

Freedom of Speech Bangladesh



Worked and organized by Global Human Rights Defence

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Freedom of expression in Bangladesh: Introduction to the theme

1.1. International legal framework

Nowadays, freedom of expression is peacefully recognised as one of the fundamental pillars of any democratic system. It enables everyone to participate in and exercise scrutiny over public affairs. From a legal perspective, this right has been long acknowledged at the international and the national levels and is included in most international human rights instruments and domestic Constitutions.

Starting from the former, Article 19 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to freedom of opinion and expression, which implies that no one should ever be subject to inappropriate interference when it comes to holding opinions and to seeking, receiving and delivering information and ideas through any media and regardless of any geographic border.

These provisions are almost literally reiterated in paragraphs 1 and 2 of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR adds that the rights of freedom of opinion and expression shall always be exercised with special duties and responsibilities. In line with these requirements, the enjoyment of such rights could be restricted, provided that the restrictions are imposed by law and that they are reasonably justified by the presence of overriding conflicting interests: namely, the respect of the rights and the reputation of other people or the protection of national security, public order, public health or morals. It goes without saying that the balance between these conflicting interests is oftentimes very delicate and problematic to strike and, notwithstanding numerous attempts to reduce the subjective nature of the judicial decisions in this regard, the resolution of these issues is still too often left to the unpredictable interpretations of judges. Additionally, as it will be broadly substantiated in the following sections of this report, the clauses paving the way to restrictions on the freedom of opinion and expression may sometimes be illegitimately and arbitrarily distorted in order to accomplish anti-democratic goals and to suffocate people's voices of dissent.

As far as the specific Asian context is concerned, it is worth recalling the contribution of the Asian Human Rights Charter (AHRC). This is a landmark document released in 1998 by the Asian Human Rights Commission as the outcome of the coordinated efforts taken by several non-governmental organisations, renowned academics, legal practitioners and human rights defenders, all united under

the same objective of creating a popular and widespread culture of human rights in the Asian continent (Asian Human Rights Commission, 1998). Remarkably, Article 7(2) of the AHRC interrelates the freedom of expression with the right to personal development, venturing that the cultivation of people's cultural and spiritual capacities, the right to participate in the affairs regarding the State and the community without enduring hegemonic pressures are *conditiones sine quae non* to ensure the realisation of the full potential of any human being within the society. Moreover, Article 15, (2)(f) recalls the pivotal role of the so-called “bottom-up scrutiny” on State institutions, establishing that the right to freedom of expression allows for popular control of the activities of public actors and, ultimately, for the proper functioning of civil society.

1.2. Bangladeshi legal framework

Shifting to the Bangladeshi domestic legal framework, the Preamble of The Constitution of the People's Republic of Bangladesh establishes that the main goal of the State is to build a socialist society based on the democratic values, where the rule of law and the respect of the fundamental human rights and freedoms are secured for all citizens. Mindful of such a statement of principle, The Constitution, Part III, includes the right to freedom of thought and conscience, and speech in Article 39, amongst other fundamental rights. At this stage, it is useful to understand how the structure of this article suggests the separate examination of the two paragraphs forming it, since they guarantee rights whose manifestations are inherently different and the degree of protection they require cannot be the same.

Indeed, the first paragraph of the Article embraces the freedom of thought and conscience, which protects only the intimate sphere of the individual, without any reference to contacts with third parties. For this reason, the freedom of thought and conscience cannot encroach on other rights and interests: subsequently, the first paragraph does not contemplate any restriction clause. Conversely, the second paragraph protects the rights to freedom of speech and expression and to freedom of press. Intuitively, these rights implicate the manifestation and the delivery of personal ideas to the external world, being therefore potentially able to affect third parties. In light of this and in line with the aforementioned Article 19 of the ICCPR, the second paragraph enunciates the possibility to adopt restrictions to the freedom of speech and expression and to the freedom of press, provided that such restrictions have a reasonable nature and that they are “imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to

contempt of court, defamation or incitement to an offence”.

