complaint was that criticism of local law enforcement would create a “situation of instability and chaos.”<sup>153</sup> Again, why this would necessarily be so went unexplained.

### ***International Human Rights Analysis***

As with Sections 25 and 29, Section 31 includes a number of vague and broad terms, including in particular ‘unrest or disorder’ and ‘enmity, hatred or hostility.’ For instance, in analysing Indonesia’s ‘fake news’ law, which the Constitutional Court struck down, the Court noted that the Articles at issue require the speech to cause, or have the likelihood to cause, ‘disruption,’ but “there is a lack of clarity regarding the scale or parameter

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<sup>150</sup> Chargesheet No. 141, June 23, 2022, Tanvir Hasan Tanu, Rahim Shuvo, and Abdul Latif Litu.

<sup>151</sup> Interview, Abu Zafar; Complaint as basis for FIR [Number Unclear], Dohar Police Station, February 20, 2019, Abu Zafar.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

that constitutes the limit of danger”<sup>154</sup> and that “what can or may happen is a subjective judgement that has the potential to create arbitrariness.”<sup>155</sup> At the international level, in several decisions, the UN Working Group on Arbitrary Detention has found that provisions criminalizing incitement to ‘social disorder’<sup>156</sup> or ‘disobedience to the authorities or riots’<sup>157</sup> were impermissibly vague. The same is true as to ‘unrest or disorder.’

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which was adopted by experts following UN workshops around the world, recommends that “States ... consider including robust definitions of key terms such as hatred, discrimination, violence, hostility, among others” so as to avoid opening the door to prosecutions based on criticism, insult, and inappropriate words.<sup>158</sup> Such definitions are lacking in Section 31.

Moreover, international law requires that restrictions on speech be necessary and proportionate to achieving a legitimate objective. Under the International Covenant on Civil and Political Rights, restrictions on speech are only permitted for “respect of the rights or reputations of others” or “the protection of national security or of public order, or of public health or morals.” This is an exhaustive list.<sup>159</sup> Section 31 would appear to have two main objectives: protecting groups from hostility and hatred and protecting public order.

To the extent the objective of Section 31 is the protection of groups from “enmity, hatred or hostility” it is not clear that it is limited to “individuals and communities belonging to ethnic, national or religious groups,” as

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<sup>154</sup> Constitutional Court Judgment [translation], Case No. 78/PUU-XXI/2023, para 3.18.5.

<sup>155</sup> *Id.*

<sup>156</sup> UN Working Group on Arbitrary Detention, Ros Sokhet v. Cambodia, U.N. Doc. A/HRC/WGAD/2021/75, Jan. 27, 2022, para. 66.

<sup>157</sup> UN Working Group on Arbitrary Detention, Opinion No. 57/2024 concerning Saparbek Akunbekov, UN Doc. A/HRC/WGAD/2024/57, Mar. 3, 2025, para. 104 (“This provision, by criminalizing broad and vague concepts such as ‘disobedience’ and ‘riots’, fails to meet the rigorous standards set by article 19 (3) of the Covenant.”).

<sup>158</sup> OHCHR, The Rabat Plan of Action, Oct. 5, 2012, para 21.

<sup>159</sup> General Comment No. 34, para. 21.

indicated by the Rabat Plan,<sup>160</sup> as opposed to, for instance, political groups. Indeed, in one case several journalists were charged with violating Section 31 for a story that allegedly created animosity or hatred regarding a District Committee of the Bangladesh Awami League,<sup>161</sup> making clear the wide scope of application of Section 31.

To the extent the objective of the law is protecting public order, it would not seem limited to the kinds of harms encompassed by that term. In a recent decision, Malaysia's High Court analysed the difference between 'public order' and 'law and order,' having reference to the developed jurisprudence of India's Supreme Court. In so doing, the court noted that "law and order" . . . comprehends disorders of less gravity than those affecting 'public order.'"<sup>162</sup> In this case, Section 31 is plainly meant to protect 'law and order.' It thus exceeds the scope of the objectives in pursuit of which speech can be limited.

Finally, as to necessity and proportionality, the Rabat Plan suggests that hate speech must have "a reasonable probability . . . [of] inciting actual action against the target group, recognizing that such causation should be rather direct," rather than simply arousing 'feelings' or criminalizing incitement to an offence, no matter how indirect the connection.<sup>163</sup> The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has for instance suggested that Singapore's somewhat similar law should be reviewed to be brought into compliance with international standards.<sup>164</sup> With respect to the DSA, the later clause of Section 31 applies to speech that "deteriorates" or "advances to deteriorate" law and order. It is not clear

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<sup>160</sup> Rabat Plan of Action, para. 11.

<sup>161</sup> Complaint (discussing "creat[ing] animosity, or hatred between classes or sects *regarding that sacred political institution*") (emphasis added) [note that in this case the journalist's name is withheld on their request].

<sup>162</sup> Heidi Quah, *supra*, para. 37 (citing *Dr. Ram Manohar Lohia v State of Bihar and Others*).

<sup>163</sup> Rabat Plan of Action, para. 29.

<sup>164</sup> Human Rights Council, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Githy Muigai, UN Doc. A/HRC/17/40/Add.2, Mar. 25, 2011, available at <https://documents.un.org/doc/undoc/gen/g11/123/13/pdf/g1112313.pdf>. The law in Singapore is most closely analogous to Section 153A of the Bangladesh Penal Code, to which Section 31 bears some similarity.

whether “advances to deteriorate” is tantamount to likely, or possibly, or some other standard.

### ***Current position***

Section 31 has been partially carried forward in the CSO. As discussed above, Section 26 of the CSO provides “[i]f any person intentionally or knowingly or under a pseudonym illegally enters his own or another’s ID and publishes or circulates or causes to be published in cyberspace anything that is related to any religion or communal hate speech or racial hatred and which creates violence or creates anxiety or directs disorder or criminal activities.” This includes a number of elements in common with Section 31 of the DSA, including the concept of racial ‘hatred’ and the potentially overlapping concerns regarding ‘disorder’ and ‘anxiety.’

Anxiety, in particular, is an undefined term that is capable of wide construction. Further, the scope of ‘communal’ is not clear—including whether it includes or excludes political parties.

The main improvement, however, is that Section 26 of the CSO is bailable and non-cognizable, unlike Section 31, which was non-bailable and cognizable.

## **Section 28**

### ***The Law***

Section 28 criminalizes publication of information that “hurts religious sentiment or values.” This provision was invoked in 8 cases in our data.

For instance, in the case of Henry Swapon, he faced charges under Section 28, in addition to charges under Section 29 and 31. The basis for the charges was a post suggesting the local catholic church was insensitive for organizing a cultural program at a time when a series of bomb blasts had targeted churches in Sri Lanka.<sup>165</sup> Swapon said he thought the case was retaliation for his reporting on alleged corruption

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<sup>165</sup> Interview, Henry Swapon; Bangladesh Supreme Court High Court Division, Court Order, June 5, 2022.

within the church.<sup>166</sup> The High Court eventually issued a stay order in his case in 2022—three years after the FIR was registered.<sup>167</sup>

### ***International Human Rights Analysis***

Terms such as ‘hurt religious sentiment or values’ are vague, and thus provisions such as Section 28 violate the right to freedom of expression. Further, the UN Human Rights Committee has made clear that “[p]rohibitions of displays of lack of respect for a religion or other belief system” are not compliant with the right to freedom of expression except where the allegedly blasphemous speech fits within the framework of Article 20 of the ICCPR.<sup>168</sup> The Special Rapporteur on Freedom of Expression has reached similar conclusions. As stated by the Rapporteur, “anti-blasphemy laws fail to meet the legitimacy condition of article 19(3) of the Covenant, given that article 19 protects individuals and their right to freedom of expression and opinion ... [article 19 does not] protect ideas or beliefs from ridicule, abuse, criticism or other ‘attacks’ seen as offensive.”<sup>169</sup>

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<sup>166</sup> *Id*

<sup>167</sup> *Id*

<sup>168</sup> General Comment No. 34, para. 48

<sup>169</sup> UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, U.N. Doc, A/74/486, Oct. 9, 2019, para. 21. See *also* Human Rights Council, Report of the Special Rapporteur on Freedom of Religion or Belief, U.N. Doc A/HRC/31/18, Dec. 23, 2015, para. 61 (“[T]he employment of criminal sanctions against expressions which do not advocate for violence or discrimination but which are deemed ‘blasphemous’” is “incompatible” with the right to freedom of expression.”).

### ***Current Position***

As discussed above, Section 26 of the CSO covers religious hate speech, which would seem to raise similar concerns to those posed by Section 28 of the DSA.

This concern is borne out by abuses identified with other laws criminalising hurting religious feeling as well. As the Media Reform Commission has noted, “[t]he existing law regarding ‘hurting religious sentiments’ has been misused against journalists and others, especially against people of minority communities.”<sup>170</sup>

## **Section 35**

### ***The Law***

Section 35 makes abetting the commission of any offence under the DSA punishable with the same imprisonment as provided for the offence. Section 35 does not define abetment. Section 107, Bangladesh Penal Code, defines abetment as “instigat[ing] any person to do that thing,” “engag[ing] with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy” or “intentionally aid[ing], by any act or illegal omission, the doing of that thing.”

Section 35 was invoked 76 times (in 33 cases) and most often in conjunction with Sections 25 and 29 (73 and 68 times respectively).

### ***Trends from Data and Case Studies***

Section 35 was invoked frequently to implicate more than one journalist—63% of the cases invoking Section 35 (21 of 33 cases) covered more than one journalist.

Among the 30 case studies, three journalists faced charges for reposting or sharing content on social media. In these cases, journalists were not being penalized for original speech, but rather for amplifying content already in public circulation. Both cases where the provisions were known included Section 35. This suggests a trend where journalistic amplification alone can become grounds for prosecution in Bangladesh.

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<sup>170</sup> Media Reform Commission Report, pg. 70.

One journalist faced charges under Sections 25, 29, 31, and 35 for sharing news on Facebook that alleged corruption involving a mayor.<sup>171</sup> Despite merely amplifying an existing report, he was prosecuted under multiple provisions and detained for 34 days before being granted bail by the Sessions Court.<sup>172</sup>

And in another case two editors and a journalist were criminalized for allegedly publishing a story that included a quote from a police officer that he said he never gave.<sup>173</sup> The FIR invoked Sections 25, 29, 31, and 35.<sup>174</sup> One of the defendants was not involved in the online news (handling only the print version), but he was nevertheless swept up in the case before eventually being acquitted.<sup>175</sup> The second editor likewise said he had nothing to do with the story, and was also eventually acquitted more than a year after his colleague.<sup>176</sup> This suggests that Section 35 permits the authorities to investigate and charge not only those who repost allegedly unlawful information, but also anyone involved in a publication, whether they had a role in the speech/story in question, or not.

### ***International Human Rights Analysis***

Section 35 has been criticized for failing to include an element of intention in the offence, and for failing to define what constitutes abetment.<sup>177</sup> This raised concerns that it could be used to “criminalise a wide range of Internet users”<sup>178</sup>—concerns that are made out in the data collected for this report.

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<sup>171</sup> FIR 25/140, Khulna City Police Station, April 20, 2021, Sabur Rana.

<sup>172</sup> Interview, Sabur Rana.

<sup>173</sup> Interview, Ramjan Ali Pramanik; Interview, Shanto Banik.

<sup>174</sup> FIR 7/71, Palash Police Station, April 30, 2020, Ramjan Ali Pramanik and Shanto Banik.

<sup>175</sup> Interview, Ramjan Ali Pramanik.

<sup>176</sup> Interview, Shanto Banik.

<sup>177</sup> Article 19, Bangladesh: Digital Security Act 2018, Legal Analysis, (November 2019), pg. 17, available at <https://www.article19.org/wp-content/uploads/2019/11/Bangladesh-Cyber-Security-act-2018-analysis-FINAL.pdf>.

<sup>178</sup> *Id.*

### **Current Position**

Under the CSO, abetting an offense remains a crime. In fact, it mirrors the language of the DSA nearly verbatim. While the fact that the principal offenses have been limited may reduce its scope for abuse, it is easy to see how it could be coupled with Section 26 to sweep in those who repost critical comments that are alleged to ‘cause anxiety.’

### **Non-Speech Offences**

As mentioned earlier, the remaining offences that were most used against journalists did not relate to content of the speech or reporting. While the criticism of the DSA has generally focused on the so-called “speech provisions”—such as Sections 25, 28, 29, and 31, discussed above, as well as Sections 21 and 27<sup>179</sup>--our data suggests that other provisions were also prone to misuse.

