

# THE UNENDING NIGHTMARE

Impacts of Bangladesh's Digital Security Act 2018

ALI RIAZ





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April 2022

<https://freedominfo.net/reports>

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This project is funded by the National Endowment for Democracy (NED), USA.

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# INTRODUCTION

In October 2018, the Bangladesh government legislated a law called the Digital Security Act 2018 (DSA) claiming that it is intended to provide cyber security to citizens. Various national and international organizations expressed deep concerns that the expansive nature, wide scope, and vague provisions of the law could be used for clamping down on contrarian voices and severely hindering freedom of expression. The government repeatedly claimed that the law is akin to cybersecurity laws in many countries and until recently insisted there is no instance of it being abused.

More than three years have passed since the law went into effect. The impact of the law is now easily discernable on society and politics, particularly in terms of its effects on freedom of expression. How the law has been implemented and how it has impacted the lives of its victims warrant our attention. Various human rights organizations and organizations working on freedom of expression have systematically gathered data and tracked the plight of the people who have allegedly violated the law, were charged under the law, detained, and convicted. During this period the law has been criticized by not only the victims but also conscientious citizens and human rights groups. It is argued that the law violates the rights enshrined in the constitution of the country, international laws, and Bangladesh's responsibility under the International Covenant on Civil and Political Rights (ICCPR). The death of author and social activist Mushtaq Ahmed on February 25, 2021, who was arrested under the DSA, laid bare various aspects of the law and the judicial process attached to it. Ahmed was in custody for ten months and denied bail by courts six times.

It is against this backdrop that this report has been compiled.

# HOW THE LAW CAME INTO EXISTENCE

The DSA was framed and enacted against two backgrounds. The first was the widespread criticism of the Information and Communication Technology Act 2006 (as amended in 2013), and the upcoming parliamentary election.

The ICT Act was passed in 2006 under the Bangladesh Nationalist Party (BNP) government led by Khaleda Zia. The stated objective of the law was to 'provide legal recognition to and security of Information and Communication Technology and rules of relevant subjects.' The principal argument of having the ICT Act was that the existing laws, particularly the Penal Code of 1860 and the Evidence Act 1872, were inadequate to address the growing number of cybercrimes and regulating emerging e-commerce.

In 2013, the Awami League government led by Sheikh Hasina made significant changes to the law, especially in section 57. A rough translation of Section 57 of the ICT Act, as amended said: "If any person deliberately publishes or transmits or causes to be published or transmitted in the website or in any other electronic form any material which is false and obscene and if anyone sees, hears or reads it having regard to all relevant circumstances, its effect is such as to influence the reader to become dishonest or corrupt, or causes to deteriorate or creates 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, then this activity will be regarded as an offence." The amendments not only increased the maximum amount of punishment, but also made these offenses cognizable, which essentially provided the law enforcement agencies the power to arrest anyone without warrant. The offenses were made un-bailable. These changes came when the political situation was increasingly becoming restive on the issue of election-time government. The incumbent amended the constitution in 2011 and removed the caretaker government (CTG) provision. The CTG provision required that a non-partisan government is appointed to oversee the national election after the completion of the term of the elected government. Opposition political parties protested the removal of the provision and boycotted the 2014 election. Since the amendment in the ICT Act in 2013, the number of cases filed under the law, especially under section 57, began to rise.

Despite the presence of the law since 2006, there was very little use of it until the 2013 amendment was made. According to one account between 2006 and 2013, only 426 cases were filed and the number of people arrested or prosecuted was very low. In 2013, the number of cases filed was only three. But after 2013, the number began to rise. In 2014 the number rose to 33. The number continued to grow in the subsequent years: 2015 – 152; 2016 – 233; 2017 – 568; and 2018 – 676. There was only one cyber tribunal established under Article 68; consequently, the process of investigation was slow. In 2016, a newspaper report informed that "156 cases reached the Tribunal. Besides, 250 cases were under investigation. In other words, a total of 593 cases are pending and under investigation" (Asaduzzaman 2016). In 2015, eleven authors and academics filed a petition to the High Court against section 57 of the ICT Act saying that it goes against Article 39 of the Constitution that guarantees 'freedom



of thought and conscience.' The court sought a response from the government on why the law did not violate constitutional protections, but the government did not respond.

By 2016, a few more things became clear. First, section 57 of this law is being used the most. The primary objective of this section was to limit the freedom of expression of the individual. In 2016 alone, of the cases filed under the ICT Act, 94 percent were filed under the controversial section 57. Between 2012 and June 2017, 1417 cases were filed under this law, and about 65 percent of these cases were under section 57. Until section 57 was repealed in 2018, at least 37 cases were filed under section 57.

Second, most of the accused in these cases were acquitted. "All the accused have been acquitted in 66 percent of the cases as the allegations have not been proven in court. That means only 34 percent of the cases have been proven. Thirteen percent of the cases have been proven false at the investigation stage." It was also learnt that "the police had submitted final reports to the court on 46 cases in the last three years as the investigation did not find any truth of the incident." (Asaduzzaman 2016).

Due to the extensive and indiscriminate use of the ICT Act, national and international organizations were calling for reform of the law, repealing the controversial section 57, and to stop abusing the law. For example, the Asian Forum for Human Rights and Development (FORUM-ASIA) in September 2016 urged the Government of Bangladesh "to repeal this Act and release people arbitrarily arrested so far" (Forum-Asia 2016). In early 2018, as the new Digital Security Act was being discussed apprehension was that the number of cases would increase if the Digital Security Act were introduced (Riaz, 2018). According to Article 19, a London-based organization that defends and promotes freedom of expression and freedom of information worldwide, a total of 71 cases were filed in 2018, 35 cases were under the Digital Security Act (New Age 2021).

The image is a screenshot of a Human Rights Watch (HRW) website article. The page header includes the HRW logo, a search bar, and a 'DONATE NOW' button. Below the header is a navigation menu with links for 'Countries', 'Topics', 'Reports', 'Video & Photos', 'Impact', 'Take Action', 'About', 'Join Us', and 'Give Now'. The article title is 'Bangladesh: Scrap Draconian Elements of Digital Security Act', with a subtitle 'Cabinet Approves New Law That is Overly Broad and Ripe for Abuse'. The main image shows a group of people, including military officers in camouflage uniforms and a woman in a green sari. To the right of the article, there are sections for 'MORE READING' and 'MOST VIEWED'. The 'MORE READING' section includes a link to 'Submission to the Committee on Economic, Social and Cultural Rights concerning Bangladesh' dated February 14, 2018, and another link to 'Bangladesh: End Crackdown on Opposition Supporters' dated February 8, 2018. The 'MOST VIEWED' section includes a link to 'Ukraine: Russian Forces' Trail of Death in Bucha' dated April 21, 2022.

The second context of the introduction of the DSA in 2018 was the contentious political environment in the country. Since the controversial election in 2014, boycotted by the opposition, the country saw further polarization and increasing trends toward use of restrictive measures by the government. There was increasing concern that the situation would further deteriorate leading up to the election scheduled in December 2018.

The process of legislating a new law began in mid-2017, and the cabinet approved the draft on January 29, 2018. As the new law was being drafted, the government announced that five articles of the existing ICT Act would be repealed, they were – 54, 55, 56, 57, and 66. The draft bill, however, revealed that the elements of these articles have been broken into pieces and incorporated in the proposed Digital Security Act (DSA). Immediately after the approval of the draft, serious concerns about the law's reach and potentials for abuse were expressed. It was criticized as a means to curb freedom of expression. Reporters Without Borders (RSF) in a statement in January 2018, described the proposed law as "unacceptable" (RSF 2018). Human Rights Watch (HRW) said "with at least five different provisions criminalizing vaguely defined types of speech, the law is a license for wide-ranging suppression of critical voices" (HRW, 2018).