Despite the theoretical coherence of this norm with the teachings contained in the main international human rights instruments, the excessive vagueness of the clauses leave space for many grey areas and consequent arbitrary interpretations. Indeed, the reality shows that the grounds of restrictions have been applied too extensively in practice, in the example of the Bangladeshi government manipulating them in the pursuit of anti-democratic objectives, culminating often into profound injustices, such as unreasonable censorships, violent crackdowns on peaceful protests, arbitrary detentions, tortures, enforced disappearances and suspicious killings (Amnesty International, 2020). The specific details of the wide spectrum of violations endured in Bangladesh by civil society will be examined in the following chapters. Instead, the next paragraph will present a general overview of the problematic issues regarding the freedom of speech and expression, with the intent to shed light on how problematic the current scenario is and how necessary immediate solutions are.

1.3. Beyond the law: a general overview of the actual reality

Although Bangladesh is officially a secular country, the polarisation of the societal fabric is rising out of ever-growing religion-based oppositions and is becoming exponentially more accentuated (Jana & Gulshan, 2019). Upon this premise, guaranteeing freedom of speech and expression can turn out to be a highly complicated mission (Jana & Gulshan, 2019). Indeed, a research carried out in 2017 flagged up some concerning figures portraying the reality of the situation in Bangladesh, when it comes to the application of Article 39 of the Constitution. In more detail, the findings ascertained that the main obstacle to the freedom of expression and press in Bangladesh is identifiable in the conduct of the religious parties, which resulted in being responsible for intrusive pressures in 66 percent of the cases taken into consideration during the survey (Khatun, 2017). This subtle modality of repression – which is part of the broader phenomenon referred to as “politics of religion”- is further exacerbated by the fact that oftentimes ruling authorities impose restrictive measures by justifying them under the obligation of preventing religious propaganda, whereas instead, they are pursuing self-interest (Khatun, 2017).

Nevertheless, religion is not the only element impeding the full realisation of freedom of expression. Another significant hindrance to the realisation of the freedom of the press is represented by the inappropriate influence exercised on journalists by the media owners themselves, who reportedly happen to urge their own employees to refrain from the publication of news and articles appearing to

be in stark contrast with their business or political interests (Khatun, 2017). It goes without saying that the lack of media independence from such conflicting factors strongly undermines the activities of investigative journalists, constituting a huge violation of people's right to information.

Additionally, it is worth highlighting the consistent tendency of the Bangladeshi government to strangle the voices of dissent on online platforms.¹ Nowadays, given the pervasive presence of the Internet in our lives, social media should be granted a central position within the discourse around respect for people's human rights. Consequently, the gross and endless violations perpetrated by the authorities and the enforcement agencies against individuals' freedom of expression on social platforms deserve special attention from international organisations and human rights institutions.

Against this backdrop, the Information and Communication Technology Act of 2006 (ICTA) first, and the Digital Security Act of 2018 (DSA) second, have given rise to several unjustified and unreasonable interferences with the freedom of expression throughout the years. Amnesty International reported that at least 433 people had been deprived of liberty under the DSA by July 2021 (Amnesty International, 2021). People charged under the purview of these infamous provisions amount to approximately 2000 and, amongst others, the subjects mostly targeted are human rights activists, cartoonists, journalists, musicians, artists and young students (Amnesty International, 2021). Highly concerned by such a dismaying trend, Amnesty International's South Asia Campaigner Saad Hammadi pointed the finger at the ongoing criminalization of freedom of online speech, which has been causing numerous detrimental effects to the smooth and regular functioning of civil society (Amnesty International, 2021).

Following this transversal introduction, the next chapters of the report will delve deeper into each of these themes, articulating in more detail the disturbing patterns of injustice and repression presented so far.

1. For instance, read <https://ghrd.org/hoisting-digital-security-to-stifle-freedom-of-speech-a-tale-of-an-ongoing-oppression/>.

The Bangladeshi Digital Security Act and the Culture of Fear

2.1. The Digital Security Act (DSA) and its origin

Although the right to freedom of thought, conscience, and speech is embodied as a fundamental right in Article 39, Part III, of The Constitution of the People's Republic of Bangladesh of 1972, the functioning of the right in practice is completely different considering the restrictive grounds. It is widely known that media communication and freedom of speech in Bangladesh have been strongly menaced during the last decades, but starting from 2006, a series of laws completely changed the life of journalists and human rights defenders. Instead of promoting the right of every citizen to freedom of speech, several laws limited and sacrificed people's voices, especially in the case of dissidents who endangered the State's image by claiming human rights violations (Saber, 2021).