Section 26, for instance, which makes the unauthorized collection, possession, sale and use of the identity information of another person punishable with imprisonment for up to five years, featured 55 times in our dataset (in 22 cases).

This section was invoked in particular in cases involving publication of photos. As discussed above, one journalist faced a case for posting photos of the political figures he had written about without obtaining their permission.<sup>180</sup> In another case journalist Khondokar Rakib faced charges under Section 26 (and others) for publishing a photo showing an individual alleged to be involved in the drug trade on stage at a public event at a police station to promote drug awareness. In that case, the chargesheet simply stated that the Section 26 offence involved “using personal information (photos) without the permission of the plaintiff.”<sup>181</sup>

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<sup>179</sup> Section 21, which makes publishing “any propaganda or campaign against the liberation war of Bangladesh, spirit of liberation war, father of the nation, national anthem or national flag,” featured three times in our dataset, and Section 27, which relates to cyber-terrorism, also appeared three times in our dataset. In its Technical Note, the OHCHR specifically called for the repeal of Section 21 (pg. 2) and recommended the amendment or repeal of eight other sections, including Section 27. In its review of the DSA, Article 19 recommended repeal of Section 21 (pg. 15).

<sup>180</sup> Interview; Complaint; Chargesheet.

<sup>181</sup> Chargesheet No. 165, December 31, 2022, Khondokar Rakib.

The cases thus appear to concern photos of public figures or bearing on the public interest. But international and regional standards generally find the public interest in such photos outweighs the individual being photographed's privacy interest.<sup>182</sup>

Likewise, Section 23, which pertains to commission of digital and electronic fraud (defined to include changing, deleting, adding or tampering with any information of a computer programme, computer system, computer network, digital device, digital network or social media with the intention to gain benefit or cause harm to the other person), was invoked 23 times (in 8 cases). In one case, journalist Abdul Kaium alleged that he faced repeated harassment by the son-in-law of a local MP—all meant to impede his work. According to Kaium, he had been asked to create a website for a madrasa. When he arrived at the premises for payment, he was offered U.S. dollars, which he declined; he was nevertheless arrested shortly after leaving the madrasa based on the allegation that he was carrying \$200 for 'illegal work' (even though no such funds were found on him, as he had declined the payment).<sup>183</sup> The next day, an FIR was lodged against him under the DSA, invoking Sections 25 and 29, as well as Section 23, based on alleged comments on social media, which the journalist denied having made.<sup>184</sup>

Section 34 which deals with the offence of hacking was also invoked 18 times (in 4 cases) against journalists. For example, the provision was applied against the journalist publishing a report alleging corruption/preferential treatment given to a restaurant owned by the daughter of a former Member of Parliament (MP).<sup>185</sup>

Finally, Section 27 criminalizes cyber terrorism, which requires damage or intrusion into digital systems. And yet in Ikhtiyar Uddin Azad's case (involving alleged food shortages during the pandemic), this provision was invoked, alongside others. It is not at all clear why, however, since the FIR

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<sup>182</sup> ECtHR, *Von Hannover v. Germany* (No. 2), App Nos. 40660/08 and 60641/08, Feb. 7, 2012.

<sup>183</sup> Interview, Abdul Kaium.

<sup>184</sup> Interview, Abdul Kaium.

<sup>185</sup> *The Daily Star*, *Ex-MP's Daughter Files DSA Case Against 6 Journos of Rangamati*, Sept. 19, 2022, available at <https://www.thedailystar.net/news/bangladesh/crime-justice/news/ex-mps-daughter-files-dsa-case-against-6-journos-rangamati-3123231>.

simply states that the ‘crime’ consisted of “publishing false information through Facebook about the ongoing Corona virus through digital devices, discrediting the image of the state and the government, creating fear and panic among the public, attempting and aiding the deterioration of law and order.”<sup>186</sup>

The arbitrary application of non-speech provisions raises concern about provisions in the CSO being similarly weaponized.<sup>187</sup>

### **Current Position**

While Section 26 of the DSA (use of identity information) has no equivalent in the CSO, the CSO retains provisions for hacking and fraud in cyber-space.

Of particular concern is the cyberterrorism provision in the CSO, which is substantially similar to that of the DSA, raising concerns that it could be abused—including in particular by reference to such broad terms as “any purpose contrary to friendly relations with a foreign state or public order.”<sup>188</sup>

This data shows that whether or not as many ‘speech offenses’ remain available, abusive tools remain in the toolbox, which can be used alongside even more narrowly-drawn offences.

## **B. Basis of Charges**

Our analysis reveals a clear pattern, evident also from the examples above: individuals were frequently targeted and prosecuted for engaging in core journalistic functions or for critical comments on social media. As discussed, in **20 of 30 cases the allegations in the complaint/FIR concerned core journalistic work**—reporting on or sharing news related to public interest issues (such as investigations into corruption or reporting on misconduct by public officials). In MD Hedait Hossain Molla’s case, described above, he was stationed at an official’s office reporting voting

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<sup>186</sup> FIR 20/194, Patnitala Police Station, May 13, 2020, Ikhtiyar Uddin Azad.

<sup>187</sup> Other non-speech provisions invoked included Section 24, which criminalizes identity theft and impersonation, which arose in 7 cases.

<sup>188</sup> Section 23(1)(D). The CSO also criminalizes cyberfraud in substantially similar terms to the DSA.

results as they came in during the 2018 elections.<sup>189</sup> For relaying to colleagues in his newsroom concerns about the tallies, he faced charges under Sections 25, 31, 33, and 35 of the DSA.<sup>190</sup> During the investigation, however, he was vindicated, with the chargesheet ultimately indicating “no specific information or evidence to prove the allegations of the said case against the said accused.”<sup>191</sup>

Reporting on the conduct of elections is, of course, a quintessential journalistic function. As both the European Court and Human Rights Committee have concluded, “[t]here is little scope . . . for restrictions on debates on questions of public interest.”<sup>192</sup> The European Court has also stressed that “[t]he ‘public watchdog’ role of the press is no less pertinent at election time.”<sup>193</sup>

The three journalists who published a report on the quality and quantity of food provided to patients in the COVID-19 ward of a hospital were charged under Sections 25, 29, 31, and 35 of the DSA.<sup>194</sup> But this is a second kind of core public interest speech—reporting on public health. For instance, in a case before the European Court, the court stressed that reporting on such issues (in that case, mercury quantities in a soft drink) was public interest speech. As the court put it, “this clearly pertains to an important aspect of human health . . . . Accordingly, the impugned news items conveyed information of considerable public interest.”<sup>195</sup>

Likewise, Munir Uddin Ahmed faced charges for posting on a clash between police and protesters on social media.<sup>196</sup> Ahmed believes that

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<sup>189</sup> Chargesheet No. 36/1, March 23, 2020, MD Hedait Hossain Molla; Interview, MD Hedait Hossain Molla.

<sup>190</sup> FIR 06/221, Batiaghata Police Station, December 31, 2018, MD Hedait Hossain Molla; Chargesheet No. 36/1, March 23, 2020, MD Hedait Hossain Molla.

<sup>191</sup> Chargesheet No. 36/1, March 23, 2020, MD Hedait Hossain Molla.

<sup>192</sup> *Orlovskaya Iskra v. Russia*, App. No. 42911/08, Feb. 21, 2017, para. 107.

<sup>193</sup> *Id.* para 130.

<sup>194</sup> FIR 7/206, Thakurgaon City Police Station, July 9, 2021, Tanvir Hasan Tanu, Rahim Shuvo, and Abdul Latif Litu.

<sup>195</sup> *OOO Regnum v. Russia*, App. No. 22649/08, Sept. 8, 2020, para 68.

<sup>196</sup> FIR 23/511, Khulna Sadar Police Station, October 21, 2019, Munir Uddin Ahmed. For reporting on the underlying incident, see *The Hindu*, 4 Killed, 50 Injured as Protesters Clash with Police Over Blasphemous Facebook Post in Bangladesh, Oct.

‘the higher ups of the police force have ordered this arrest being afraid of facing public rage about the deaths.’<sup>197</sup>

Importantly, 70% of the cases related to core journalistic work involved commentary/criticism of the government or government functionaries.

For instance, Abu Taiyub Munshi faced charges for reporting on alleged corruption of a mayor, who said that he was previously, but was no longer, associated with the institution that had come into question for customs duty issues.<sup>198</sup> In his case, the FIR invoked Sections 25, 29, 31, and 35 of the DSA.<sup>199</sup>

As with reporting on matters of public interest, reporting on public officials and candidates for office enjoys heightened protection. The UN Human Rights Committee has specifically stated: “the value placed by the [ICCPR] upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”<sup>200</sup>

The second main category of speech at issue was allegedly caustic speech online. Many times this was on social media. In fact, **21 of 30 cases in our smaller dataset were filed against journalists’ alleged expression on social media platforms**. This includes cases such as the one where the journalist posted about a clash between police and protesters on social media, but also others where the journalists were expressing their personal opinions. For instance, in the case involving the journalists charged for apparently failing to refer to magistrates as ‘sir’ the theory of the case was that they had gone on Facebook Live and made “various taunts” about the mobile court, “various bad comments” about the District Commissioner, and “various ugly and defamatory comments

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20, 2019, available at <https://www.thehindu.com/news/international/4-killed-50-injured-as-protesters-clash-with-police-over-blasphemous-facebook-post-in-bangladesh/article29751887.ece>.

<sup>197</sup> Interview, Munir Uddin Ahmed.

<sup>198</sup> In fact, the license in question bore the Mayor’s name as Managing Director: Complaint as the basis for FIR 25/140, Khulna Sadar Police Station, April 20, 2021, Abu Taiyub Munshi.

<sup>199</sup> FIR 25/140, Khulna Sadar Police Station, April 20, 2021, Abu Taiyub Munshi.

<sup>200</sup> General Comment No. 34, para. 34.

about learned magistrates.”<sup>201</sup> Likewise, Lutfur Rahman Shawon was prosecuted for allegedly commenting that the courts were Prime Minister Hasina’s petticoats.<sup>202</sup>

In many of these cases, these posts were considered insulting. And yet the Human Rights Committee has said that defamation laws “should not be applied with regard to those forms of expression that are not, of their nature, subject to verification.”<sup>203</sup> It has also held that the mere fact that “forms of expression are considered to be insulting ... is not sufficient to justify the imposition of penalties.”<sup>204</sup> The European Court of Human Rights has likewise stressed the difference “between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself.”<sup>205</sup> By their nature, value judgments may be insulting. In 2005, for example, the European Court heard a case where the applicant used the phrase “No shame and no scruples!” to publicly describe the Governor of Ulyanovsk Region (Oblast) in Russia.<sup>206</sup> Despite the phrase’s unpleasant connotations, the European Court held that the contested statement was “a quintessential example of a value judgment that represented the applicant’s subjective appraisal of the moral dimension” of the Governor’s behaviour.<sup>207</sup>

To be sure, these categories are not neatly divisible. In our dataset, most charges based on material critical of government functionaries were for alleged speech on social media (73%--11 of 15 cases), underscoring how online, digitized platforms have become the primary space where critical reporting and commentary have led to legal action.

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<sup>201</sup> Complaint; Interview.

<sup>202</sup> FIR 20/355, Chhatak Police Station, December 25, 2021, Lutfur Rahman Shawon.

<sup>203</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

<sup>204</sup> *Id.* at paras. 11 and 38.

<sup>205</sup> ECtHR, Fedchenko v. Russia (No. 5), App. No. 17229/13, Oct. 2, 2018, para. 44.

<sup>206</sup> ECtHR, Grinberg v. Russia, App. No. 23472/03, July 21, 2005, para. 9.

<sup>207</sup> *Id.* at para. 31.

In **20** of 30 cases the allegations in the complaint/FIR concerned core journalistic work



In **21** of 30 cases the allegations in the complaint/FIR were related to speech on social media



**10** cases included allegations related to other activity



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Ten of 30 cases in our dataset fell into the category of “other activity,” where the allegation in the complaint was not directly tied to journalistic reporting.<sup>208</sup> In these cases, the allegations involved a personal dispute or activities unrelated to journalistic or political content, yet most journalists (at least six) claimed it was in retaliation for their reporting. This includes the case of Abdul Kaium who was arrested for allegedly receiving illegal money, and faced a case under the DSA filed by the son-in-law of a local MP; as well as journalist Mamunur Rashid Nomani, who faced charges for allegedly secretly taking photos of a mayor by a river. Nomani alleged that the Mayor filed the case in retaliation for his reporting on the waterlogging situation in the city.