On May 22, 2018, owners of private television channels, the Editors' Council, and the Bangladesh Federal Union of Journalists (BFUJ) met the parliamentary committee and raised concerns about the proposed law, particularly eight sections of the law. The meeting was attended by the telecommunication minister Mustafa Jabbar and the law minister Anisul Huq. According to a press report, "The journalists' proposal was accepted positively by the parliamentary committee, said Post, Telecommunication and Information Technology Minister, Mustafa Jabbar, after the meeting ended. 'We are in agreement with the journalists about amending the sections they have problems with,' said Mustafa. 'We are going to bring necessary amendments, so the freedom of press does not get hampered.'" (Dhaka Tribune 2018a). The eight sections the journalists expressed reservations about were: 8, 21, 25, 28, 29, 31, 32, and 43. In September 2018, the parliamentary committee submitted its report which ignored the suggestions of the journalists. In a statement on September 17, 2018, the editors' council expressed "surprise and disappointment" (Dhaka Tribune 2018b). The Council rejected the draft law.

In two weeks, they once more drew attention to the flaws of various articles of the proposed laws and discussed the potential negative impacts of these articles on the media in a statement issued to the media (Prothom Alo English 2018). While the parliamentary committee completely ignored the objections of the journalist community, it recommended that in Section 43 regarding search, seizure, and arrests, the police should be required to seek permission from the Director General of the Digital Security Agency; but it was later removed at the objection of the police. Thus, the police have been given the power to search, seize and arrest without any warrant or permission (Prothom Alo 2021). In September, the parliament passed the bill and sent it to the President for ascent. On September 30, the Editors' Council met the government representative and made a last-ditch effort to stop the enactment of the law which it insisted poses "serious threats to freedom of expression."

Besides organizations within the country, various international organizations pointed to the potential adverse impacts of the new law on freedom of the press. HRW, for example, in May 2018 published a report on how the existing ICT Act has muzzled independent voices and how the proposed DSA would make it worse (HRW 2018). Committee to Protect Journalists (CPJ) urged the President to return the bill to the parliament (CPJ 2018). HRW further insisted in September that the DSA is ripe for abuse (HRW 2018).

Despite such national and international outcry, on October 8, 2018, the President signed the bill into law. The Editors' Council, in an unprecedented move, staged a street protest and formed a human chain in front of the national press club on October 15, 2018. The government, on the other hand, continued to assure that the law would not harm freedom of expression nor journalists. Amnesty International pointed out in November that 'the new Act is deeply problematic' (Amnesty International 2018).

Since it came into existence, while the number of cases under the law grew exponentially, the government continued to claim that it has not been abused. In October 2018, Prime Minister Sheikh Hasina told in a press briefing that "journalists who do not publish false news need not worry" about the DSA (Aljazeera English 2018). The use of the law became so pervasive that The Editors' Council said in May 2020 that their fears about the Digital Security Act have come to pass; "our fear is now a nightmare-reality for the mass media," it said in a statement (The Daily Star 2020). In September 2020, two years after the law was enacted, the number of cases under the law had risen to more than 1,000 (Asaduzzaman 2020).



Mushtaq Ahmed

Mushtaq Ahmed (54), an author and social activist, died in prison on February 25, 2021 after being detained for 10 months. He was arrested for criticizing the government and was denied bail six times.

# DEFINING FEATURES OF THE DSA

The DSA provided the government absolute power to initiate investigations into anyone whose activities are considered a 'threat' by the government. The Act provides law enforcement agencies power to arrest without a warrant, simply on suspicion that a crime has been committed using social media. It provides police the power to search and seize without any warrant and oversight. Also, the Act allows the government to order the removal and blocking of any information or data on the internet it deems necessary, thereby providing broad scope to silence those critical of its policies or who share information on human rights violations in the country. Objections have been raised about nine sections of the law, which have been described as detrimental to freedom of speech; these Sections are 8, 21, 25, 28, 29, 31, 32, 43 and 53. It has been argued that these sections are unclear and many of its terms are not defined properly. Out of the 20 provisions of the law that deal with offences and punishments, 14 are non-bailable. Five are bail-able and one can be negotiated. The lowest punishment is one year in prison and the highest is a life-term, but most are in the range of between four and seven years. These have been viewed by editors and journalists as a recipe for creating a climate of fear. The non-bailable provisions of the law practically allow the accused to be detained for indefinite periods before the trial.



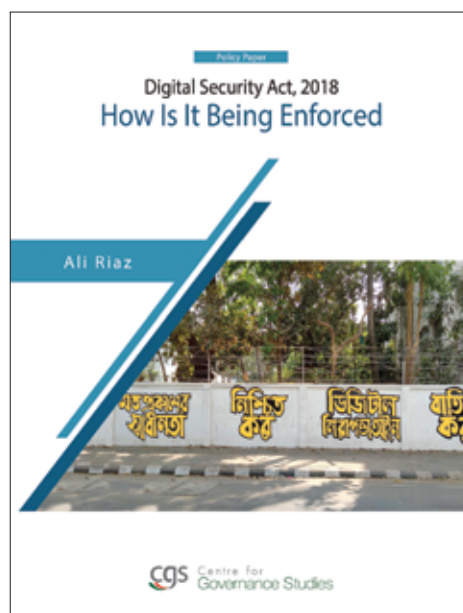
## THE PROJECT

In the backdrop of the wanton and ever-increasing use of the Digital Security Act (DSA) since its inception, the Centre for Governance Studies (CGS) initiated a research project in early 2020 to gather information about various aspects of the Digital Security Act 2018, particularly the impact of the law. Under this project, information about cases, detentions, and legal proceedings under the Digital Security Act were gathered.

This report is based on data collected from 1 January 2020 to 28 February 2022. Previously, we published the analysis of data gathered between January 1, 2020, to March 25, 2021 in a report

titled "Digital Security Act, 2018: How Is It Being Enforced". It was published in April 2021. This report includes the data presented in the previous report; however, we also provide a comparison between these two sets of data to see whether there have been any changes in the pattern. These data were gathered from government-approved print and electronic media, the accused or their family and friends, the lawyer of the accused, and police stations and other concerned departments. The data are presented and regularly updated at the website: <https://freedominfo.net/>

During this period, detailed information about 890 cases have been gathered. The number of total accused persons in these cases are 2244. Based on these cases, the information obtained on various aspects of the application of this law has been analyzed. These cases show how the law has been used by both the government agencies and individuals and how they created immeasurable hardship with no end in sight.



## THE VEIL OF SECRECY?

In the past years, while press reports have documented incidents of individuals being accused of violating the law and cases being filed against them by both individuals and government agencies, no way official count of the people being accused and prosecuted is made available. In April 2021, the government has set up eight cyber tribunals, each in one administrative division of the country. While this step is likely to speed up the trials of the accused, it has not helped gathering information. In the available reports of the human rights organizations, the number of accused and arrested have varied. These discrepancies are due to the absence of transparency and unwillingness of the law enforcing agencies in providing data. However, human rights organization Odhikar provides an account of the number of people arrested under the law. In 2018, 15 people were arrested under the DSA; the number rose to 42 in 2019 when additional six people were arrested under the ICT Act.

The unwillingness of the government to share information or in other words deliberate efforts to keep the information regarding the extensive use of the law secret has become evident in the responses to a request of a human rights defender Saad Hammadi. On June 7, 2021, Hammadi submitted an application to the Bangladesh Police, asking about the number of cases filed and the number of people accused and arrested under the Digital Security Act every year since it was introduced in October 2018. He also requested the monthly breakdown of the same information between January and May of 2021. This request was made under the Right To Information (RTI) law's sections 3 and 4. As he received no response within 30 working days as specified under the law's sections 9 (1) and 9 (2), he filed an appeal to the Inspector General of the police. The law requires the disposal of an appeal within 15 days of the application, but no response came from the IGP. This led him to filing a complaint with the Information Commission. The complaint against the police was filed by Saad Hammadi under the Right to Information Act on August 10, 2021.

The police responded to Saad Hammadi on August 22, 2021 dismissing his RTI application and subsequent appeal to the IGP stating that the police was not obligated to share the information under sections 7 (f), (g) and (m) of RTI Act. The summary of those sections suggests that disclosure of such information could obstruct enforcement of the law, incite offence, endanger public security, and the fair trial of pending cases, affecting the investigation, arrest, and prosecution of offenders.