The Digital Security Act, 2018 is a digital security law in Bangladesh that passed with the aim of “ensuring digital security and identification, prevention, suppression and trial of offences committed through digital device and for matters ancillary thereto” (Digital Security Act, 2018). In particular, it prevents the spread of racism, sectarianism, extremism, terrorist propaganda, and hatred against religious or ethnic minorities through social media, or any other electronic media. Although this law may seem emblematic for personal protection and freedom of expression, it turns out to be limiting and controversial. Any content over the internet that was deemed inappropriate by the government could be punished by fines or prison time. Paragraph 2 of Article 39 of the Digital Security Act establishes that the right of every citizen to freedom of speech and the principle of freedom of the press can be reasonably restricted by law whenever “the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence” require so (Digital Security Act, 2018). On the pretext of preventing the spread of terrorist propaganda, it is used as a means of suppression of dissenters against the government due to some of its provisions that are vague and ambiguous. This is testified by the fact that thousands of journalists and activists have been sued, arrested, or charged because of the posting of false information (Riaz, 2021).

This is not the first attempt to control the way in which media and journalists spread information. The Information and Communication Technology (ICT) Act 2006, amended in 2013, was strongly criticised as

it was widely used to prosecute individuals for expressing their opinions online (Bangladesh National Parliament, 2006). In 2013, Sheikh Hasina's government toughened the ICT Act, eliminating the need for arrest warrants meaning that people could be arrested without reliable sources or proof and receive a prison sentence of up to 14 years. Section 57 of the ICT Act authorised the prosecution of anyone who publishes, in electronic form, material deemed fake, obscene, defamatory, or any material that tends to deprave or corrupt its audience and it allowed for prosecution of any material which causes the deterioration of the image of the state, or a person (Rocha et al., 2018). Indeed, the ICT Act became a tool used by the government to shut down any expression of the population's dissent against the established power. According to the Human Rights Watch report, between 2013 and April 2018, police submitted 1,271 chargesheets under the law, most under Section 57 of the Act (Riaz, 2021). In 2018, the government decided to repeal five controversial sections of the ICT Act, including the offending Section 57. However, as previously mentioned, this action did not result in an unconfined environment because the DSA essentially incorporated these sections with even harsher articles (Bari and Dey, 2019). The DSA gives the government absolute power to start investigations into anyone whose activities are considered a threat. Section 21 first clause states, "if any person, by means of digital medium, makes or instigates 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, then such act of the person shall be an offence." However, the phrase "spirit of liberation war" is not clearly defined (Digital Security Act, 2018; Bari and Dey, 2019).

This chaos ensued due to political events that have been taking place since 2006, as conflicts between the country's political groups have given a dramatic turnaround to the country's democracy. After the installation of a constitutionally mandated and non-partisan transitional government (CTG) to oversee the upcoming general elections, the incumbent Bangladesh Nationalist Party (BNP) amended the constitution to ensure that the CTG was led by a former chief justice sympathetic to its objectives. The opposition Bangladesh Awami League (BAL) was adamant to stop this rigging at any cost, which led to the elimination of parliamentary elections, in 2007, and the intervention of armed forces. The military-backed civilian government instead arranged an election at the end of 2008, which delivered the victory for the BAL (Riaz, 2021). However, the problems between the opposing parties were not over, because by early 2018, the former prime minister of the BNP was convicted on graft charges. Extrajudicial killings by the Bangladeshi security agencies skyrocketed, and enforced disappearances became widespread.

In July 2018, a spontaneous movement of students demanding road safety shook the country, also using social media and cyberspace to raise critical voices. Thus, the Broadcast Law of 2018 was another attempt to regulate broadcasting media and news portals with provisions for stringent punishments like cancellation of licence and jail terms of up to seven years (The Daily Star, 2018; Rocha et al., 2018). For this reason, the ICT Act, the DSA Act, and the Broadcast law of 2018 resulted in being the perfect tools to blur the lines, weaken civil society organisations, maintain power and silence (Riaz, 2021).