## C. Conclusion: Current Position of Cases

Despite repeal of the DSA by the CSA, and the further repeal of the CSA by the CSO, pending DSA cases were not, at least initially, withdrawn by the interim government. The savings clause in the CSA—Section 59(2)—had provided that “cases pending under the said Act [DSA] immediately before such repeal, shall be conducted and disposed of in the concerned Tribunal and the appeals against the orders, judgments or sentences

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<sup>208</sup> This category, and ‘core journalist’ cases, were considered mutually exclusive. But a case could involve both ‘other activity’ and refer to speech on social media, for instance.

passed in similar cases shall be conducted and disposed of in the concerned Appellate Tribunal as if the said Act had not been repealed.” However, with the repeal of the CSA by the CSO, there is no longer a legal basis for cases under the DSA to proceed.

This has been partially clarified by the amendment to the CSO of October 2025. However, this new provision only dismisses cases pending under certain provisions of the DSA—Sections 21, 24, 25, 26, 27, 28, 29, and 31 of the DSA, as well as abetment of these offenses, instead of all cases.

Litigation may be necessary to clarify that even as to those Sections of the DSA to which the amendment does not apply, there is no legal basis for those cases to continue. It is possible that certain speech-restrictive prosecutions were filed under these provisions. For instance, as discussed above, the case against MD Hedait Hossain Molla (for reporting on vote tallies) also invoked Section 33 of the DSA, which is not covered by the recent amendment to the CSO.

Further, the CSO repealed the CSA, but saved certain cases under the CSA. It specifically excepted “all pending cases under sections 17, 18, 19, 20, 22, 23, 30, 32, and 35 of the said Act [CSA], including cases relating to offences of abetment of such offences.”<sup>209</sup> This includes, for instance, cyberfraud, which appears in our DSA database. Moreover, neither the CSO nor the CSO Amendment specifically require withdrawal or quashing of ICT Act cases, many of which, with the adoption of the CSA, no longer have a legal basis.

Finally, the interim government has not issued an exhaustive list of all cases dropped/withdrawn as a result of the CSO amendment, nor clarified the implications for persons who have already suffered unjust prosecutions under the law. This could become an acute concern in the event the CSO is not adopted by the incoming Parliament, in which case the status of the cases would become more uncertain with the CSA (and its savings clause as to the DSA) potentially snapping back into place.

Thus, the concerns highlighted in the section below are not just lessons for the future, but continue to be relevant for the journalists in the dataset.

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<sup>209</sup> Section 50(2).

# THE LIFECYCLE OF A CASE: THE DSA AS A TOOL OF INTIMIDATION AND HARASSMENT



The experiences of the journalists facing DSA cases demonstrate that the DSA was primarily used as a tool of intimidation and harassment, rather than one to prosecute legitimate cyber-crimes. As the UN High Commissioner for Human Rights has noted, “[t]he Digital Security Act [was] used across Bangladesh to arrest, harass and intimidate journalists and human rights defenders, and to muzzle critical voices online.”<sup>210</sup>

Our data reveals that (i) complaints under the DSA were filed by anyone concerned by the speech at issue, making it easy to weaponize; (ii) journalists were often arrested without a warrant, held incommunicado for hours and subjected to prolonged pre-trial detention; (iii) yet these cases were not actively pursued by the authorities thereafter—in most cases the police did not complete the investigation, let alone take the case to trial. Almost all of the cases that went to trial resulted in acquittals, demonstrating the baseless nature of these cases.

## A. Initiation of a Case

Our data shows that proceedings under the DSA could be triggered by anyone, even if they were not directly harmed or mentioned by the speech in question. Indeed, in close to 30% of the cases in the larger dataset (63 of 222), the complainants were not the direct victims/subjects of the speech that was the basis for the complaint.

For instance, Mamunur Rashid Noman faced charges for allegedly taking photos of a mayor by a river, after which a crowd beat him.<sup>211</sup> But it was not the mayor who filed the case: instead, it was a councillor from the city.<sup>212</sup>

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<sup>210</sup> OHCHR, Bangladesh: Türk Urges Immediate Suspension of Digital Security Act as Media Crackdown Continues, (Mar. 31, 2023), available at <https://www.ohchr.org/en/press-releases/2023/03/bangladesh-turk-urges-immediate-suspension-digital-security-act-media>.

<sup>211</sup> Interview, Mamunur Rashid Nomani.

<sup>212</sup> FIR 39, 574/2020, Kotwali Police Station, September 13, 2020, Mamunur Rashid Nomani.

Likewise, in the case of Abu Zafar (the journalist prosecuted for reporting on alleged corruption), it was the organizing secretary of a unit of Volunteer wing of the Awami League who filed the complaint. According to Abu Zafar, the complainant and the official who was the subject of the reporting may have been close.<sup>213</sup>

Many journalists in our dataset also faced multiple cases—30 journalists faced two cases; five faced three; one journalist faced for four; and three journalists faced five cases. Many times these multiple cases were filed by different individuals for the same reporting, since the DSA did not have any clear restriction on who could file complaints. For example, journalist Shafiqul Islam Kajol, whose case TrialWatch has monitored, was charged in three separate DSA cases, for sharing a newspaper article on social media.<sup>214</sup> The newspaper article related to an alleged sex scandal involving Bangladeshi politicians affiliated with the Awami League.<sup>215</sup> The complaints were filed by an Awami League MP and two members of the Bangladesh Jubo Mohila League (youth female wing of the Awami League).<sup>216</sup>

This reflects the way in which the DSA permits persistent targeting, even where the same reporting is at issue, as different complainants are able to seek registration of cases. It also dramatically increases the burden on the defendant.

The Media Reform Commission came to the same conclusion with respect to criminal defamation cases: “Although the law clearly states that only the individual who is the victim of defamation can file a case under this law, and multiple cases cannot be filed, the opposite has been seen in reality. Third parties have filed cases with the logic that ‘defamation of my leader is defamation of me and my party,’ and numerous cases have

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<sup>213</sup> Interview, Abu Zafar.

<sup>214</sup> Clooney Foundation for Justice, *Bangladeshi Newspaper Editor Should Be Released From Pre-Trial Detention On Speech Charges*, Oct. 17, 2020, available at <https://cfj.org/news/bangladeshi-newspaper-editor-should-be-released-from-pre-trial-detention-on-speech-charges/>.

<sup>215</sup> *Id.*

<sup>216</sup> Daily Star, *Kajol’s DSA Plight: Charges in 3 Cases Framed in 1 Day*, Nov. 9, 2021, available at <https://www.thedailystar.net/news/bangladesh/crime-justice/news/kajols-dsa-plight-charges-3-cases-framed-1-day-2225141>.

been filed in different places. Surprisingly, the courts have accepted these cases, and accused individuals have been arrested.”<sup>217</sup>

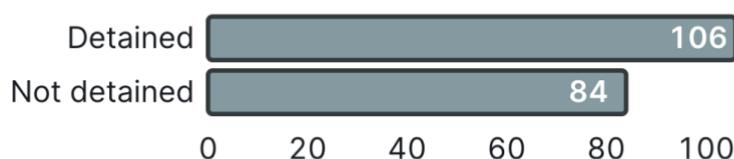
### **Current Position**

The CSO contains a provision that provides that “[n]o person shall file a case under this Ordinance except an aggrieved person directly or a person authorized in writing by him or a member of the law enforcement agency.”<sup>218</sup> It will be important to monitor the extent to which this restriction is applied.

## **B. Arrest and Pre-Trial Detention**

Journalists facing DSA charges were often arrested and subject to pre-trial detention. In the larger dataset, journalists were detained in 55% of the incidents (where information was available).<sup>219</sup> And among the 30 case studies analysed, 90% of the journalists faced arrest (27 of the 30).

### **Number of instances where a journalist was or was not detained**



Note: information on pre-trial detention was available for 190 instances

These rampant arrests were enabled by Section 43 of the DSA, which allowed for warrantless searches, seizures *and* arrests when a police officer had “reasons to believe that an offence under this Act has been or is being committed, or is likely to be committed in any place, or any evidence is likely to be lost, destroyed, deleted or altered or made unavailable in any way.” As noted by the OHCHR, the “unfettered discretion” police officers had to arrest persons, without prior court approval, is contrary to the recommendations of the UN Human Rights

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<sup>217</sup> Media Reform Commission Report, p. 68.

<sup>218</sup> Section 40(1).

<sup>219</sup> Since information in the dataset was gathered from publicly available sources, information on pre-trial detention was available in a minority (189 of 451) of incidents.

Committee and falls short of international standards.<sup>220</sup> The case studies analysed for this report show that police officers did not even observe the stipulations of Section 43, and proceeded to conduct arbitrary arrests, including when there was no apprehension of an offence being committed or evidence being destroyed. Instead, journalists reported arrests taking place at odd hours, involving large numbers of officers, sometimes being blind-folded and held incommunicado, demonstrating the use of the DSA as a tool of intimidation.

## **Intimidatory Arrests**

Almost half the journalists arrested (12 of 27) reported that they were arrested at odd hours, i.e. late at night or during early morning hours, and often by officers in plainclothes. And over half of the journalists arrested (18 of 27) reported that multiple police officers, in some cases 30-40 officers, came to arrest them.

For instance, in the case of the journalist who reported on alleged diversion of funds from a construction project, he says that the FIR was registered after midnight, and 10 officers arrived at his house around 1am, accompanied by the complainant. Upon entering the residence, he alleges that law enforcement officers seized his phone and obtained his password through force.<sup>221</sup> Likewise in Lutfur Rahman Shawon's case, he says that five or six officers came to his house in the middle of the night, around 12:40 AM—and again, they seized his phone.<sup>222</sup>

In MD Hedait Hossain Molla's case, he says he was arrested by plainclothes officers, who held a gun to his head. He says that when he reached the police station, his cell phone, bank cards, wallet, and belt were all removed.<sup>223</sup>

In many cases, journalists were not even told they were being arrested, much less the reason why. For instance, in Ikhtiyar Uddin Azad's case, he recounted that he was initially invited by the police to go with them to cover news regarding a relief distribution event during the lockdown. According to him, the police even assured his father and family members

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<sup>220</sup> See OHCHR Technical Note, pg. 6

<sup>221</sup> Interview.

<sup>222</sup> Interview, Lutfur Rahman Shawon.

<sup>223</sup> Interview, MD Hedait Hossain Molla.

that they would also escort him to return home after the event. Instead, he was kept in a moving police van for several hours and was brought to the police station only after midnight.<sup>224</sup> Likewise, in Abu Zafar’s case, he said he was called to the police station on the pretext that they had information for him for a story, and that when he went to wash his hands after eating food, he found his two phones were gone.<sup>225</sup>

### ***International Standards***

Article 9 of the ICCPR protects the right to liberty and prohibits arbitrary detention.<sup>226</sup> Article 9(1) of the ICCPR stipulates that no one may be deprived of liberty or “subjected to arbitrary arrest or detention ... except on such grounds and in accordance with such procedures as are established by law.”<sup>227</sup> Arbitrariness “is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law.”<sup>228</sup> As discussed in greater detail below, individuals also have a right to be informed of the reasons for arrest.

The fact that some journalists were ‘invited’ by the police to cover news as a pretext for depriving them of their liberty does not mean that they should not be considered to have been ‘arrested’ from the outset. According to the European Court of Human Rights, to determine whether an individual has actually been deprived of their liberty, “the starting-point must be his or her specific situation and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question.”<sup>229</sup> There is both an objective and subjective element to the qualification of whether an individual is ‘detained.’ The objective element includes factors such as the degree of

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<sup>224</sup> Interview, Ikhtiyar Uddin Azad.

<sup>225</sup> Interview, Abu Zafa.

<sup>226</sup> United Nations General Assembly, “International Covenant on Civil and Political Rights”, Treaty Series 999, Dec. 1966, Article 9 [hereinafter “**ICCPR**”]; United Nations General Assembly, “The Universal Declaration of Human Rights”, Dec. 1948, Article 3.

<sup>227</sup> ICCPR, Article 9(1).

<sup>228</sup> UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Person), UN Doc. CCPR/C/GC/35, Dec. 16, 2014, para. 12 [hereinafter “**General Comment No. 35**”].