On January 11, 2022, the Information Commission heard the complaint and set the date for the resolution of the petition on February 2, 2022. The resolution of the petition was further rescheduled on February 22, 2022. But on that day, the commission ended up asking the police to confirm the identity and citizenship of the complainant as Hammadi lives abroad. He told the New Age that, 'The commission asked police to verify my citizenship and identity by going to my present and permanent addresses' (New Age 2022). On March 8, 2022, the Information Commission finally delivered its verdict in favour of Hammadi and asked the Bangladesh Police to provide him with data on Digital Security Act (DSA) cases, within 20 days. Nine months after the complaint was filed, the order was passed by Chief Information Commissioner Martuza Ahmed. In the meantime, the commission verified that complainant Hammadi is a Bangladeshi citizen living abroad and has a right to seek the data. However, the Business Standard reported on 8 March 2022 that several senior officials at Police Headquarters anonymously told the newspaper that the Bangladesh Police will be filing a writ petition with the High Court against the verdict of the Information Commission (The Business Standard 2022).

# WHAT DO WE KNOW?

## WHO IS BEING ACCUSED, WHO IS BEING DETAINED?

Between January 2020 and February 2022, at least 2244 individuals have been accused under the law in 890 cases. We have been able to gather information about the occupations of 820 people. The breakdown of their professions is following (Table 1).

**Table 1: Professions of the accused, Jan 2020-Feb 2022**

Professions	No
Journalist	207
Educator	41
NGO & Activist	10
Politician	254
Student	79
Govt. Employee	32
Private Employee	53
Businessman	79
Legal Practitioners	21
Religious Leaders	8
Other Profession	36
Profession Not Found	1424

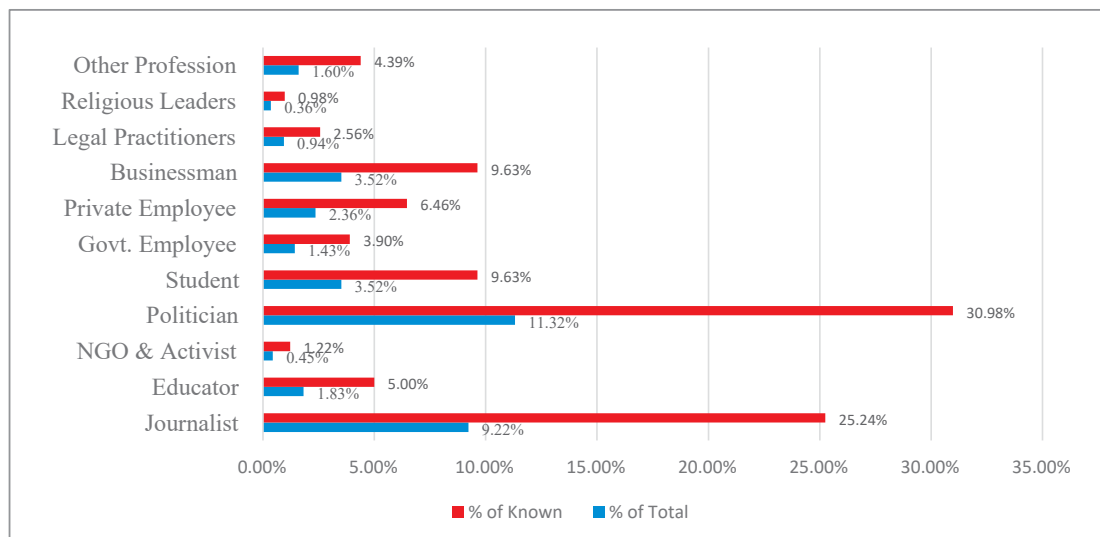
According to this information, of those whose professions are known, 30.98 percent are politicians, and more than a quarter are journalists. Of the total accused, they constitute 11.32 percent and 9.22 percent, respectively (Figure 1).



Ahmed Kabir Kishore

Ahmed Kabir Kishore, a cartoonist and social activist, spent ten months in jail and was denied bail six times until March 2021. He alleged of being tortured in custody. He along with six others have been indicted in February 2022.

**Figure 1: Professions of the accused by percentages of known information, Jan 2020-Feb 2022**



Note: 'Other profession' refers to the professions that are not listed under the specified professions above; 'profession not found' consists of the people those were unnamed, and their professions are not available.

In our previous report in April 2021 the data showed that the share of politicians and journalists were on top of the list, with 14.1 percent and 13.2 percent of accused whose professions were known to us. The pattern has held, but the share of individuals of both professions has increased significantly.

We have been able to gather information about the age of 824 accused. Of these 19 are below the age of 18. This number has doubled since our last report in April 2021. This is a disturbing development because it clearly shows that children have continued to remain vulnerable to the unrestrained use of the law. Overall, almost 84 percent of the accused belonged to the age group of 18-40. In terms of the number, accused within the age group 18-25 and 26-40 are close, 303 and 388, respectively (Table 2). Their share are respectively 36.77 percent and 47.09 percent, (Figure 2).



Mamunar Rashid Nomani

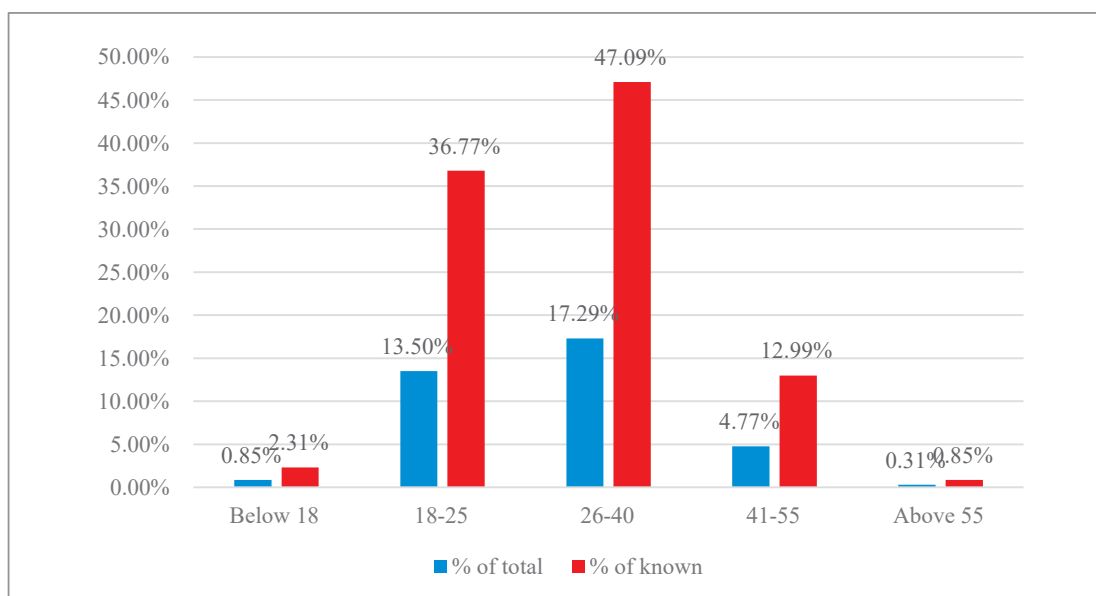
Mamunar Rashid Nomani, an editor of a newspaper of Barisal, has been in jail for weeks after a local Ward councilor filed a case against him and his friends in September 2020 under the DSA. He was granted interim bail on September 29, 2020. He is yet to be indicted or granted permanent bail, thus requiring him to appear before the court regularly.



