

MoulikOdhikarShurokkha Committee
(Committee for the Protection of Fundamental Rights)

PRESS RELEASE:
DIGITAL SECURITY ACT AND CITIZENS' RIGHTS

1 October 2016 – Today the Committee for the Protection of Fundamental Rights held a discussion on ‘The Proposed Digital Security Act and Citizens Rights’ at the Dhaka Reporters’ Unity Auditorium. Speakers noted that the law contains a number of repressive provisions, and that if the law is enacted in its present form, it would result in breaches of Bangladesh’s obligations under international human rights treaties, and threaten citizen’s fundamental rights guaranteed under our Constitution. All speakers noted concerns regarding the implications of the law for curtailing freedom of expression and incursions on personal liberty and privacy.

Tahmina Rahman, South Asia Director of Article 19, giving the main presentation, noted that many of the provisions in the Digital Security Act second draft still require review in light of international standards of freedom of expression. The draft law is too broad and not in conformity with many international standards. Several countries have already taken away criminal defamation provisions: we recommend that Bangladesh follows suit. The provisions related to offences need to meet the criteria of ‘intention’ and the ‘serious harm’ test. Overall the law requires safeguards for citizen’s rights of freedom of expression and liberty.

Dr Mahbubur Rahman, Associate Professor, University of Dhaka stated that the law as currently framed is too broad and there is a risk of its misuse. For example, the reference to online content ‘harmful to our foreign policy’ being ‘cyber terrorism’ would make even critiques of the Rampal project punishable. With regard to the punishing of statements on the liberation war, it is worth recalling the US Supreme Court’s decision that ‘compulsory patriotism’ should not be a function of the law. Despite emancipation from colonial rule, South Asian countries have retained much-criticized sedition laws used to repress freedom fighters. If the government thinks our hard won freedom and the liberation war are simply a glasshouse that can be smashed with one pebble being thrown, then it is not being true to the spirit of liberation, and is also following the example set by Pakistan (which has made new laws on sedition). The Government’s speed in moving forward with this law contrasts with the time being taken to adopt other necessary laws, for example the draft law on government servants has been awaiting consideration for several years, while consultations are held. Similar detailed consultations are needed on this law which will affect ordinary citizens, and their rights.

Barrister Jyotirmoy Barua, Advocate, Supreme Court of Bangladesh drew attention to the risks for journalists who expose any rights violations or harms being caused in the private sphere, even when they do so in accordance with journalistic norms. He highlighted section 17 of the draft law, which penalizes any person who takes or publishes or distorts the personal image of any another person without their consent for breach of privacy, and covers not only the content, but the publication or broadcast of such an image, and so would affect journalists. There is no procedure for collection of digital evidence and our 1872 Evidence Act is still in use. There are also serious concerns regarding the provisions on seizure of documents, arrest, and trial, as well as the

deprivation of liberty and refusal of bail. Without more training for those concerned with law enforcement and law application in the courts, there is a risk of abuse of many provisions of this draft law.

Sayed Ahamed, Executive Director, Institute of Informatics and Development (IID) stated in the context of rapid changes in technology, there are many good reasons to put in place a law to ensure cyber security and to prevent abuse of privacy and online threats to security and individual reputation. We also need to be aware that digital communications have played a huge role in pushing forward our development and growth. So, we need the law to maintain a balance between twin objectives, of ensuring cyber security on the one hand, and enabling digital communication for development, democracy and growth on the other. However, some controversial sections of the proposed bill are threatening the prospects of evidence-based development.

The ambiguity of Section 15 is a concern here. Even to implement Banganbandhu's dreams, the works and policies of Bangabandhu may be researched and undergo constructive criticism. Similarly, despite our emotion on liberation war history, we have to engage in global academic debates with evidence and arguments. When Sharmila Bose wrote a history of 1971 which many of us disagreed with, we could write critically and comment on her piece and argue with her and win those arguments. If we only use law to highlight our history, instead of logical arguments, we will fail to highlight our glorious history in global discourse. Also, if a foreign policy goes against our fundamental principles, why should we not speak out against it? When some Americans opposed their state policy to support our liberation war in 1971, we agreed they were right to do so. Then why should we have a double standard in play? The ghost of Section 57 of the ICT can be seen in sections 19 and 20 of this law. From that experience we can ask: what action will be taken against those who bring false allegations and harass a person or subject them to confinement? Since offences under this law are compoundable but non-bailable is there a real risk of corruption and intimidation to compel people to plead guilty? Will the broad limits put on online speech on grounds of 'hurt to religious sentiment' seriously curtail freedom of expression particularly on social media?

Tasaffy Hossain of Bonnishikha said that legal protection is needed for women against cyber harassment and cyber-stalking in internet space (including morphing, trolling, sexual and misogynist comments in public spaces). Internet space is a public space, so just as stalking and harassment are an issue in public space, so is cyberstalking and cyber-harassment. The issue of women's consent is missing in this law, and it does not deal with the common situation of public use of images of a woman to blackmail her, where she had consented only to its private use. The law also does not make it clear that the woman would not herself be criminalized for the creation or dissemination of such an image. It also threatens artistic or educational or health related use of any content regarding sex or sexuality.

Dr Shahdeen Malik, chairing, noted three major concerns. Firstly, the Committee is concerned that the offences in this law have been defined so broadly that any computer user may potentially be charged with one or other offence under the proposed law. A second concern is that the proposed law will further stifle dissent, criticism and freedom of expression. Thirdly the law in its current form gives too much power to the Digital Security Agency to be created under the law, including judicial powers whereas there is no provision for accountability. In conclusion, Dr Malik said that the proposed law is unacceptable in its current form.

Participants raised concerns that the draft law if adopted could result in increasing self-censorship, suppression of democratic practices including using satire and cartoons for social and political critique (mentioning that Quamrul Hasan's BishhoBehaya cartoon of Gen. Ershad, or cartoons of Gen Yahya would themselves have fallen under this law if it had existed), and of the critical discussion and study necessary for ensuring sustainable development and our basic rights.

The programme was chaired by Dr. Shahdeen Malik and moderated by Dr. Shahnaz Huda. Participants included Adv. Tobarak Hossain, Shireen Huq, Sadaaf Saaz Siddiqi, Dr Shahidul Alam, Dr Shapan Adnan, Dr CR Abrar, Zakir Hossain, Barrister Sadia Arman, Arup Rahee, Rowshan Ara Parvin, Samia Afrin, Barrister Sara Hossain, Advocate Quazi Zahed Ahmed, Ahmed Javed Ronie, and other journalists, professionals and rights advocates.

Background

The ICT Act and the Bangladesh Telecommunications Act 2001 have empowered the Government to regulate and control cyber communications till today. In early 2015, the Government framed the Cyber Security Bill. It is now proceeding instead with the Digital Security Bill 2006. Concerns have been expressed regarding inadequate consultation with experts and citizens regarding the content of this draft law and its possible implications for freedom of expression and personal liberty.

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