<sup>229</sup> European Court of Human Rights, *De Tommaso v. Italy*, App. No. 43395/09, Feb. 23, 2017, para. 80.

control the authorities have over a person's movements, the extent they have isolated the person and the availability of social contacts.<sup>230</sup> The subjective element on the other hand focuses on whether the person "has not validly consented to the confinement in question."<sup>231</sup> In these cases, seeking to conceal that journalists were being arrested not only does not absolve the authorities of the requirement to disclose the reason for arrest, since they were effectively deprived of liberty, but may also constitute an independent violation of the accused's rights on arbitrariness grounds.

Further, the European Court has held that a "psychological ordeal to which [defendants] [a]re allegedly subjected [during an arrest] . . . could in principle be characterised as inhuman and degrading treatment."<sup>232</sup> The Court has, for instance, considered cases where, among other measures, "the authorities used a dozen masked and armed officers to arrest the [defendant] although it appears that he did not present a particular security risk."<sup>233</sup> Raids during the middle of the night by large numbers of plainclothes police, without justification, may also give rise to concern in this regard.

### **Failure to Comply with Arrest Safeguards**

Only three of the 27 journalists arrested were informed immediately of the reasons for arrest or the charges against them. In K M Belal Hossen Swapon's case, he said he only learned the sections he was charged with violating when he was taken to court the next day.<sup>234</sup> Shanto Banik,

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<sup>230</sup> European Court of Human Rights, *Guzzardi v. Italy*, 1980, para. 95; European Court of Human Rights, *H.M. v. Switzerland*, App. No. 39187/98, Feb. 26, 2002, para. 45; European Court of Human Rights, *H.L. v. the United Kingdom*, App. No. 45508/99, Oct. 5, 2004, para. 91; European Court of Human Rights, *Storck v. Germany*, App. No. 61603/00, Sep. 16, 2005, para. 73.

<sup>231</sup> European Court of Human Rights, *Storck v. Germany*, App. No. 61603/00, Sep. 16, 2005, para. 74.

<sup>232</sup> European Court of Human Rights, *Hrisotvi v. Bulgaria*, App. No. 42697/05, Oct. 11, 2011, para. 80 (discussing a "a terrifying experience when several heavily armed and masked police officers entered their apartment, pointed guns at them and shouted death threats").

<sup>233</sup> European Court of Human Rights, *Mirosław Garlicki v. Poland*, App. No. 36921/07, June 14, 2011, para. 75.

<sup>234</sup> Interview, K M Belal Hossen Swapon.

another journalist, reported that 35 persons came to his house at midnight, and he was taken into a minivan where he was blind-folded and hand-cuffed. The police did not inform him where they were taking him much less the reasons or grounds for his arrest.<sup>235</sup> He remained in the minivan for most of the night and was taken the police station only in the morning.<sup>236</sup>

Of the 27 journalists arrested, at least 10 reported that their family members were not informed about their whereabouts upon arrest. Similarly, at least 10 reported that they were not allowed to contact a lawyer upon arrest. Some of these journalists reported that the police actively obstructed them from contacting their family or a lawyer. The remaining did not speak to this issue, so it is possible the violations were more widespread.

Only **3** of the **27 journalists arrested** were informed immediately of the reasons for arrest or the charges against them



At least **10** journalists reported that their family members were not informed about their whereabouts upon arrest



At least **10** journalists reported that they were not allowed to contact a lawyer upon arrest



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<sup>235</sup> Interview, Shanto Banik.

<sup>236</sup> Interview, Shanto Banik.

For instance, in K M Belal Hossen Swapon's case, he says that upon his arrival at the police station, when he sought to contact a lawyer, his phone was taken away from him.<sup>237</sup>

Five journalists interviewed also stated that they were not brought before a court within 24 hours of arrest. For example, Mamunur Rashid Nomani reported being secretly taken to jail in a police car at 11am the day after his arrest without being presented in court.<sup>238</sup>

### ***International Standards***

Article 9(2) of the ICCPR requires that the authorities give prompt notice of the reasons for arrest at the time of the arrest, enabling the arrestee "to seek release if [they] believe that the reasons given are invalid or unfounded."<sup>239</sup> The Human Rights Committee has commented that reasons given for an arrest must include both legal and factual grounds, including the alleged crime(s) and identity of any alleged victim(s), and must be in a language the arrested person understands.<sup>240</sup> The Committee has also stated that an individual must be provided with such an explanation "immediately upon arrest" barring exceptional circumstances, such as the need for an interpreter.<sup>241</sup> In *M.T. v. Uzbekistan*, for example, the Committee found a violation of Article 9(2) where police officers failed to promptly inform a human rights defender of the reasons for her arrest, charging her only the subsequent day.<sup>242</sup>

Under Article 9(3) of the ICCPR, all individuals detained on a criminal charge must be brought "promptly" before a judge or other person exercising "judicial power." This applies "even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity."<sup>243</sup>

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<sup>237</sup> Interview, K M Belal Hossen Swapon.

<sup>238</sup> Interview, Mamunur Rashid Nomani.

<sup>239</sup> General Comment No. 35, para. 25.

<sup>240</sup> *Id.* paras. 25, 26

<sup>241</sup> *Id.* para. 27.

<sup>242</sup> Human Rights Committee, *M.T. v. Uzbekistan*, Comm. No. 2234/2013, UN Doc. CCPR/C/114/D/2234/2013, Oct. 21, 2015, paras. 2.1, 7.7–7.8.

<sup>243</sup> General Comment No. 35, para. 32.

Under Articles 14(3)(b), (d) of the ICCPR, everyone charged with a criminal offense has the right to the assistance of counsel of his or her choosing, including the right to communicate with counsel. The right to counsel applies at all stages of criminal proceedings and is particularly vital during periods of detention.<sup>244</sup> In this regard, the UN Human Rights Committee has stated that “States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>245</sup> In *Zhuk v. Belarus*, for example, the Committee found a violation of Article 14(3)(b) where a detainee had “only been allowed to see a lawyer for five minutes and ha[d] effectively been deprived of legal assistance during the initial phases of the investigative proceedings, and ... was forced to participate in investigative actions [including police interrogation] without legal advice, despite his requests for a lawyer.”<sup>246</sup>

The behaviours described in the case studies run afoul of these standards.

### **Prolonged Pre-trial Detention**

Journalists arrested under the DSA remained in pre-trial detention for prolonged periods—eight journalists from the larger data spent over 100 days in detention.

And among the 30 cases analysed, 50% of the journalists spent more than 30 days in jail.

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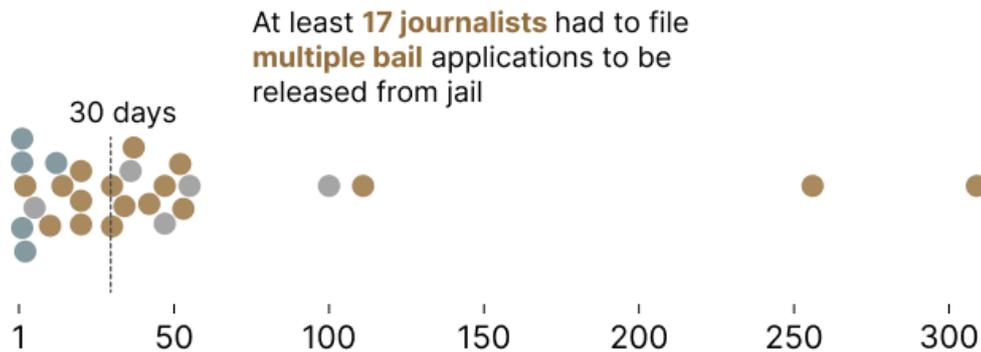
<sup>244</sup> UN Basic Principles on the Role of Lawyers (Sept. 7, 1990), Principle 1; UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (Annex) (9 Dec. 1988), Principles 1, 17(1), 18.

<sup>245</sup> General Comment No. 35, para. 35.

<sup>246</sup> UN Human Rights Committee, *Zhuk v. Belarus*, UN Doc. CCPR/C/109/D/1910/2009, Oct. 30, 2013, paras. 2.1, 8.5.

## Half of the journalists spent more than 30 days in jail

Length of pre-trial detention, in days



This can be attributed to the significant time it took for journalists to obtain bail. For instance, journalist Shafiqul Islam Kajol was in pretrial detention for eight months—after being subject to enforced disappearance for 53 days prior to that.<sup>247</sup> The prolonged pre-trial detention was in part due to the fact that he faced multiple cases and had to seek bail in each of them separately.

In other cases, it took many attempts/hearings to obtain bail. Out of the 30 cases analysed, at least 17 had to file multiple bail applications to be released from jail. For instance, in Ikhtiyar Uddin Azad's case, it reportedly took 17 hearings before the High Court before bail was granted, and the defendant spent eight months in jail.<sup>248</sup> In the case involving alleged use of quotes that had not actually been given by a police officer, one of the defendants had to seek bail five times before it was granted.<sup>249</sup>

Among the incidents where journalists were subject to pre-trial detention, the provisions were known in 49 incidents. Over 80% of these incidents included Sections 25 and 29, often clubbed with non-bailable offences such as Section 31 (32 incidents); Section 23 (11 incidents); and Section

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<sup>247</sup> Dhaka Tribune, Photojournalist Kajol Finally Walks out of Jail After 237 Days, Dec. 25, 2020, available at <https://www.dhakatribune.com/bangladesh/234287/photojournalist-kajol-finally-walks-out-of-jail>.

<sup>248</sup> Interview, Ikhtiyar Uddin Azad.

<sup>249</sup> Interview, Shanto Banik.

26 (10 incidents), enabling authorities to arrest and subject the journalists to pre-trial detention.

Similarly, in the case studies analysed, Section 25 and 29 were most often clubbed with Section 31—this clubbing of charges allowed for pre-trial detention.

### ***International Standards***

As to the decision to detain, in many of the cases, placing journalists in pre-trial detention would be inconsistent with international standards because the offences fail to meet the principle of legality or are not ones where a sentence of imprisonment could ever be deemed proportionate.

The UN Human Rights Committee has explained that “any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application. Deprivation of liberty without such legal authorization is unlawful.”<sup>250</sup> As discussed above, many of the offences most charged in our dataset, including in particular Section 31, which presumably formed the basis for many detentions, are unlawfully vague.

Likewise, the UN Human Rights Committee has made clear that where imprisonment is not an appropriate penalty for an offence, pretrial detention pursuant to such an offence is arbitrary. In a case in which a defendant was charged with defamation and calumny, the Committee held that the accused’s pretrial detention was arbitrary because “[i]f defamation should never result in a penalty of deprivation of liberty being imposed on the grounds that it is not an appropriate penalty, then a fortiori no detention based on charges of defamation may ever be considered either necessary or proportionate.”<sup>251</sup>

Several of the offenses under the DSA are not ones for which imprisonment could ever be appropriate—including in particular defamation. As the UN Human Rights Committee has explained, “imprisonment is never an appropriate penalty” for defamation

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<sup>250</sup> General Comment No. 35, para. 22.

<sup>251</sup> UNHRC, Lydia Cacho Ribeiro v. Mexico, UN Doc. CCPR/C/123/D/2767/2016, Aug. 29, 2018, para. 10.8.

offenses.<sup>252</sup> That means that any pretrial detention under Section 29 would necessarily be arbitrary.

## **Mistreatment During Detention**

Numerous journalists also raised concerns about their treatment by the police and/or in detention. This reflects the devastating stories of Bangladeshi writer Mushtaq Ahmed, who was detained under the DSA in May 2020 for allegedly posting criticism of the government's response to the Covid-19 pandemic on Facebook, and died in police custody,<sup>253</sup> and cartoonist Ahmed Kishore, who was arrested at the same time and released eventually, and who reported incidents of torture while in custody.<sup>254</sup>

At least 14 journalists interviewed stated that they were subject to abuse and mistreatment during arrest or while in detention. For instance, in Mamunur Rashid Nomani's case (involving allegedly taking photos of a mayor), he says that he was kept in pretrial detention for fourteen days, did not have access to counsel during the arrest, was not treated for injuries he had suffered when the mayor's supporters had beaten him, and was left to suffer.<sup>255</sup> In MD Hedait Hossain Molla's case, he says that the Officer in Charge 'held his chin and said not to talk too much, if he talked too much, it would be dangerous.'<sup>256</sup> Likewise, in Abu Zafar's case, an officer at the station reportedly said that "it would not be good for him if the officers covered his face with a black cloth and beat him up" and "it is better to agree with them and tell them what they want to know."<sup>257</sup>

In some cases, the mistreatment by the authorities appeared to be a tactic to elicit a coerced confession or to get the accused to provide other

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<sup>252</sup> General Comment No. 34, para. 47.

