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INTOLERANCE AND A REPRESSIVE LEGAL REGIME: A TWIN THREAT TO FREEDOM OF EXPRESSION

BANGLADESH

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On October 6, Robiul Islam Khandokar, 35, a district correspondent of the national daily Sangbad in Rajbari, wrote a Facebook status appealing to the prime minister: "Honourable Prime Minister[,] an utterly deranged person is trying to cause unrest in the peaceful Rajbari." (My translation)

Robiul was apparently trying to alert the prime minister to the unlawful activities of someone in the district. He, however, forgot to place a comma after the title of the country's leader. Little did he know that this oversight would be construed as an attack on the prime minister herself. As soon as he was alerted to the typographical error, Robiul corrected his Facebook post. But it was too late. On October 9, a member of the student wing of the ruling Awami League filed a defamation case against Robiul under the draconian Digital Security Act (DSA), accusing him of "defaming the prime minister". He was arrested the next day. This Kafkaesque sequence of events has become depressingly familiar in Bangladesh where even the perception of a slight is enough to invite official retribution.

Like Robiul, hundreds of people—journalists, academics, activists—have been charged and detained under the Digital Security Act simply for exercising their right to freedom of expression online. Many of these cases have been filed by members of the ruling party, or people acting on their behalf. According to the government's own Cyber Crime Tribunal data, more than 800 cases were filed under the DSA between January and October in 2020. Nearly 1,000 people were charged. More than 350 people were detained.

The DSA is not the only tool used to silence critical voices. It is often accompanied by others in an arsenal of repression that includes threats, harassment, intimidation, physical attacks and even enforced disappearances. According to Ain o Salish Kendra, a local human rights group, at least 219 journalists have been targeted this year by state agencies or individuals acting on behalf of the government.

On March 10, the editor of the daily Pokkhokal, Shafiqul Islam Kajol, was forcibly disappeared from the capital Dhaka, a day after a ruling party lawmaker filed a case against

him under the DSA for his Facebook post. Kajol was later "found" by police under mysterious circumstances along the Bangladesh-India border—53 days after he was last seen in Dhaka—only to face an unlawful detention since then. In April, the acting editor of jagonews24.com, Mohiuddin Sarker, and editor-in-chief of bdnews24.com, Toufique Imrose Khalidi, were charged under the DSA for publishing reports on alleged embezzlement of relief materials meant for poor people affected by the Covid-19 lockdown. In May, a news editor of daily Grameen Darpan, Ramzan Ali Pramanik, staff reporter Shanta Banik, and publisher and editor of the online news portal Narsingdi Pratidin, Khandaker Shahin, were arrested for reporting on a custodial death at the Ghorashal police station. In June, the editor of the Bangla national newspaper Inqilab, AMM Bahauddin, was charged for publishing a story about an advisor to the prime minister.

Even children have not been spared. On June 19, a 14-year-old boy from Mymensingh district, who is in his ninth grade at school, criticised the government's decision of increasing Value Added Tax on mobile phone calls alleging that the extra revenue earned would fill the prime minister's coffers. The next day, he was detained under a DSA charge by police for "defaming the prime minister" in his Facebook post.

Bangladesh's academy was once regarded as a relatively safe space for airing of critical views. But this year, several academics have also been targeted and prosecuted for exercising their right to freedom of expression. In June, two professors at Rajshahi University and Begum Rokeya University were sacked for their Facebook posts about a deceased ruling party MP. In September, the Dhaka University authorities terminated BNP-linked professor Hasan Morshed Khan for publishing an opinion piece in a national newspaper allegedly distorting history. In the same month, the National University authorities suspended AKM Wahiduzzaman, an assistant professor, for posting on Facebook "offensive" and "indecent" remarks about the prime minister.

The DSA is a successor to the Information and Communication Technology (ICT) Act, widely criticised by human rights groups for its draconian Section 57, which was abused to file more than 1,271 charges between 2013 and 2018. But instead of remedying the repressive elements of the ICT Act, the DSA is arguably more abusive in character. The law was passed in 2018 in the face of strong opposition from journalists, civil society organisations, and human rights defenders. At the time, there were serious warnings of how an already restricted space for dissent online could be further squeezed to the point of near-suffocation. These warnings seem prescient now.

Some sections of the law that raised serious concerns were too vague and too broad to be able to define a crime, and also provided for disproportionately harsh punishments. For instance, Section 17 of the DSA can punish anyone for 10 years' imprisonment for "making any kind of propaganda or campaign against liberation war, spirit of liberation war, father of the nation, national anthem or national flag." The actions that would specifically constitute a violation under this provision were not at all defined. Besides, the terms are dangerously vague and overly broad, and the suggested punishments are not only disproportionate, but they also punish acts that shouldn't be considered a crime in the first place.

Provisions such as this create a situation where any political position deemed to be contrary to the regime narrative could land an individual in prison for 10 years. Similarly, Sections 25(b) (publications "damaging the image or reputation of the country"), 28 (publications "hurting religious values and sentiments"), 29 ("publications of defamatory information"), 31 ("publications deteriorating law and order"), and 32 ("breaching the secrecy of the government")—all criminalise legitimate forms of expression and suffer from the same vague and broad definitional issues, giving law enforcement authorities too much leverage to determine what act(s) would constitute a crime.

What the country has now is a legal regime under which the government's intolerance for criticism means that anyone even publishing the faintest whispers of dissent can be severely punished. Instead of a system where people can express themselves to promote the accountability of those in power, the reverse applies. A climate of fear now pervades society, with people filled with a sense of foreboding for what may happen if they dare to speak out, or even forget to place a comma correctly.

The right to freedom of expression is essential to all societies, and crucial to advance human rights. It is how people can claim their other human rights, speaking up for their rights and that of others—whether that's education, food, or healthcare. It is also the right on the basis of which societies thrive, testing old ideas and generating new ones. Without the right to freedom of expression, which is protected in Bangladesh's constitution and in its international commitments under the International Covenant on Civil and Political Rights, Bangladesh stands to lose in a global knowledge-based economy.

We must remember that when people fear to express themselves freely, when journalists are afraid to write or report on what they see, without fear of reprisals, it only corrodes and undermines the accountability and transparency pillars of the state. Such an outcome may prove ultimately self-defeating for any government that wants to serve the public good. Only an open, deliberative, and discursive political culture resting on the respect of the right to freedom of expression can arrest such a drift. As the noted American Justice Louis Brandeis once said, "Sunshine is the best disinfectant."