2.2. The target of this digital repression: The case of Dipti Rani Das

Human rights defenders, students, and journalists have been the targets of surveillance, politically motivated charges, and arbitrary detention. At least 80 journalists, including photographers, were reportedly attacked, injured, or killed while performing their jobs under the Digital Security Act (Human Rights Watch, 2021). According to Amnesty International, the Cyber Tribunal based in Dhaka has recorded 199 cases for trial between January and May 2021. Amnesty International has found that 134 of those cases were based on specific sections under the DSA. Around 80 percent of those cases were filed under both Sections 25 and 29 of the DSA, which criminalises “false, offensive and defamatory information” in contravention with Bangladesh's obligations under international human rights law (Amnesty International, 2021; Digital Security Act, 2018).

A prominent case is the one that occurred to Dipti Rani Das, a 17-year-old girl from the Hindu minority community, detained in a juvenile correction centre in Rajshahi for one year, for sharing a photo of the Holy Quran upon a woman's thighs. Apparently, the photo attacked the “hearts of pious Muslims” (Islam, 2021). According to the case details, police arrested Dipti, from Parbatipur, Dinajpur, on August 28, 2020, under the Digital Security Act. She faced up to seven years in jail if convicted with the fear of leaving her family and her school. Dipti obtained admission at Parbatipur Government College in August 2020, but she has not been able to continue her studies since she got arrested (Kham, 2021). Since being booked, her bail was denied four times. Dipti was almost released when the High Court granted her a six-month bail on May 11, 2021. Eight days later the district's deputy commissioner appealed to the Appellate Division of the Supreme Court praying that the bail order be stayed as “the accused respondent is named in the report having strong specific over the act of committing a heinous offence under Section 25, Section 28, Section 31 of the DSA,” said the appeal (Islam, 2021). Section 25 criminalises the spreading of false information to “annoy, insult or humiliate”, while Section 28 deals

with hurting religious sentiment, and Section 31 is to prosecute a person who causes public order to deteriorate (Islam, 2021). In February 2022, the High Court finally granted bail to Dipti Rani Das, after her lawyers filed the petition following rejection by a lower court (Dhaka Tribune, 2022). According to the Children Act, Article 29, “if the child is not diverted from the criminal justice system, the Court can release the child on bail with or without surety, whether or not the offence for which they are accused is bailable or non-bailable. Where a child is not given bail, the Court must give its reasons”, meaning that she is eligible to get bail whatever the charges are against her due being a minor (Children Act, 2013).

The case was reputedly reported by Amnesty international that considered the arrest of Dipti illegitimate as the activities do not qualify for legitimate restrictions, let alone punitive measures under international human rights law and standards including the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh is a state party. In May 2021, several organisations wrote to the UN High Commissioner for Human Rights, Michelle Bachelet, raising concerns over continuing attacks on the media, including arbitrary arrests, and a culture of impunity for torture and extrajudicial killings (OMCT, 2022; United Nations, 2021). According to Ain-O-Salish Kendra (ASK), at least 80 people were victims of extrajudicial killings in 2021 (Foyez, 2022). The firm indifference shown so far by the Bangladeshi institutions to the outcries of the population is highly concerning. The case of Dipti Rani Das is just one example involving a minor; however, many other girls and women also saw their human rights violated.

POLITICAL PERSECUTION

The People's Republic of Bangladesh, post British rule, was born out as a republic centred around language and religion. The aspirations of economic, political, and intellectual emancipation accelerated and organised the country's birth (Ahmedur, 2019). The constitution of Bangladesh clearly dictates the aspiration of the nation with the pledge to commit to the larger promise to build a foundation based on liberalism, secularism, non-sectarianism, and equality. However, post-independence, the role played by political parties, religious hatred, political and communal riots, and lack of minority rights hindered the progress of Bangladesh's minority groups.

The establishment of the People's Republic of Bangladesh took drastic turns in its history of formation. The larger promises of the constitution were highly compromised while and after the assassination of Bangabandhu Sheikh Mujibur Rahman, who was the chief leader in the liberation war of Bangladesh. It was as if the principles of the constitution of Bangladesh departed with the deceased, and post the unfortunate incident, the nation could not properly function as a democracy. The nation was in its premature stage and could not duly fit and mould as a democracy, thereby opening pathways for corruption, and unfolding a new dynamic for the country.