<sup>253</sup> Faisal Mahmud, Anger in Bangladesh Over Dissident Writer's Death in Prison, Al Jazeera, Feb. 26, 2021, available at <https://www.aljazeera.com/news/2021/2/26/anger-in-bangladesh-over-prominent-writers-death-in-prison>.

<sup>254</sup> Amnesty International, Bangladesh: Cartoonist Tortured, Writer Dies in Jail: Ahmed Kabir Kishore, Mar. 8, 2021, available at <https://www.amnesty.org/en/documents/asa13/3800/2021/en/>.

<sup>255</sup> Interview, Mamunur Rashid Nomani.

<sup>256</sup> Interview, MD Hedait Hossain Molla.

<sup>257</sup> Interview, Abu Zafar.

information. For instance, in Azharul Haque’s case, the journalist states that the magistrate recording his testimony told him confess to the accusation and threatened him with facing consequence like ‘crossfire’ (an extra judicial killing) if taken to remand.<sup>258</sup> And Abdul Kaium says he was slapped around and beaten, by ununiformed police officers who could not be identified, in order to get him to divulge his passwords.<sup>259</sup>

### ***International Standards***

In addition to prohibiting arbitrary arrest and detention, Article 9(1) of the ICCPR encompasses broader guarantees for the physical integrity of an individual. In interpreting Article 9(1) the UN Human Rights Committee has explained that it “protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury.”<sup>260</sup>

Additionally, Article 7 of the ICCPR establishes that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In recognition of the vulnerability of those in state detention, Article 10 of the ICCPR further states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” In this regard, the Committee has noted that detainees should not “be subjected to any hardship or constraint other than that resulting from the deprivation of liberty.”<sup>261</sup>

The behaviours described by affected journalists violate these standards.

### ***Current position***

Section 35 of the CSO provides for warrantless arrests albeit in much more limited circumstances—it permits warrantless searches where there “there is a possibility of deletion, alteration, destruction, loss of evidence or any other means of making it scarce or unavailable through cyber-attack on important information infrastructure or illegal entry or intrusion

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<sup>258</sup> Interview, Azharul Haque.

<sup>259</sup> Interview, Abdul Kaium.

<sup>260</sup> General Comment No. 35, para. 9.

<sup>261</sup> Human Rights Committee, General Comment No. 21, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994), Apr. 10, 1992, para. 3.

or hacking into computers, computer systems, digital devices, etc.” and the police may arrest any persons at the place searched if it is suspected that the person “has committed or is committing any crime under this Ordinance.”<sup>262</sup> However, the blatant disregard of the pre-conditions under Section 43 of the DSA for conducting warrantless arrests, as seen in our data, raises concerns about whether these requirements in the CSO will be followed by the police in practice.

While the Police Reform Commission has made several recommendations to the interim government, including relating to implementation of guidelines governing warrantless arrest,<sup>263</sup> public reporting suggests these are “far away,”<sup>264</sup> and the interim government does not seem to have introduced any substantial reforms on police abuses, or accountability for violations. In fact, reports suggest that journalists continue to be subjected to arbitrary arrests and suffer mistreatment while in custody.<sup>265</sup>

### **C. Seizure of Devices**

As is evident in the case studies cited above, journalists’ phones and other digital devices were often seized before or after they were arrested. At least 15 journalists in the smaller dataset reported their mobile phones or other devices being seized by the police.

This was enabled by the broad search and seizure powers under the DSA: Section 41 provided that investigating officers had the power to take into

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<sup>262</sup> Section 35(1)(D), CSO.

<sup>263</sup> Mamum Abdullah, What’s in the Police Reform Commission’s Sweeping Overhaul Plan?, Dhaka Tribune, Jan. 23, 2025 (“It also stresses adhering to Supreme Court directives on arrests and questioning, urging the government to withdraw a review petition hindering implementation.”), available at <https://www.dhakatribune.com/bangladesh/371583/what%E2%80%99s-in-the-police-reform-commission%E2%80%99s-sweeping>.

<sup>264</sup> Shadique Mahbub Islam, Uniforms Have Changed, But Will Police Culture Follow?, The Business Standard, Nov. 17, 2025, available at <https://www.tbsnews.net/features/panorama/uniforms-have-changed-will-police-culture-follow-1288316>.

<sup>265</sup> Doughty Street Chambers, Imprisoned Bangladeshi Journalists Farzana Rupa and Shakil Ahmed Complain to the United Nations over Arbitrary Detention, Jan. 22, 2025, available at <https://www.doughtystreet.co.uk/news/imprisoned-bangladeshi-journalists-farzana-rupa-and-shakil-ahmed-complain-united-nations-over>.

their custody any “computer, computer programme, computer system, computer network or any digital device, digital system, digital network or any programme, data-information which has been saved in any computer or compact disc or removable drive or by any other means.” Further, Section 43 authorized warrantless entry into premises based simply on the belief that an offense has been committed, and authorized police to “seize the computer, computer systems, computer network, data-information or other objects which were used in committing the offence.”

In numerous cases, journalists recounted that officers simply took their devices or demanded that they open them for searching. For instance, in MD Hedait Hossain Molla’s case, the officers simply took his mobile device.<sup>266</sup> The same transpired in Ikhtiyar Uddin Azad’s case.<sup>267</sup> As described in the section on arrests above, this was sometimes done without informing the accused about the charges faced or grounds of search/arrest. Several journalists reported that since their phones were seized, they could not inform their family of their whereabouts, or contact a lawyer.

### ***International Standards***

Article 17(1) of the ICCPR provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.” The UN Human Rights Committee has made clear that “the concept of arbitrariness in article 17 is intended to guarantee that even interference provided for by law is in accordance with the provisions, aims and objectives of the Covenant and, in any event, is reasonable in the particular circumstances.”<sup>268</sup>

Parallel provisions of the European Convention have been subject to significant interpretation. As to the question of whether an interference with privacy is lawful, the European Court has stressed, “the Court must assess the quality of the relevant domestic law in relation to the requirements of the fundamental principle of the rule of law.”<sup>269</sup> Among

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<sup>266</sup> Interview, MD Hedait Hossain Molla.

<sup>267</sup> Interview, Ikhtiyar Uddin Azad.

<sup>268</sup> Human Rights Committee, Mullina et al. v. Uzbekistan, UN Doc. CCPR/C/138/D/3025/2017, Feb. 7, 2024, para. 8.5.

<sup>269</sup> European Court of Human Rights, Dudchenko v. Russia, App. No. 37717/05, Nov. 7, 2017, para. 95.

the criteria to consider are whether there are “adequate and effective guarantees against arbitrariness and the risk of abuse.”<sup>270</sup>

And as to the question of whether an interference is ‘arbitrary,’ in a recent case involving the search of journalists’ devices, the European Court looked to “whether the search was undertaken pursuant to a warrant issued by a judge and based on reasonable suspicion; the circumstances in which the search warrant was issued; whether the scope of the warrant was reasonably limited; and the manner in which the search was carried out, including the presence of independent observers during the search in order to ensure that materials subject to professional secrecy were not removed.”<sup>271</sup>

While international and regional standards do not preclude warrantless searches and seizures, the European Court has stressed the importance of *post factum* judicial review in such cases: “The Court thus needs to examine whether the post factum judicial review offered sufficient guarantees that the applicants’ right to respect for their private life was not breached.”<sup>272</sup>

Both as on their face and as applied—as reflected in our data—the provisions of the DSA regulating seizure of digital devices are deficient. They do not appear to require judicial authorization. The standard appears to be far below ‘reasonable suspicion’ insofar as the law refers to the ‘possibility’ of an offense being committed.<sup>273</sup> Finally, where devices are seized and searched without a warrant, it is unclear whether there is any possibility of post-factum judicial review.

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<sup>270</sup> *Id.*

<sup>271</sup> European Court of Human Rights, *Man v. Romania*, App. No. 39273/07, Nov. 19, 2019, para. 86.

<sup>272</sup> European Court of Human Rights, *Prezhdarovi v. Bulgaria*, App. No. 8429/05, Sept. 30, 2014, para. 47.

<sup>273</sup> *Cf. Dudchenko, supra*, para. 96 (“In the *Roman Zakharov* case the Court has found, in particular, that the judicial authorisation procedures provided for by Russian law are not capable of ensuring that covert surveillance measures are not ordered haphazardly, irregularly or without due and proper consideration. In particular, the CCRP does not instruct judges ordering covert surveillance measures to verify the existence of a ‘reasonable suspicion’ against the person concerned or to apply the ‘necessity’ and ‘proportionality’ tests.”).

### ***Current Position***

The CSO is somewhat improved in this regard. Section 35 provides much more limited authorization for warrantless search and seizure—in particular, where “there is a possibility of deletion, alteration, destruction, loss of evidence or any other means of making it scarce or unavailable through cyber-attacks on important information infrastructure or illegal access or intrusion or hacking into computers, computer systems, digital devices.” Nevertheless, as mentioned above, safeguards in the DSA were not observed in practice, raising questions about whether narrower provisions will in fact be protective under the CSO.

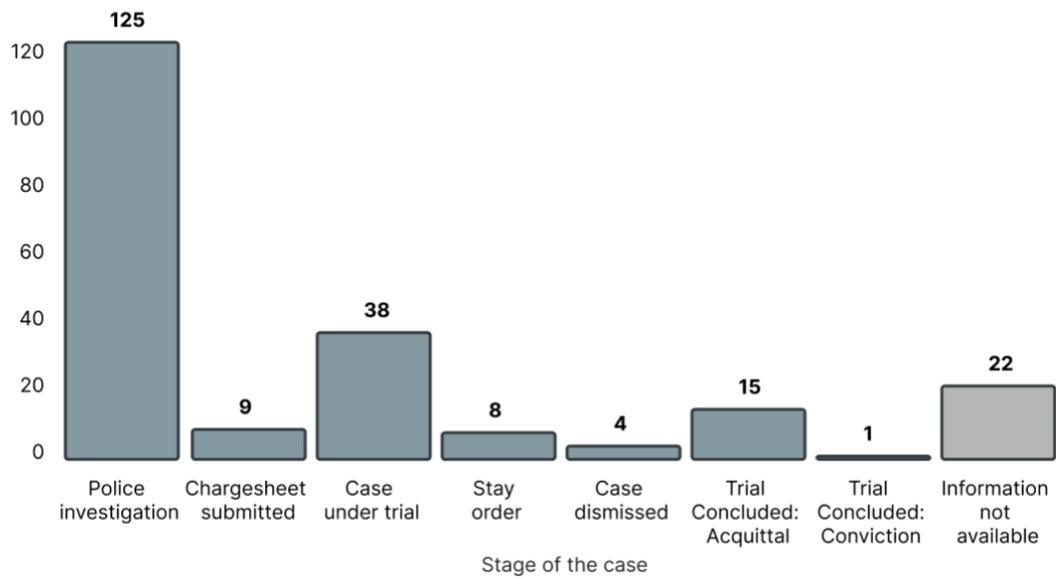
## **D. Investigation/Submission of Chargesheet**

Our data shows two significant trends: in a majority of cases, the police did not complete the investigation and left the cases pending without submitting a chargesheet; and in cases where the investigation was completed and a chargesheet was filed, the investigation appears to have been superficial, suggesting the cases may have been baseless from the beginning.

### **Delays in Completing the Investigation**

A shocking majority of cases in our larger dataset—125 of 222 (56%)—remained at the initial stage of police investigation as of July 2024 (as per public sources). This means that the police did not complete the investigation and take the case to trial, but rather kept the case open/pending for years on end. This demonstrates the use of the DSA as a tool of harassment, rather than for the prosecution of legitimate cybercrimes.

**Number of cases by the stage of legal proceedings**



Journalists were arrested in over 50% of the incidents that remained pending at the stage of police investigation—suggesting a pattern where people are arrested but their cases never proceed to trial—making the process the punishment.

Under Section 40 of the DSA, an investigation must be concluded within 60 days from the date it is assigned to the investigating officer. If the officer is unable to complete the investigation within this period, an extension of up to 15 days may be granted with the written approval of the controlling officer.