**Table 2 - Age of the accused, Jan 2020- Feb 2022**

Age group	No
Below 18	19
18-25	303
26-40	388
41-55	107
Above 55	7
Age Not Found	1420

**Figure 2: The percentage of age of the accused, Jan 2020-Feb 2020**

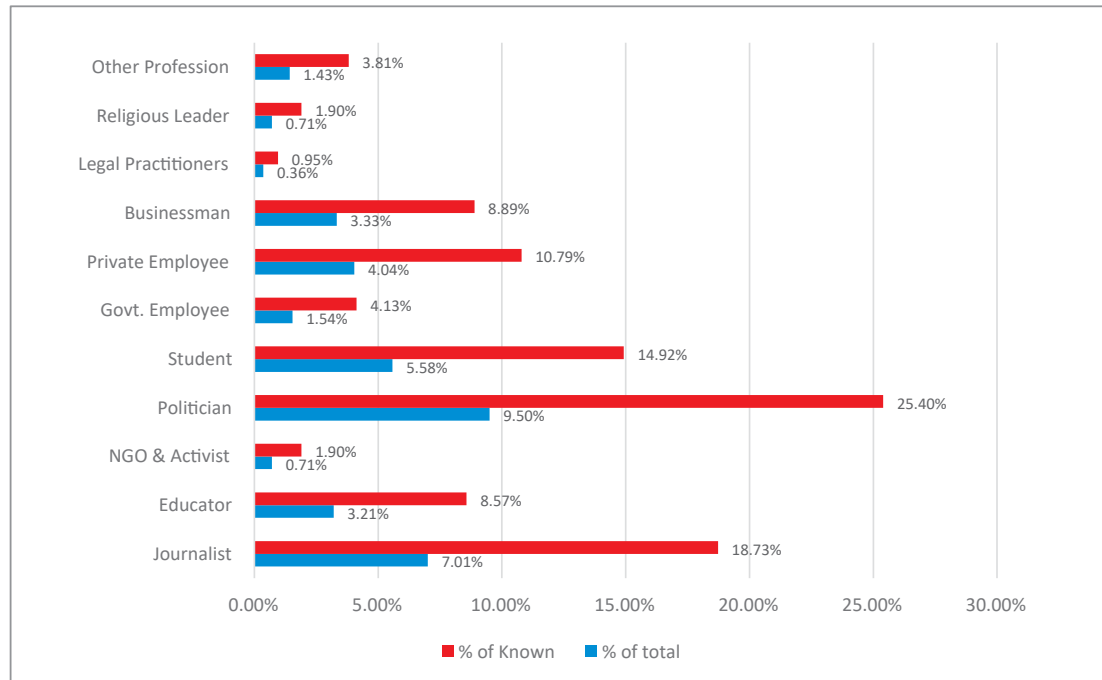


Our database has the record of 842 individuals who have been arrested under the law over the period between January 2020 and February 2022. From various sources, we gathered occupational information of 315 people. Of them 80 were politicians, 59 were journalists and 47 were students (Table 3), that is 25.40 percent, 18.73 percent, and 14.92 percent, respectively (Figure 3)). The share of politicians among the arrestees have increased compared to our previous study period (January 2020- March 25, 2021). Previously, it was 11.3 percent.

**Table 3: Professions of the arrestees, Jan 2020-Feb 2022**

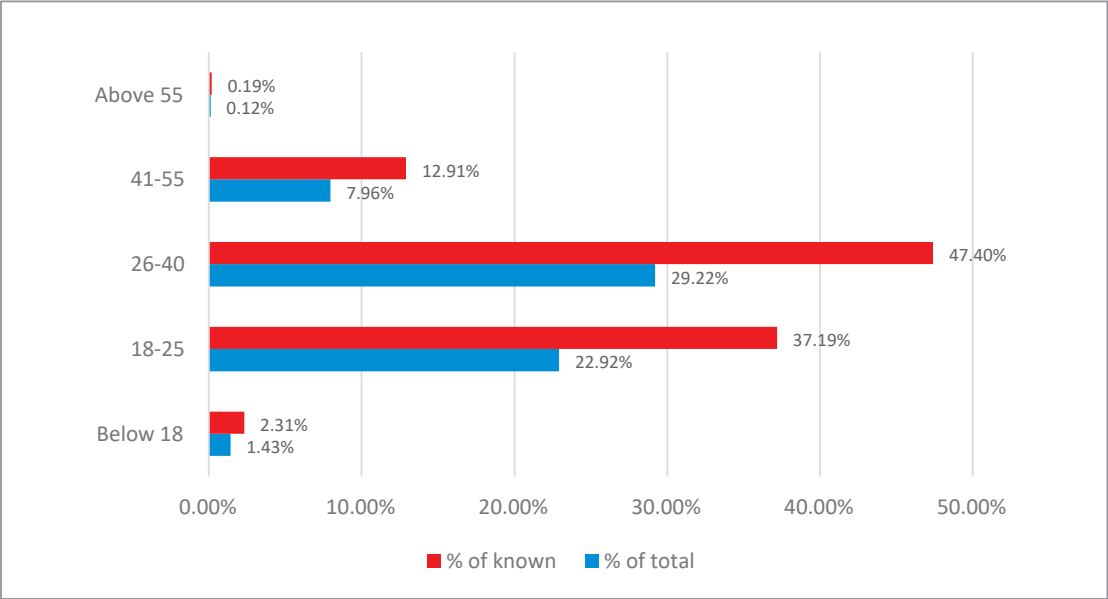
Professions	No
Journalist	59
Educator	27
NGO & Activist	6
Politician	80
Student	47
Govt. Employee	13
Private Employee	34
Businessman	28
Legal Practitioners	3
Religious Leader	6
Other Profession	12

**Figure 3: Percentage of professions of the arrestees, Jan 2020-Feb 2022**



Among those who have been arrested (842 individuals), we succeeded in confirming the age of 519 persons. Among them 12 were underaged. The number was four when we analyzed the data in April 2021, covering information gathered between January 2020 and March 25, 2020. As we mentioned regarding the underaged being accused, it is deeply disconcerting. The largest number of people arrested belonged to the 26-40 age group (246), followed by the 18-25 (193) age group. The third largest age group is 41-55 (67). Percentage wise, 47.40% of the known arrestees are within the 26-40 group, and 37.19% are in the 18-25 age group (Figure 4).

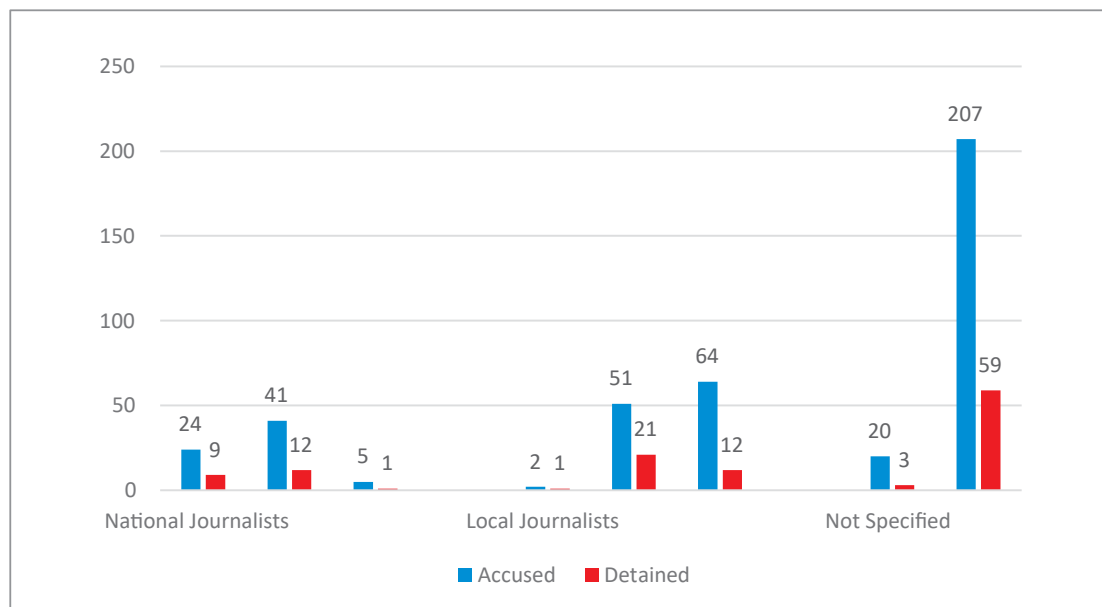
**Figure 4: The age group of the arrestees, Jan 2020 – Feb 2022**



**JOURNALISTS AS VICTIMS**

In a 26-month period, 207 journalists have been accused. Among them, we have details about 187 journalists' media affiliation - 70 are associated with national level media, and 117 are local journalists. Of the 207 journalists, a majority of them are associated with the print media - a total of 92, almost half of the journalists whose workplace has been identified. The second highest number of journalists are associated with online media - a total of 69. Online media journalists from outside Dhaka have been the largest number of victims - 64 individuals. It is not only that the journalists working outside the capital are being accused of violating the law, but they are also the victims of being detained. Of the 59 journalists who have been detained, 34 of them were local journalists. It is the print media journalists who were detained the most - 33, this is more than half of the total arrested journalists (Figure 5).