If the investigation remains incomplete after this extended period, the investigating officer is required to record the reasons for the delay in writing and submit a formal report to the court i.e. the Cyber Tribunal. Upon reviewing the report, the Tribunal may authorize an additional extension not exceeding 30 days.<sup>274</sup> Any further extension beyond this timeframe may be allowed only at the Tribunal’s discretion.<sup>275</sup>

These rules appear not to have been respected in practice. In fact, as discussed above, a defining feature of the DSA cases in our dataset is a prolonged delay in submitting chargesheets. Among the 265 incidents that remained pending at the stage of police investigation, a significant portion

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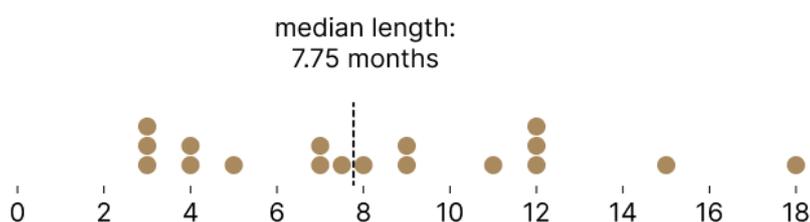
<sup>274</sup> Section 40(1)(c), DSA.

<sup>275</sup> Section 40(2), DSA.

(48%) were from 2020 and 2021—meaning they had been delayed by three-four years,<sup>276</sup> long past the time by which an investigation was expected to have been completed.

Indeed, 15 out of 30 journalists among the case studies analysed waited more than three months after the filing of the complaint before a chargesheet was filed. In fact, the median length of time between the filing of the complaint and the filing of the chargesheet in these case studies was an astounding 7.75 months.

### Length of time between the filing of the complaint and the filing of the chargesheet, in months



In MD Hedait Hossain Molla’s case, for instance, the chargesheet against the journalist was not filed for more than a year after his arrest. When the investigation eventually concluded, the chargesheet stated that there was: “no specific information or evidence to prove the allegations of the said case against the said accused.”<sup>277</sup> During this time, the journalist incurred legal expenses totalling between Taka 2 to 2.5 lakh, despite the case making no progress in court.<sup>278</sup>

In another case involving reporting on alleged embezzlement/the misappropriation of government-distributed rice intended for low-income individuals,<sup>279</sup> the journalist has spent years making monthly court appearances.<sup>280</sup> These examples point to not just an inordinate delay in completing investigations, but suggest that the cases were baseless in nature. This is discussed in more detail below.

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<sup>276</sup> The data was last updated in July 2024.

<sup>277</sup> Chargesheet No. 36/1, March 23, 2020, MD Hedait Hossain Molla.

<sup>278</sup> Interview, MD Hedait Hossain Molla.

<sup>279</sup> FIR 12/59, Baliadangi Police Station, April 17, 2020, Rahim Shuvo.

<sup>280</sup> Interview, Rahim Shuvo.

## ***International Standards***

Article 14(3)(c) of the International Covenant on Civil and Political Rights provides that anyone charged with a criminal offence is entitled to be tried without undue delay. The purpose of this guarantee is to limit the uncertainty and hardship caused by prolonged proceedings.<sup>281</sup> The period for assessing undue delay begins once a person is arrested<sup>282</sup> or charged and continues until the final judgment on appeal,<sup>283</sup> with international jurisprudence evaluating reasonableness in light of the case's complexity, the conduct of the accused, and the diligence shown by the authorities.<sup>284</sup> The burden lies with the State to justify the length of proceedings, and this burden is heightened where defendants remain in detention.<sup>285</sup>

The UN Human Rights Committee has likewise stated clearly that “[i]t is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned.”<sup>286</sup>

The data above suggests that these rights were not being respected in many of the cases against journalists in our dataset.

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<sup>281</sup> UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, Aug. 23, 2007 [hereinafter “**General Comment No. 32**”], para. 35.

<sup>282</sup> Human Rights Committee, *Engo v. Cameroon*, U.N. Doc. CCPR/C/96/D/1397/2005, para. 7.9 (“[T]he fact that a period of eight years elapsed between the author’s arrest and the delivery of a final judgement by either the court of appeal or the court of cassation . . . constitutes a violation of article 14, paragraph 3 (c), of the Covenant.”).

<sup>283</sup> General Comment No. 32, para. 35.

<sup>284</sup> *Id.*

<sup>285</sup> Human Rights Committee, *Barroso v. Panama*, U.N. Doc. CCPR/C/54/D/473/1991, para. 8.5.

<sup>286</sup> General Comment No. 34, para. 47.

### ***Current Position***

The CSO prescribes a longer time period for investigation than the DSA—the investigating officer must complete the investigation within 90 days (instead of 60 days), which can be extended for an additional 15 days with the approval of the controlling officer.<sup>287</sup> Like the DSA, if the investigation remain incompletes after this extended period, the investigating officer is required to record the reasons for the delay in writing and submit a formal report to the court, i.e. the Cyber Tribunal, on the basis of which the Tribunal may authorize an additional extension not exceeding 30 days.<sup>288</sup> If the investigation is still not complete “due to technical limitations,” further extension beyond this timeframe is allowed at the Tribunal’s discretion.<sup>289</sup> The CSO does not specify the implications if the investigation is delayed for non-technical reasons, or if the Tribunal does not grant further extension. Apart from the vagueness, the story of the DSA shows us that these stipulations are not followed in practice.

### **Superficial Investigations**

Investigations in many of the DSA cases in our dataset appear superficial and of low quality. In lieu of a thorough inquiry and investigation, authorities have often limited their role to seizing and sending digital devices (often cell phones) in for forensic analysis (as discussed above). Based on our review of 15 chargesheets, many of them referenced only the forensic analysis of a digital device as the primary form of investigation, with no mention of corroborating interviews or additional investigation. Moreover, we reviewed three forensic reports and found that they were very limited in scope, typically only focusing on whether specific content underlying the allegations originated from the accused’s devices. In some instances, these reports pointed towards the accused’s innocence by failing to substantiate the allegations. For example, Lutfur Rahman Shawon’s case,<sup>290</sup> the forensic report stated that the content in question (the comment regarding the courts being beholden to Former

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<sup>287</sup> Section 32, CSO.

<sup>288</sup> Section 40(1)(c), DSA and Section 32(1)(c) CSO.

<sup>289</sup> Section 32(2), CSO.

<sup>290</sup> FIR 20/355, Chhatak Police Station, December 25, 2021, Lutfur Rahman Shawon.

Prime Minister Hasina) had not been posted from his device, undermining the prosecution’s claim that he was responsible for the posts.<sup>291</sup>

In Sabur Rana’s case,<sup>292</sup> a forensic report determined that no post corresponding to the screenshot submitted by the investigating officer was found under the Facebook name of the defendant;<sup>293</sup> nevertheless, his case remained under a stay order as of the close of data collection.<sup>294</sup>

In a third case—that of K M Belal Hossen Swapon—the police centered a large part of their investigation around a forensic report concerning the journalist’s seized cell phone. It does not appear that any further investigative steps were taken to substantiate the allegations against him. Ultimately, the Cyber Tribunal found in its judgment that based on the testimony of the prosecution’s three witnesses, the authorities had failed to prove the charges against the journalist beyond doubt.<sup>295</sup>

Finally, in Rahim Shuvo’s case, the forensic investigation indicated that the Facebook accounts attributed to the defendant and his co-defendant could not be located or verified.<sup>296</sup>

### ***International Standards***

Under international standards, “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary.”<sup>297</sup> The European Court of Human Rights has extensive jurisprudence regarding the requirement that there must be a ‘reasonable suspicion’ to justify placing an individual in detention for allegedly having committed a

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<sup>291</sup> Forensic Report on Facebook Activity of Lutfor Shawon, Issued By IT Forensic Branch, CID Bangladesh, April 20, 2022.

<sup>292</sup> FIR 25/140, Khulna City Police Station, April 20, 2021, Sabur Rana.

<sup>293</sup> Forensic Report on Facebook Activity of Sabur Rana, issued by IT Forensic Branch, CID Bangladesh, May 3, 2021.

<sup>294</sup> Interview, Sabur Rana.

<sup>295</sup> Chargesheet No. 131, July 18, 2021, K M Belal Hossen Swapon; Rajshahi Cyber Tribunal Verdict, [Date Unclear].

<sup>296</sup> Forensic Report on Facebook Activity of Rahim Shuvo, issued by IT Forensic Branch, CID Bangladesh, Date Unknown, as referenced in Chargesheet, [Number Unknown], April 30, 2022, Rahim Shuvo.

<sup>297</sup> General Comment No. 35, para 38.

crime. For the European Court of Human Rights, this refers to “the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.”<sup>298</sup>

The European Court has thus had occasion to assess the adequacy of investigations in the context of the existence, or not, of a reasonable suspicion. This can also arise in the context of an initial, warrantless arrest.<sup>299</sup> For instance, in one case the Court looked to limitations on the post-arrest investigation of an alleged crime to find a lack of reasonable suspicion.<sup>300</sup>

Here, in many cases it appears that the quality of the investigations would give rise to concerns regarding whether they were sufficient to ground a ‘reasonable suspicion’ given their limitations.

## **E. Trials**

The data on cases that went to trial demonstrate similar themes as discussed above: There were tremendous delays in bring the case to trial, and even the few cases that went to trial took years to conclude. Then, most cases brought to trial ended in acquittals—again suggesting the meritless nature of these cases.

## **Delays**

As mentioned above, the vast majority of the cases did not even go to trial. Only 24% of the cases in the larger dataset went to trial—out of which only a shocking 7% (16 cases) concluded. Four cases were dismissed/journalists were exonerated by the court before conclusion of the trial. In eight cases courts issued “stay orders” pausing any movement

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<sup>298</sup> European Court of Human Rights, *Kavala v. Turkey*, App. No. 28749/18, para. 127 (2019).

<sup>299</sup> See, e.g., European Court of Human Rights, *Fox et al. v. United Kingdom*, Apps. Nos. 12244/86; 12245/86; 12383/86, Aug. 30, 1990.

<sup>300</sup> European Court of Human Rights, *Ibrahimov & Mammadov v. Azerbaijan*, App. No. 63571/16 et al., Feb. 13, 2020, para. 130 (“As regards the scope of the criminal investigations at stake, the Court reiterates that the investigative measures carried out were mainly limited to conducting the relevant searches, without any further investigative steps being taken. The circumstances relating to the applicants’ alleged acquisition and selling of drugs, the alleged existence of organised criminal groups and the applicants’ alleged role therein were completely left aside by the investigating authorities. . . .”).

on the case and the cases haven't proceeded since (at least as of the close of data gathering).

Overall, only 20 of the 222 cases (less than 10%) in the larger dataset concluded, i.e. the trial concluded or the case was dismissed.

Section 52 of the DSA provided for a 180-day limit for disposal of cases—from the date “on which the charge is framed.” Section 52 further provided for a potential extension of 90 days, after which the court was expected under that section to record the reason and bring it to the knowledge of the High Court Division in the form of a report.

Our data shows that this was not followed in practice. For instance, Lutfur Rahman Shawon's case, it not only took seven months for the authorities to file a chargesheet,<sup>301</sup> but despite the FIR being registered in December 2021, the case was ongoing as of July 2024.<sup>302</sup> According to the defendant, the impact of the DSA on his life has been profound: he and his family accumulated over Taka 8 lakhs of debt, and his reputation within the journalist community had been tarnished.<sup>303</sup>

Among the 30 case studies analysed, 11 ended in acquittals. However, five out of 11 acquitted journalists faced delays of over 20 months between the initial complaint and disposal of the case—far exceeding the maximum 180 days provided for in Section 52 of the DSA. In Ikhtiyar Uddin Azad's case, it took almost three years for the journalist to obtain an acquittal. During this period, he not only lost his job with the newspapers for which he had been working, but suffered financially from the number of hearings that he was required to attend throughout the course of his case, in addition to the lawyer fees he had to pay.<sup>304</sup>

### **Current Position**

Like the DSA, the CSO provides for a 180-day limit for disposal of cases; however, this is calculated from the date of framing of charges. The provision, Section 45, further provides for a potential extension of 90 days,

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<sup>301</sup> Interview, Lutfur Rahman Shawon.

<sup>302</sup> This was when we closed data gathering on this case. However, subsequently he has said that he was since acquitted.

<sup>303</sup> Interview, Lutfur Rahman Shawon.

<sup>304</sup> Interview, Ikhtiyar Uddin Azad.

after which the court must “record the reasons therefor and inform the High Court Division in the form of a report and continue the proceedings of the case.” Without further mechanisms to ensure compliance, this provision could be disregarded by courts/law enforcement as seen as with cases under the DSA.

## **Baseless Cases**

The weaknesses in the cases is evidenced by their ultimate disposition. Only **one case** out of 222 cases in the larger data ended in a conviction.<sup>305</sup>

Among the 30 case studies analysed, eleven cases resulted in acquittals; five cases were dismissed and six cases were stayed by superior courts (meaning that the court temporarily halted the proceedings)—reflecting the apparently baseless nature of these cases.<sup>306</sup>

For example, in MD Hedait Hossain Molla’s case, he was acquitted after the investigation spelled out in his chargesheet that there was “no specific information or evidence to prove the allegations of the said case against the said accused.”<sup>307</sup> And Ikhtiyar Uddin Azad’s case was dismissed after an almost 3-year battle.<sup>308</sup>

## ***International Standards***

The United Nations Guidelines on the Role of Prosecutors establish that prosecutors should “perform their duties fairly, consistently and expeditiously ...”.<sup>309</sup> Parallel guidelines issued by the Council of Europe clarify that “fairness” in the execution of prosecutorial duties encompasses, among other things, assisting the court in arriving at the

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<sup>305</sup> A second case ended in conviction at trial, but the case was stayed by the High Court.

<sup>306</sup> Seven cases were ongoing as of the date data collection closed and one case resulted in a conviction (this is the same case that ended in a conviction in the larger dataset).

<sup>307</sup> Chargesheet No. 36/1, March 23, 2020, MD Hedait Hossain Molla.

<sup>308</sup> Interview, Ikhtiyar Uddin Azad.

<sup>309</sup> United Nations, Guidelines on the Role of Prosecutors, Sept. 7, 1990, para 12, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>.

truth, using evidence “reasonably believed to be reliable”, and declining to prosecute a case “beyond what is indicated by the evidence.”<sup>310</sup>

In many of these cases, however, chargesheets were filed despite such paucity of evidence, suggesting that they were a matter of rote rather than carefully considered.

### ***Current Position***

Under Section 28 of the CSO, filing false complaints is a criminal offence; yet the Ordinance does not provide any consequences for law enforcement officers who pursue such false and baseless cases. A similar provision was present in the CSA (Section 34), yet baseless and abusive prosecutions under the CSA persisted. The interim government may have to create other mechanisms to ensure there are consequences for the filing and prosecution of baseless cases.

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<sup>310</sup> Council of Europe Consultative Council of European Prosecutors, Opinion No. 9 (2014) on European Norms and Principles Concerning Prosecutors, Dec. 17, 2014, available at <https://rm.coe.int/168074738b>, paragraphs XV and 14.

# IMPACT ON JOURNALISTS AND PRESS FREEDOM



*“The law should protect the citizens of Bangladesh from online harassment and crimes, not become a weapon to keep them hostage.”<sup>311</sup>*

Drawn from the interviews and in-depth analysis of corresponding records related to the cases of the thirty journalists, this section of the report illuminates the individual and systemic effects that investigations and criminal proceedings under the DSA had on the lives of journalists, their families and communities, and civil society more broadly. In particular, proceedings take an immense toll on the personal and professional wellbeing of individuals—including, for example, imposing financial and other burdens and creating obstacles to carrying out future journalistic work—while the broader pattern of charging journalists under the DSA has had a demonstrable chilling effect on freedom of expression. Journalists reported impacts to their personal and professional lives as depicted below. These stories make clear the stakes in striking the right balance in implementing the CSO going forward.

## Self censorship - 20



## Financial burden - 19



## Mental health impact - 16



## Burden on family - 9



## Reputational damage - 3



## Impact on career - 6



## Forced to relocate - 1



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<sup>311</sup> Interview, K M Belal Hossen Swapon.

## A. Impact on the Lives of Journalists

As discussed above, at the time of arrest, and in detention thereafter, many journalists suffered direct and immediate physical and mental consequences. At least 14 journalists interviewed stated that they were subjected to abuse and mistreatment during arrest or while in detention.

For instance, in the case of the journalists charged for allegedly misattributing a quote to a police officer, one of them, Ramjan Ali Pramanik, said that when he was arrested at home just before a meal, his family members cried and begged the police to release him, and were not even informed where he was being taken. The police reportedly took a circuitous route to the station, leaving the journalist afraid that he was being driven into the countryside to be executed. Despite being a diabetic and informing the police of his condition, he was given no medicine. Throughout this ordeal, he wasn't even sure why he was being arrested; according to him, the FIR in his case was actually registered *after* his arrest.<sup>312</sup>

In Tanvir Hasan Tanu's case (one of the journalists accused for reporting on reduced food in the COVID ward of a hospital), Tanu himself had COVID-19 at the time of his arrest, but he was kept at the police station for interrogation until 1 AM, before his health began to deteriorate and he was having trouble breathing. He was ultimately taken to the hospital in handcuffs, with a rope around his waist, accompanied by 15-20 officers, and he was denied the ability to remove the handcuffs to use the washroom.<sup>313</sup>

In a third case, that of Azharul Haque, the journalist states that he was aggressively questioned by five to six officers while blindfolded and according to him, they made use of electric shocks during questioning. He says the questioning revolved around whether he had anti-government sentiment or why his bosses at the publication for which he worked had made him write his report (according to him, this was an effort to establish

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<sup>312</sup> Interview, Ramjan Ali Pramanik.

<sup>313</sup> Interview, Tanvir Hasan Tanu.

a connection between him and his publisher who at that time stood for election as part of an opposition party).<sup>314</sup>

**Ikhtiyar Uddin Azad's Story:** Ikhtiyar Uddin Azad states that he spent almost Taka 6 lakh in defending his case. He had to attend hearings almost three times a month. The case, including court visits and lawyer fees, “has totally broken his economic backbone.” He suffered and endured so much pain for so long, socially and economically degraded, all because of a false case that will still leave a black mark in his life and career.<sup>315</sup>

The way cases dragged on and/or were left hanging also had profound consequences, including requiring significant financial outlays. In the cases for which we had data, an average of nearly two years elapsed between registration of the FIR and disposition of the case. And nineteen of thirty journalists cited a financial impact of the case. For instance, in the case of the journalist who reported on alleged diversion of funds from a construction project, he said that the case cost him nearly Taka 5 lakhs.<sup>316</sup> This is commensurate with the maximum fine possible under several of the DSA provisions, and is roughly 20 times the average monthly wage in the country.<sup>317</sup>

In other cases, the pendency of the case caused additional profound upheaval in journalists' lives. For instance, in Afroza Sarkar's case, she relocated without her two sons for seven months to avoid immediate unjustified arrest. She had to sell her gold pendant and earrings in order to sustain herself.<sup>318</sup>

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<sup>314</sup> Interview, Azharul Haque.

<sup>315</sup> Interview, Ikhtiyar Uddin Azad.

<sup>316</sup> Interview.

<sup>317</sup> One recent report placed the average monthly entry-level salary in Bangladesh at between BDT 20,000 and 30,000. Faisal Bin Iqbal & Aaqib Hasib. Entry Salaries for Fresh Graduates: A Bleak Picture, Daily Star, Aug. 25, 2022, available at <https://www.thedailystar.net/campus/career/news/entry-salaries-fresh-graduates-bleak-picture-3102016>.

<sup>318</sup> Interview, Afroza Sarkar.

**Abu Taiyub Munshi's Story:** Abu Taiyub Munshi's family and professional life suffered as a result of the case against him. 'His family is still terrified.' He is not allowed to post or share any news on Facebook. His employer asked him why he needed to get involved in this mess by generating this news.<sup>319</sup>

But the effects were not only physical or financial, DSA cases also created fear and anxiety among journalists, or affected their families. In MD Hedait Hossain Molla's case, for instance, he said that he is reminded about the case wherever he goes and continues to be traumatized by what he experienced. 'Now he has to think 3 times to write the truth. He is still in trauma.'<sup>320</sup>

In the case lodged for reporting about a powerful businessman who had allegedly disregarded COVID-related restrictions on bus operations, the journalist, Sirajul Islam Ratan, said that officers came to arrest him around 6am, while he was sleeping with his two children, one aged one year and another five years at that time. His two children kept crying while the police took away their father. He says that his family, especially his children, had to go through social torment and taunts for his case.<sup>321</sup>

## **B. Systemic Impacts**

**Mamunur Rashid Nomani's Story:** After the case, which involved allegedly taking photos of a mayor, Mamunur Rashid Nomani says that the city corporation in question blacklisted his newspaper—meaning that no advertisement appears in his newspaper now. Due to this he is facing a huge loss because the newspaper runs on advertisement, amounting to Taka 1 crore. He said that he will never leave journalism, but now he no longer reports on the city corporation.<sup>322</sup>

Twenty of the thirty journalists said they self-censored following their experience with one or more DSA cases, and three stopped working as journalists entirely. As one interviewee expressed, the DSA functioned as a "red signal to journalists, column writers and cartoonists and it created

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<sup>319</sup> Interview, Abu Taiyub Munshi.

<sup>320</sup> Interview, MD Hedait Hossain Molla.

<sup>321</sup> Interview, Sirajul Islam Ratan.

<sup>322</sup> Interview, Mamunur Rashid Nomani.

a terror among them.”<sup>323</sup> In Sabur Rana’s case, he had just reposted an article and also faced charges. He said ‘the journalists he knew were terrified. They are terrified of writing investigative reports. They are hesitant to share or even like anything on Facebook.’<sup>324</sup> Likewise, in Azharul Haque’s case, he said that ‘he has been robbed of his right to speak and he dare not to take any work involving risk thinking of the suffering his family went through.’<sup>325</sup>

**Abu Zafar’s Story:** Abu Zafar spent his 37 days of jail time in complete terror and uncertainty about whether he would ever be free or not. The thought of ending his profession also crossed his scared mind after being punished for writing up against a corrupt government official. The case has forced him to self-censor his news for fear of getting accused again and going through the same horrifying process.<sup>326</sup>

In some cases, journalists are denied work, even if they might seek it. For instance, in Abdul Kaium’s case, pictures of him in handcuffs were circulated in the community, and he can no longer work because news organizations see him as a liability who might cause their organizations harm.<sup>327</sup>

As a result, the space for investigative reporting shrinks, with consequences for democratic accountability.

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<sup>323</sup> Interview, K. M. Belal Hossen Swapon.

<sup>324</sup> Interview, Sabur Rana.

<sup>325</sup> Interview, Azharul Haque.

<sup>326</sup> Interview, Abu Zafar.

<sup>327</sup> Interview, Abdul Kaium.

## Conclusion & Recommendations



Journalists play a critical role in society. The UN Human Rights Committee, for instance, has explained that “free, uncensored and unhindered press or other media” that is “independent and diverse” “constitutes one of the cornerstones of a democratic society.”<sup>328</sup> Similarly, the Inter-American Court of Human Rights has stated that “[t]he media play an essential role as vehicles for the exercise of the social dimension of freedom of expression in a democratic society, which is why it is vital that the media are able to gather the most diverse information and opinions.”<sup>329</sup> And the European Court of Human Rights has repeatedly emphasized the “vital role of the media in facilitating and fostering the public’s right to receive and impart information and ideas.”<sup>330</sup>

Yet our data shows that the DSA was readily susceptible of being weaponized against journalists for political purposes as well as for personal rivalries and grievances: There were few barriers to filing a complaint—indeed, in many cases the affected individual was not even the complainant—and repeated complaints were filed in respect of the same speech. The provisions of the law were broad and vague, and invoked interchangeably by officers. In many cases, journalists were arrested in the middle of the night or suffered abuse in detention. Once embroiled in a case, proceedings were, moreover, riddled with delays. The cases caused significant hardship along multiple dimensions.

While the DSA has been repealed, the dangers revealed in this report are not past. Indeed, the succession of cyberlaws in Bangladesh mirrors a trend across South Asia, where speech-restrictive laws are repeatedly tweaked or repackaged, without addressing the need for fundamental reform.<sup>331</sup>

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<sup>328</sup> General Comment No. 34, para. 13.

<sup>329</sup> IACtHR, Case of Herrera-Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, para. 117.