**Figure 5: Workplace and medium of accused and detained journalist, Jan 2020-Feb 2022**



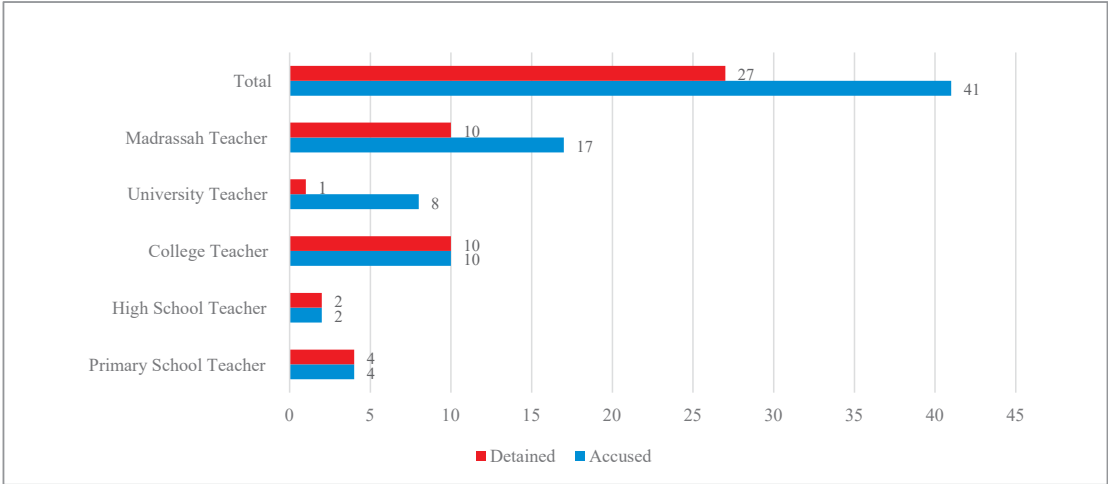
These 207 journalists have been accused in 108 cases, filed by 96 people. Among these 96 accusers, 66 are aggrieved parties, while 30 individuals who haven't been directly affected by the news or any other actions of these journalists filed cases. We have explored the political identities of these accusers and found that 24 of them belong to the ruling party and its affiliates. Of them, 12 belong to the Bangladesh Awami League, eight of them belong to the Student League, three of them are members of the youth front, and one of the Swachasebak (Volunteer) League. In many instances these journalists are alleged to have violated more than one section of the DSA. However, 46 journalists are accused of a breach of Section 25, and 48 are alleged to have violated Section 29. Section 25 deals with publishing, sending of offensive, false or fear inducing data-information, etc. It says 25(1)," If any person in any website or through any digital medium – a) Intentionally or knowingly sends such information which is offensive or fear inducing, or which despite knowing it as false is sent, published or propagated with the intention to annoy, insult, humiliate or denigrate a person or b) Publishes or propagates or assists in publishing or propagating any information with the intention of tarnishing the image of the nation or spread confusion or despite knowing it as false, publishes or propagates or assists in publishing or propagates information in its full or in a distorted form for the same intentions, then, the activity of that person will be an offense under the Act. (2) If any person commits any offense mentioned within sub section (1), the person will be penalized with imprisonment for a term not exceeding 3 (three) years or fines not exceeding 3(three) lacs taka or with both. (3) If any person commits the offense mentioned in sub-section (1) for the second time or recurrently commits it, then he will be punished with imprisonment for a term not exceeding 5(five) years or with fine not exceeding 10 (ten) lacs taka or with both." Section 29 deals with publishing, broadcasting & disseminating defamatory information. It says 29(1)," If a person commits an offence of publication or broadcast

defamatory information as described in section 499 of the Penal Code (Act XLV of 1860) in any website or in any other electronic format then he will be sentenced to a term of imprisonment not exceeding 3(three) years or fine not exceeding Tk.5 (five) lac or both." 29(2) says," If any person commits the offence mentioned in sub-section (1) second time or repeatedly, he will be sentenced to a term of imprisonment not exceeding 5(five) years or fine not exceeding Tk.10 (ten) lac or both." Two other sections of the law have been used against the journalists – section 31 (12 cases, 17 accused); and section 26 (5 cases, 16 accused).

**EDUCATORS AS VICTIMS**

Our overall data showed that 41 educators have been accused; we gathered that 27 of them were arrested. Among the accused, Madrassah teachers constitute the largest numbers – 17, and they along with the college teachers – 10, each – have been the highest number being detained. Altogether eight university teachers have been accused while one of them had been arrested (Figure 6). It is notable that of the accused 41.46 percent were madrassah teachers; in the previous report we mentioned that the share was 22.72 percent. In the case of detention, the share of the madrassah teachers and college teachers is – 37.03 percent. Our data show that the rate of arrests of educators is far greater than in any other profession – 65.85 percent of accused educators have been arrested during this period, in case of school and college teachers the rate is 100 percent.

**Figure 6: The workplace of accused and detained educators, Jan 2020- Feb 2022**



## ACCUSED GOVERNMENT EMPLOYEES

Interestingly, government employees are continuing to be accused. A total of 32 government employees were accused; nine of them were members of the police (Table 4).

**Table 4: Workplace of the accused government officials, Jan 2020 – Feb 2022**

Categories of Government Employees	Number
Assistant Surgeon of a Upazila [sub-district] Health Complex	1
Office Assistant of a Upazila Cooperative Office	1
Bangladesh Police	9
Work Assistant in the Office of a Project Implementation Officer (PIO)	1
Working as 'Auditor' in a District Accounts and Finance Office	1
Working in the Position of 'Cash Government' at a Medical College Hospital	1
Upazila Election Officer	5
Office Assistant/ Computer Typist of a Upazila Election Office	
Banker	6
Unknown	7
Total	32

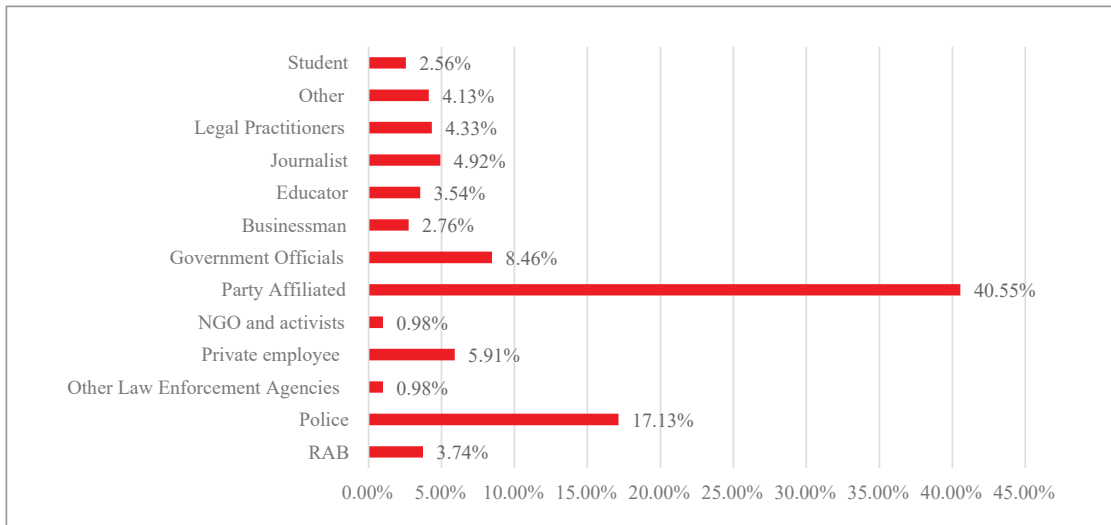
## WHO ARE THE ACCUSERS?

Of the 890 cases in our database, identities of accusers of 508 cases have been identified. The breakdown shows that 111 cases have been filed by law enforcement agencies, and 43 cases have been filed by government officials. Considering that all of these have the government's explicit and implicit approval, a total of 154 cases have the blessing of the authorities. After excluding the five cases filed by NGOs, cases filed by individuals stand at 349. While there are instances of victims of wrongdoings, including sexual harassments, bullying, invasion of privacy, have lodged complaints under the law, a significant number of complaints have been filed by individuals alleging defamation of other individuals (Table 5). The share of law enforcement agencies filing cases is 21.85 percent; this has increased from 12.6 percent of cases reported in April of 2021. Altogether the share of cases filed between January 2020 and February 2022 with the blessing of authorities is 30.31 percent. Among the cases filed by individuals, 206 cases have been filed by individuals with affiliations with political parties – a staggering 40.55 percent. This has doubled compared to our last report, when it was 20.7 percent.