<sup>330</sup> ECtHR, Satakunnan Markkinapörssi Oy & Satamedia Oy v. Finland, App. No. 931/13, June 27, 2017, para. 126.

<sup>331</sup> For instance, in Pakistan, TrialWatch documented the flaws in the Prevention of Electronic Crimes Act (PECA). See Clooney Foundation for Justice, Deep Flaws in Pakistan’s Cyber Defamation Law Threaten Press Freedom, available at <https://cfj.org/news/deep-flaws-in-pakistans-cyber-defamation-law-threaten-press->

In Pakistan, the Prevention of Electronic Crimes Act has been used to target journalists and suppress dissenting speech.<sup>332</sup> And India's Information Technology Act and related rules have been repeatedly amended to censor and control online speech.<sup>333</sup> This both shows that the DSA is not an anomaly, but also creates an opportunity for Bangladesh to lead the way in protecting digital rights through the implementation of a further narrowed CSO and other rights-respecting reforms.

Concerningly, as it stands, Section 26 of the CSO carries forward elements of one of the most problematic provisions of the DSA (i.e., Section 31). Section 26 remains highly susceptible to abuse.

This concern is exacerbated by the way in which various provisions of the DSA were clubbed together with little logic, suggesting that the legal lines dividing one offense from another are not especially clear. That is, even if there are now fewer tools available, the availability of one or more may be sufficient where little care is given to distinguishing one offense from another. Further, the weakness of investigations under the DSA bolsters the concern regarding a lack of careful scrutiny by officials.

At the same time, the fact that the CSO is an ordinance creates further uncertainty: If the Parliament does not adopt the CSO when it convenes, the CSO will lapse, restoring the antecedent status quo, including presumably the applicability of the CSA.

Indeed, while recent amendments to the CSO purport to quash certain cases under the DSA and vacate convictions, it remains to be seen how this will be implemented—and in any event, the amendment appears to contemplate the continuation of some cases under the DSA despite there no longer being a legal basis for their pursuit. In addition, the CSO does

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freedom/. And yet as Human Rights Watch has explained, 2025 amendments to PECA added new provisions “making the dissemination of ‘fake or false’ information a criminal offense punishable by up to three years in prison.” Human Rights Watch, Pakistan: Repeal Amendment to Draconian Cyber Law, Feb. 3, 2025, available at <https://www.hrw.org/news/2025/02/03/pakistan-repeal-amendment-draconian-cyber-law>.

<sup>332</sup> Clooney Foundation for Justice, Deep Flaws in Pakistan's Cyber Defamation Law Threaten Press Freedom, available at <https://cfj.org/news/deep-flaws-in-pakistans-cyber-defamation-law-threaten-press-freedom/>.

<sup>333</sup> See Joint Statement for World Press Freedom Day, India: New Amendment to the Information Technology Rules that Threatens Press Freedom Must be Withdrawn.

not speak to ongoing ICT Act cases at all, which could continue to be pursued despite a lack of legal basis.

In light of the above, we offer the following recommendations:

***To the Interim Government:***

- i. Take steps to protect freedom of the press, regardless of the political orientation of the journalists in question.
- ii. As a matter of transparency, create a public data repository on the implementation of the CSO, including enforcement statistics disaggregated by profession, gender, and location, in order to track whether it is implemented in a manner consistent with international law.
- iii. Address cases pending under previous cyber-crime laws:
  - a) Quash all outstanding cases under the ICT Act, consistent with the principle of legality, and take steps to vacate convictions in parallel with the recent amendment to the CSO regarding speech-related DSA convictions.
  - b) Quash all outstanding cases under the DSA, consistent with the principle of legality, and ensure that the recent amendment to the CSO vacating convictions under certain provisions of the DSA is effectively implemented.
  - c) Release a list of all cases pending under the ICT Act, DSA and the CSA and the status of these cases, indicating whether they have been withdrawn or quashed to provide clarity regarding their status. Lessons can be perhaps be drawn from the reported process of identifying other politicized cases, already underway.<sup>334</sup>
  - d) Given the multifaceted harms journalists interviewed for this report suffered, compensate affected journalists and their families who faced unjust prosecutions and/or false cases

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<sup>334</sup> The Business Standard, Political Parties Urged to Submit FIRs by 30 Nov for Withdrawal of 'False Cases,' Nov. 18, 2025, available at <https://www.tbsnews.net/bangladesh/political-parties-urged-submit-firs-30-nov-withdrawal-false-cases-1288491>.

under the DSA, as also suggested by the Media Reform Commission.<sup>335</sup>

- iv. Adopt gender-sensitive and rights-respecting responses to online harms that do not rely on broad speech offences or criminal defamation by:
  - a) Repealing or narrowing Section 26 of the CSO, given that it replicates some of the flaws of Section 31 of the DSA.
  - b) Repealing the criminal defamation provision of the Penal Code, given the risk that it will be used in lieu of a cyber defamation provision.<sup>336</sup>
- v. Introduce long-lasting reforms to protect press freedom:
  - a) Adopt legislation including a provision like that proposed by the Media Reform Commission protecting media work undertaken in good faith.<sup>337</sup>
  - b) Consider the recommendation of the Media Reform Commission to create an independent National Media Commission that would provide for “[r]edressal of complaints from individuals, institutions, or groups affected by false or motivated news.”<sup>338</sup> As recently found by Bangladesh’s Media Reform Commission, the existing Press Council has been ineffective at resolving complaints about the press: “[t]here is virtually no effective remedy for victims of unethical reporting (such as privacy breaches or false reports) other than seeking legal recourse.”<sup>339</sup> Further, the Press Council’s work does not cover online media at

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<sup>335</sup> Media Reform Commission Report, p. 145.

<sup>336</sup> Media Reform Commission Report, p. 145.

<sup>337</sup> See Draft Ordinance enacted for providing protection of journalism and journalists’ rights and formulating ancillary provisions, Media Reform Commission Report, p. 176.

<sup>338</sup> Media Reform Commission Report, p. 144.

<sup>339</sup> Media Reform Commission Report, p. 69.

all.<sup>340</sup> As a result, individuals with complaints against journalists resort to filing criminal cases.

- c) Consider establishing a role for such National Media Commission/press body in managing disputes to help divert cases from the criminal justice system. For instance, in Indonesia, the Press Council and the National Police entered into a Memorandum of Understanding (MoU) to manage disputes involving the press and prevent the inappropriate use of criminal law against journalists. The MoU outlines a collaborative framework for handling cases involving journalists and media outlets, the main aim of which is to ensure that complaints about journalistic work are handled by the Press Council before any criminal investigation or legal action is taken.<sup>341</sup> This model has also been proposed in India: The Media Transparency (And Accountability) Bill, 2024 suggests the establishment of a National Media Council. As per Clause 6 of the Bill, permission of the National Media Council would have to be taken before institution of any criminal proceedings against a media outlet or any of its employees regarding any journalistic story or activity.<sup>342</sup>

- vi. Engage at the regional level to progress efforts to dismantle vague and overbroad “digital speech crimes,” using the Bangladesh experience, as documented in this report.

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<sup>340</sup> *Id.*, p. 70.

<sup>341</sup> Memorandum of Understanding [unofficial translation], No.2/DP/MoU/II/2017,. This system does not, however, always function as intended. See, e.g., Staff at the American Bar Association Center for Human Rights et al., TrialWatch Fairness Report, Indonesia v. Muhammad Asrul, Indonesia v. Stella Monica, Dec. 2023, available at [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/indonesia-ite-report.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/indonesia-ite-report.pdf).

<sup>342</sup> See Media Transparency (And Accountability) Bill, 2024, available at <https://pressclubofindia.org/Media-Transparency-Bill.pdf>.

### ***To the Future Government:***

- i. Conduct a comprehensive compatibility review of the speech offences in Bangladesh, including in the CSO, and related procedural laws, as against international standards applicable to Bangladesh, and then adopt/ratify the CSO (with changes), in order to ensure that the CSA does not spring back.
- ii. Repeal the criminal defamation provision of the Penal Code, given the risk that it will be used in lieu of a cyber defamation provision.<sup>343</sup>
- iii. Consider legislation to set up institutions and mechanisms for protection of press freedom as highlighted in recommendations v (a), (b) and (c) above.
- iv. Given data in this report showing that only one out of 222 cases ended in a conviction, ensure implementation of Section 28 the CSO that criminalizes “any person [who], with the intention of harming another, files or causes any case or complaint to be filed under any provision of this Ordinance without just or lawful reason.” To avoid selective application, create clear criteria for when this offence is triggered (e.g., repeated complaints by third parties about the same reporting; demonstrably false allegations). Regular reports should also be solicited on the application of this provision to determine whether weaponization of the law is being effectively deterred—or whether this provision itself is being instrumentalized. The Media Reform Commission has also proposed draft legislation that would include a provision providing that “[i]f evidence of false cases is found upon review, legal and just action must be taken against the concerned authorities.”<sup>344</sup> This too should be considered, along with similar, more broadly-applicable recommendations from the Judiciary Reform Committee.<sup>345</sup>
- v. Given that 56% of the cases in our larger dataset remained at the initial stage of police investigation as of July 2024, suggesting

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<sup>343</sup> Media Reform Commission Report, p. 145.

<sup>344</sup> Media Reform Commission Report, p. 145.

<sup>345</sup> Ashutosh Sarkar, Enact Practical Law to Curb False, Frivolous Cases, The Daily Star, Mar, 19, 2025, available at <https://www.thedailystar.net/news/bangladesh/news/enact-practical-law-curb-false-frivolous-cases-3851776>.

significant delays, carefully monitor implementation of other protective provisions of CSO, in particular those establishing time limits for completion of investigations and disposal of cases.

- vi. Invite UN bodies and independent experts to assist with reviewing Bangladesh's speech-restrictive laws and monitoring implementation of reforms.

***To the Police:***

- i. Curb the practice of clubbing offences arbitrarily in FIRs, without application of mind on the offence applicable to the facts of the complaint, and adding non-bailable charges to cases where only bailable offences apply.
- ii. Introduce reforms to prevent arbitrary arrests, search and seizure operations and police misconduct, given that almost half the journalists in the report's smaller dataset reported that they were arrested at odd hours, and at least fourteen reported mistreatment. In this regard, ensure implementation of Supreme Court guidelines<sup>346</sup> and consider reforms suggested by the Police Reform Commission.<sup>347</sup>
- iii. Observe time-limits for investigating cases and conduct thorough and impartial investigations.
- iv. Ensure internal disciplinary procedures for police officers who knowingly pursue baseless or politically-motivated cases, and violate the rights of accused persons, including as documented in this report.

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<sup>346</sup> Supreme Court of Bangladesh, Appellate Division, Bangladesh v. BLAST, Civil Appeal No. 53/2004, May 24, 2016, available at [https://blast.org.bd/content/judgement/Civil\\_Appeal\\_No.53\\_of\\_2004.pdf?ref=netra.news](https://blast.org.bd/content/judgement/Civil_Appeal_No.53_of_2004.pdf?ref=netra.news)

<sup>347</sup> Mamum Abdullah, What's in the Police Reform Commission's Sweeping Overhaul Plan?, Dhaka Tribune, Jan. 23, 2025 available at <https://www.dhakatribune.com/bangladesh/371583/what%E2%80%99s-in-the-police-reform-commission%E2%80%99s-sweeping>

***To the Judiciary:***

- i.** Implement Supreme Court guidelines issued in the BLAST judgment in 2016.<sup>348</sup>
- ii.** Reports of warrantless searches and seizures, which are required to be recorded and reported to the Cyber Tribunal, should be made public and carefully reviewed.
- iii.** Carefully review police actions during the investigation of a case with full consideration of the rights of accused persons.
- iv.** Implement the scheme of time limits for investigations and trials under the CSO, which require reports to the court (by investigators) and to the High Court (by courts) in case of any delay. These reports should be compiled and made public to allow for analysis of the extent to which limits are being respected in practice.
- v.** In light of the extreme delays in trials concluding, as documented in the report, consider recommendations of the Judiciary Reform Commission relating to reducing case backlogs.

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<sup>348</sup> Supreme Court of Bangladesh, Appellate Division, Bangladesh v. BLAST, Civil Appeal No. 53/2004, May 24, 2016, available at [https://blast.org.bd/content/judgement/Civil\\_Appeal\\_No.53\\_of\\_2004.pdf?ref=netra.news](https://blast.org.bd/content/judgement/Civil_Appeal_No.53_of_2004.pdf?ref=netra.news).