**Table 5: Identities of accusers, Jan 2020-Feb 2022**

Accuser	No
RAB	19
Police	87
Other Law Enforcement Agencies	5
Private employee	30
NGO and activists	5
Party Affiliated	206
Government Officials	43
Businessman	14
Educator	18
Journalist	25
Legal Practitioners	22
Other	21
Student	13
Identity could not be ascertained	382
Total	890

**Figure 7: Identities of accusers by percentages, Jan 2020- Feb 2022**

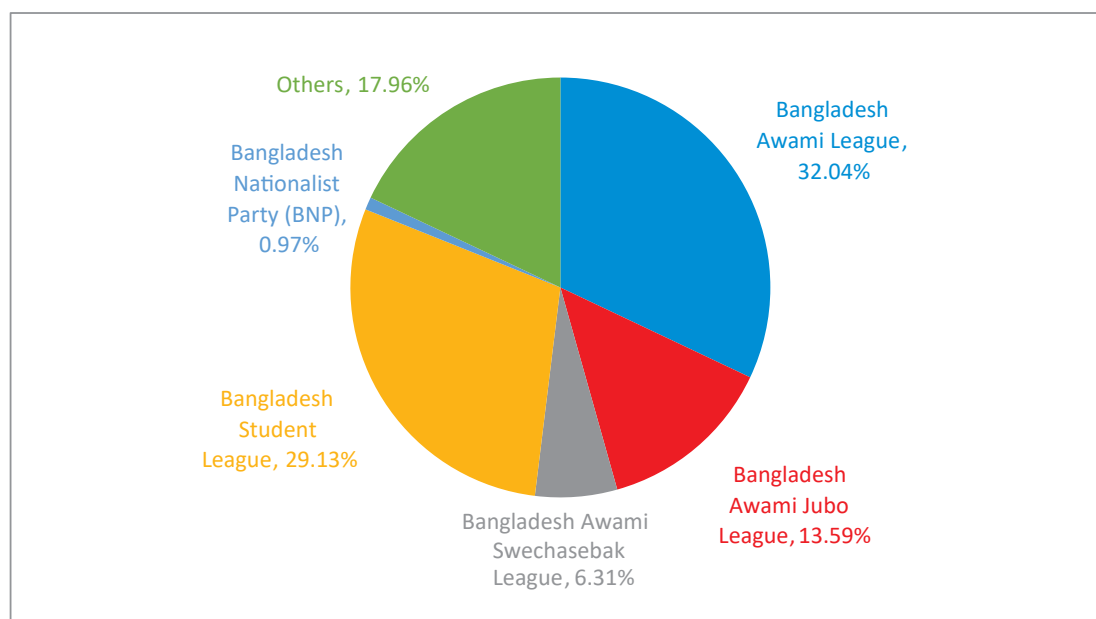


Of those who are affiliated with the political parties, 167 of them or 81 percent are directly involved with the ruling Bangladesh Awami League (BAL); this is the same share from April 2021. As such the ruling party activists have not been deterred by public criticisms that have been in the press about this phenomenon.

**Table 6: Political Identities of individual accusers, Jan 2020-Feb 2022**

Political Identities of individual accusers	No
Bangladesh Awami League	66
Bangladesh Awami Jubo League (Youth front)	28
Bangladesh Awami Swechasebak League (Volunteers front)	13
Bangladesh Student League	60
Bangladesh Nationalist Party (BNP)	2
Others	37
Total	206

**Figure 8: Percentages of political identities of the accusers, Jan 2020- Feb 2022**





Among the accusers, we have been able to identify 37 individuals who hold elected positions at various national and local levels, which include five members of the parliament (Table 7).

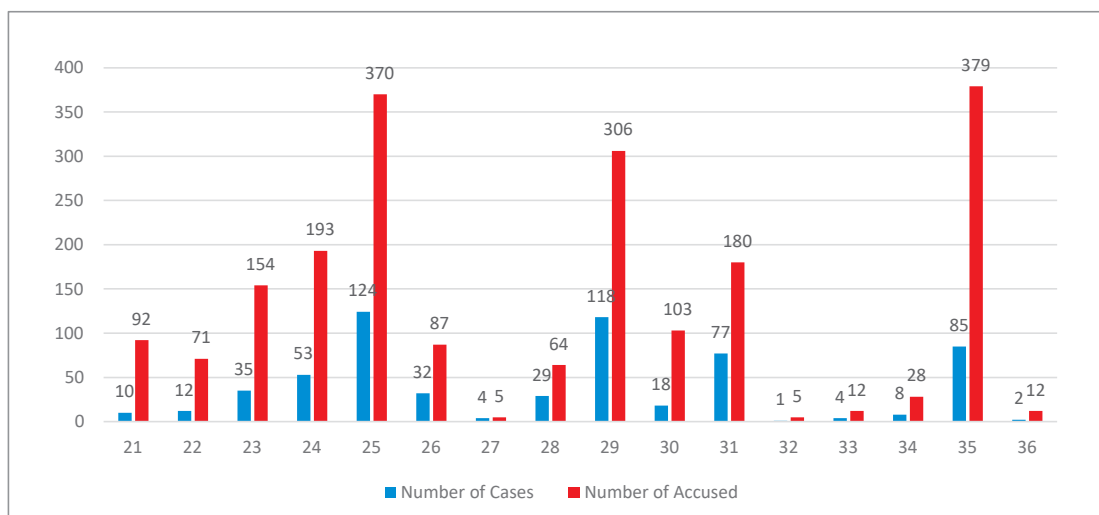
**Table 7: Elected Representatives as accusers, Jan 2020-Feb 2022**

Categories of Elected Representatives	Number
MP	5
City Mayor	6
Municipality Panel Mayor	1
Ward Councilor	11
Chairman of Union Parishad	8
Chairman of Upazila Parishad	4
Vice Chairman of Upazila Parishad	2
Total	37

## WHAT ARE THE ACCUSATIONS, WHO ARE THE ACCUSED, WHO ARE THE ACCUSERS?

There are 22 sections in the Digital Security Act 2018 which deal with offenses and penalties; but the details of the cases show that 16 sections have been used. In some instances, cases have been filed against the same person under multiple sections (Figure 9).

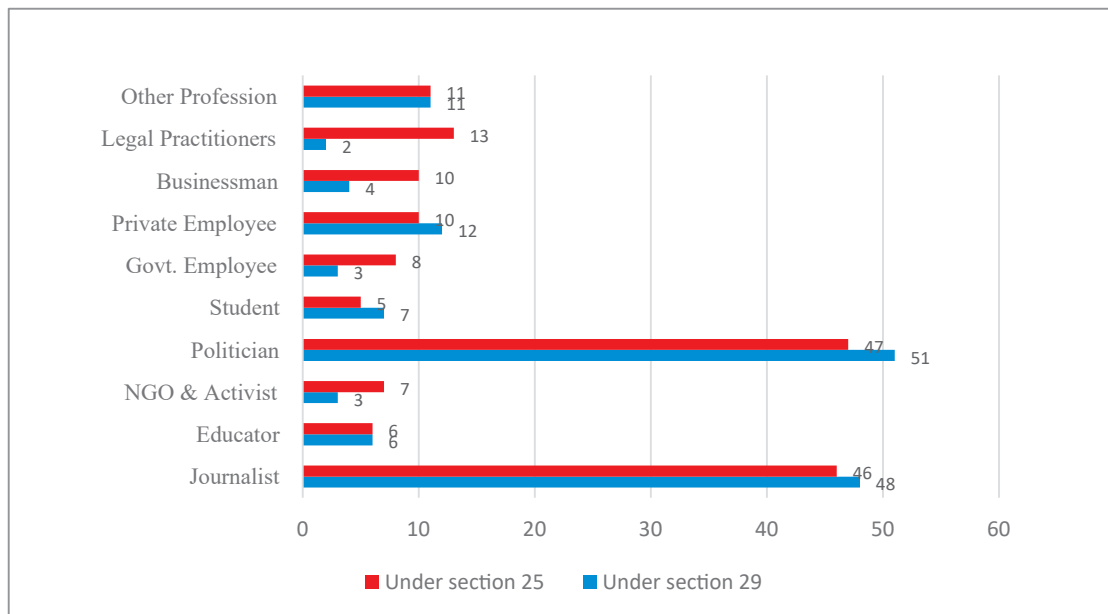
**Figure 9: How many cases under which section, Jan 2020-Feb 2022**



Section 25 has been used in the most instances (124), followed by Section 29 (118). However more people have been accused under Section 29 (379). Section 25 deals with publishing, sending of offensive, false or fear inducing data-information, etc, and Section 29 deals with publishing, broadcasting & disseminating defamatory information.

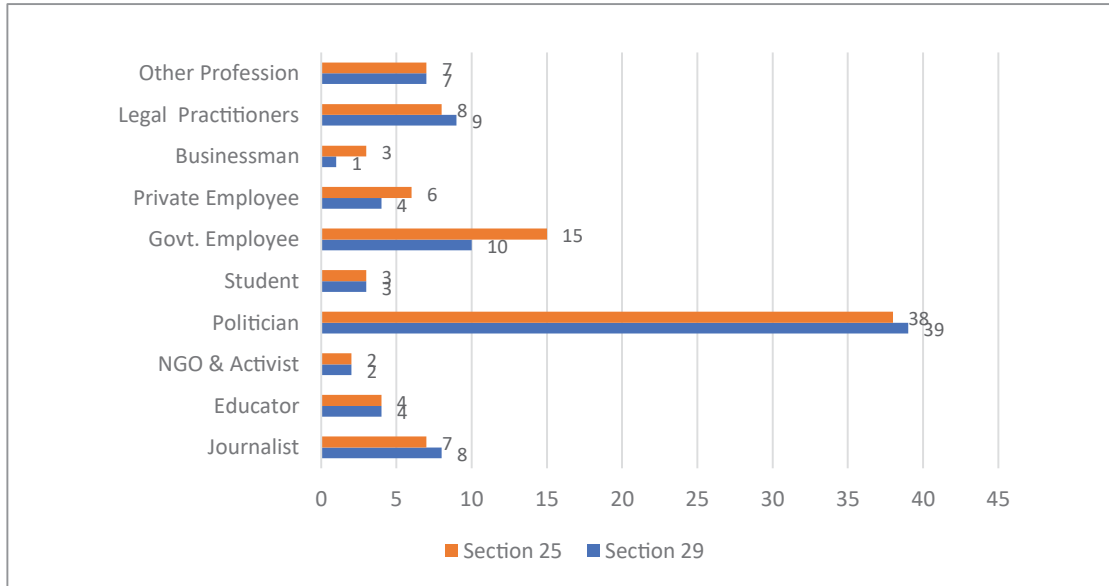
We have explored the professional identities of the accused under these two sections. Of the 306 accused in 118 cases under Section 29, 147 individuals have been identified by their professions. Most of them are politicians - 51; followed by the journalists - 48 people. Regarding Section 25, of 370 accused in 124 cases, 163 have been identified; the same pattern exists – politicians (47) are followed by journalists (46). (Figure 10).

**Figure 10: Professional Identities of accused under section 25 and 29, Jan 2000-Feb 2002**



As for the accusers under these two sections, we identified the professional identities of 87 and 93, for Section 29 and Section 25, respectively. The accusers are overwhelmingly politicians in both instances (Figure 11)

**Figure 11: Professional identities of accusers under Section 25 and Section 29, Jan 2020- Feb 2022**



## ALLEGATIONS OF DEFAMING THE PRIME MINISTER, MINISTERS, AND POLITICIANS

Since the introduction of the law in October 2018, hundreds of cases have been filed by law enforcement agencies and individuals. There have been instances of being accused, charged and convicted for allegedly defaming Prime Minister Sheikh Hasina under the ICT Act, the precursor of the DSA. For example, in 2013, a lecturer of the Bangladesh University of Engineering and Technology (BUET) Hafizur Rahman Rana was tried in absentia and sentenced to seven years of imprisonment under the Information and Communication Technology Act (Hindustan Times 2013). In 2021, a cyber tribunal in Rajshahi sentenced Bangladesh Nationalist Party leader of Natore to seven-year imprisonment on charges of sharing distorted pictures of Prime Minister Sheikh Hasina and former Indian Prime Minister Manmohan Singh on social media. The case was filed under Section 57 of the ICT Act in 2015. In March 2021, a 17-year-old boy was arrested for making comments in a video posted online against Prime Minister Sheikh Hasina, Indian Prime Minister Narendra Modi and Bangladeshi Foreign Minister M A Momen (Sakib 2021). These were far from exceptions, instead similar instances have been reported in the press over the past nine years. Punitive actions have taken against individuals by their employers including universities on several occasions. We examined the allegations filed under the DSA between January 2020 and February 2022. We found that 98 cases have been filed during this period alleging that the accused have defamed Prime Minister Sheikh Hasina. Thirteen of these cases were filed by law enforcing agencies, while 85 were filed by individuals. Fifty of these individuals belong to the ruling BAL and its affiliates. Among these organizations, the student wing of the party has been the most active, its members filed 20 cases, followed by the members of the BAL with 19 cases, youth league members with nine cases and the volunteer wing with one. Our database records that 58 accused had been arrested.

We found that 51 cases have been filed for allegedly defaming ministers. The law enforcing agencies filed three cases, and the aggrieved minister or his/her family members filed four cases; the remaining 44 cases were filed by other individuals. Twenty-eight of these individuals have direct affiliation with the ruling party and its various wings. The members and leaders of the student wing of the party filed 13 cases. The BAL activists filed seven cases, while the youth league filed six. These cases resulted in arrests of 23 individuals.

At least 75 cases have been filed alleging defamation of political leaders, primarily of the ruling party. In 32 instances, it was the aggrieved parties who went to the police and/or court while three were filed by law enforcement agencies. His/her supporters filed 40 cases. All but one case of these were supporters of the Bangladesh Awami League (BAL); the lone exception was a Jatiya Party supporter. Fifty-five individuals were arrested because of these cases.



Shafiqul Islam Kajol

Shafiqul Islam Kajol, a photojournalist, was abducted after ruling party leaders filed cases under the DSA in March 2020. He was found near the Benapole border after 54 days. He was arrested under the DSA and was detained for eight months. Kajol was granted bail on December 25, 2020. He has been indicted in three cases.

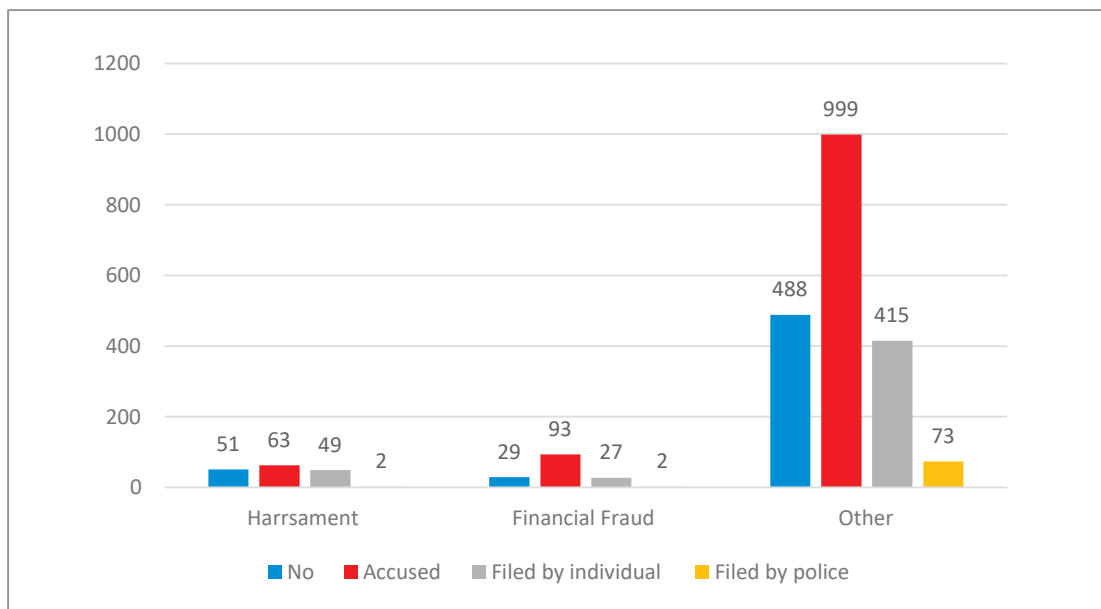


Dipti Rani Das, a tenth grader, was charged under the DSA in October 2020. She spent 18 months in a Juvenile Correctional Center until she was released on a bail on February 17, 2022. Local courts denied her bail thrice, and a bail granted by the High court in May 2021 was suspended by the Appellate Division due to Government's appeal.

# THE PERIL OF FACEBOOK

Like elsewhere around the world, social media, particularly Facebook has become immensely popular in Bangladesh and the number of Facebook users increased significantly. According to Statista.com, Bangladesh had 44.1 million users in 2021. Facebook has been used for inciting religious and ethnic violence on the one hand while creating avenues for expressing grievances against the government and helping to organize social movements. There is palpable discomfort among the ruling party and the government about the increasing influence of Facebook. Consequently, on several instances the government tried to restrict Facebook. For example, in March 2021, during demonstrations against Indian Prime Minister Narendra Modi's visit to Bangladesh, services were restricted for three days (Netblocks, 2021). Since 2013, there have been scores of incidents where posting on Facebook or comments on social media have landed in individuals being tried and convicted. The Digital Security Act and its predecessor, the ICT Act, were used by individuals and government agencies in this regard. During the period of our study, 568 cases have been filed against 1175 individuals for posts and comments on Facebook. We have divided these cases by the reasons cited in filing cases into various categories and gathered data about the number of cases and the accused. Of these 568 cases, 51 cases have been filed for harassment (accused 83) and 29 cases for financial fraud via Facebook (accused 93). Of the remaining 488 cases, 85 cases have been filed for hurting religious sentiments accusing 138 individuals (Figure 12). Further disaggregation of the cases involving hurting religious sentiments show that 76 were for slandering and nine for provocation and spreading rumors through fake status or video, accusing 125 and 13 people, respectively.

**Figure 12:** Cases filed for Facebook Posting, Jan 2020-Feb 2022



# CASES, INVESTIGATION REPORTS AND THE MATTER OF BAIL

The rising number of cases in the past years have prompted the government to set up cyber-tribunals in each division, making the total number of tribunals eight. It is worth noting that in most cases more than one person is being accused; consequently, there are more accused than the number of cases. The protracted nature of the trial is a major weakness of the judicial system in Bangladesh, cyber-tribunals are no exception.

But this argument cannot be considered acceptable in this case, as many of the accused are detained without trial: the accused continues to face intimidation in society as many of the cases are closely tied to politics.

It is also worth noting that since the police can detain someone without a warrant, in many instances, the cases are being filed after the arrest. But after filing the case, the police are required to file the investigation report based on which the charge will be formed. The law stipulates that an investigation report must be submitted within 60 days. If necessary, the investigating officers can seek an extension of 15 days from the authorities. After 75 days, they will have nothing to do. It then falls under the jurisdiction of the tribunal. But over the last two years, we have seen that in many cases, even if the investigation report is not given within the stipulated 75 days, the accused is still in custody and effectively being punished before the trial. In this context, we must remember Mushtaq Ahmed who was detained for ten months after being arrested under the Digital Security Act and died in prison. Do we know how many are languishing in jails under these kinds of situations?

Another thing that warrants our attention is the question of bail. Under the law 14 sections are non-bailable. However, in the case of any non-bailable law, a court can grant bail to an accused if it so desires. That is why many of the accused have been granted bail under this Act, while many have not. The issue has come to the fore in recent times because the court had rejected Mushtaq Ahmed's bail application six times. However, the court had granted bail to several others in the same case. After Mushtaq's death, one of the accused in the case, cartoonist Ahmed Kabir Kishore, was granted bail after 300 days in jail. There is a lack clarity as to why the court grants bail to some who are accused under the same section while some are denied, often repeatedly.

## BELATED ACKNOWLEDGMENT OF ABUSE?

Despite scores of reports of national and international human rights groups with evidence of the abuse of the law and its deleterious impacts on freedom of speech, particularly increasing self-censorship among journalists, the government repeatedly denied any misuse of the law. Such denial continued in both the national and international scene. However, in late 2021, ministers began to tacitly indicate that they were aware of these abuses. Law Minister Anisul Haq, on November 4, 2021 told that an exception regarding the arrests will be made. He said the journalists who are accused of violating the DSA and cases have been filed against them won't be arrested immediately (The Business Standard 2021). Such an exception betrays the letter and spirit of the rule of law and equality in the eyes of the law, noted analysts. One analyst stated, 'Sadly, his assurances are even more troubling, because none of his words can be found in the law. Therefore, in order to afford this extraordinary exemption to a journalist, the officials and employees of the republic have to sidestep the letter and spirit of the law' (Ahmed 2022). The tacit acknowledgement of abuse of the law has become more pronounced in mid-December. The Law Minister, on December 29, 2021, unequivocally stated, 'I acknowledge that the act was misused and abused' (The Daily Star 2021). This statement came on the heels of an intense discussion about the state of human rights after the US Treasury Department imposed sanctions on the Rapid Action Battalion (RAB) and seven of its current and former officials (VOA 2021). In March 2022, Foreign Minister M A Momen, in an interview with a Bengali newspaper said that DSA has been abused, but 'only a bit' (Prothom Alo 2022). Subsequently, the law minister, while meeting the US ambassador on April 7, that 'the Digital Security Act had been abused in some cases; (The Daily Observer 2022)

Since December 2021, the government has claimed that it has two steps to mitigate the situation. According to the Law Minister, Bangladesh has initiated a dialogue with the United Nations Office of the High Commissioner for Human Rights regarding the best practices and the second step is appointment of a monitoring cell within the law ministry. According to government sources, the monitoring cell will vet all cases before an arrest is made. Interestingly, neither civil society members nor journalists have been involved in these measures. Increasingly the impression is that the government is likely to amend the law. However, the question remains – whether this will be a repeat of 2018, when the ICT Act was reformed only with a more draconian Digital Security Act (DSA). Such apprehension is not only based on experience, but also because of the government's recent move to enact laws. Two drafts which are in the process of being laws of the land are cases in point; they are the Data Protection Act (Islam 2021), and Bangladesh Telecommunication Regulatory Commission Regulation for Digital, Social Media and OTT Platforms (Preetha 2022).

## CONCLUSIONS

Since its introduction in 2018, the Digital Security Act has been widely used by government agencies and individuals in Bangladesh. Although the government claimed that it will provide security to the citizens, the law was framed in a manner that it could be utilized to silence the critics and criminalize dissent. Data gathered and analyzed in this report covers 26 months between January 2020 and February 2022 and showed that the law has been weaponized and citizens of various strata of the Bangladeshi society have become victims of the wanton use of the law. Data presented in this report have demonstrated that journalists and politicians disproportionately became victims of this law and the younger population has been subjected to the rampant abuse of the law. The overwhelming number of accusers of cases filed under the law are members of the ruling party and its supporters, although they are not the aggrieved party to these alleged wrongdoings.

The vagueness of various provisions of the law has created a situation of vigilante justice. Often fabricated allegations have been used for verbal lynching and social ostracization. This law has made commenting in social media, particularly on Facebook, perilous and commenting on government officials has landed people in court and in jail. The law's provision has allowed and continues to allow incarceration of people for indefinite periods even before being charge sheeted, let alone convicted. Although the government has lately started to acknowledge 'some abuse', the data presented here convincingly argues that it has been widespread. The law undermines the country's commitment to international law and norms of fundamental rights and contravenes the human rights provided in the Constitution. It has created a situation of unending nightmare for the citizens. Under such circumstances, it is imperative that the law be repealed, those who have been detained be released and those who have been subjected to persecution receive reparations.





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