3.1. The myth of "Free and Fair"

The ruling party, Awami league, is widely infamous for allegations against it during almost every election for upholding illegal activities such as booth capturing, fake voters, and most terrifying to the general population, for casting votes in the party's favour. In the year 2014, the elections were boycotted for the unparliamentary activities that were conducted by the Awami league party. It was also reported by various NGOs and election monitoring agencies that a bare minimum of ten percent of the population genuinely casted their votes. These activities are extensively practised by the Awami league; however, it is not limited to just one party.

The question then arises on the election commission (hereinafter as EC) of Bangladesh, the authority responsible for ensuring free and fair elections. But one sidedness of the EC is not new to the Bangladesh population. The EC has been overtly biassed and has been unable to take any effective measures to ensure that the election is free of political pressure from the ruling party. Bangladesh has lost all hopes from the EC or any political party, because of the interlinkage of every authority to another

which in turn demolishes the basis of democracy.

3.2. Interplay of Religion and Politics

The republic of Bangladesh being a Muslim majority state has, since its inception, been infamous for its issues pertaining to religious and linguistic minorities. The ruling party led by Sheikh Hasina i.e. The Awami league, has a major role to play in violating the rights of minorities while strengthening religious unity amongst Muslims. Additionally, vanishing out minorities from the Muslim majority nation especially the Hindus, has by time proven to be one of their major agendas.

The Awami league party has been advancing the argument of secularism as a major aim of their manifesto, however, only till elections are in progress. The national party no longer has Hindu, or any other minority votes, since the party came into power and has been inflicting violence on the ungarded groups. Awami league party, initially was a party in favour of the minor groups as opposed to the other major party, i.e. Jamaat-e-islam. But over time, Awami league, has slowly degraded their status of a secular party in order to maintain the Muslim support. Therefore, it no longer cares about the opposing groups and breeds upon the majority supporters, who are enough for them to stay in power. The Awami league's ideology has been questioned on multiple occasions in the beginning and as the political abruptions of Bangladesh went on, it was made clear that their intentions and aims are discriminatory and opposed to what they originally promised.

The violence against the minorities by the political parties, especially Awami league and their supporters, increases significantly after every election. As many as 3,679 attacks on the Hindu community took place between January 2013 and September 2021, according to a bdnews24.com report that compiled yearly data released by the Ain o Salish Kendra (ASK), a prominent rights group of Bangladesh. Most attacks against Hindus in the recent past took place in the post-election violence of 2014. The election was boycotted by the opposition Bangladesh Nationalist Party (BNP)-led 18 party alliance, paving the way for an AL victory with two thirds majority (Samir, 2021).

In the aftermath of the election, political clashes broke out in various parts of the country, as the BNP and its key-ally, Jamaat-e-Islami, termed the elections as 'illegitimate'. The country's minority communities comprising ten percent Hindus, one percent Buddhists, 1.5 percent Christians and others, became the soft target of the political violence. (Ahmedur, 2019). The minority groups face severe opposition and brutality, no matter which party comes to power, as the promises of secularism and

upliftment of the marginalised disappear as soon as the elections go by.

The attacks against the minority groups just after elections and even on the declaration day, speaks volumes about their political persecution. The duration of elections and post elections in Bangladesh is a very vulnerable period for the minority groups. The party leaders and the local members of the winning party, i.e. the Awami league, annihilate the minority groups, standing upon their promises of creating an all-Muslims nation, dictates the narrative of victory of Muslims over Hindus, which the Awami league party has been trying to implicate as their ultimate goal. These acts of violence by the ruling party creates a sensitive environment for the minority groups where no remedy can be sought for the protection of their fundamental rights as every sect in the nation is in some way led by the ruling party.

Threats and intimidation stays as the lowest form of violence inflicted upon the minorities, however the major political parties also do not hold back in committing murders, vandalising minority areas, burning temples etc. in areas such as Malopara. A rumour spread around, where a member of a political party has been killed by the Hindus, leading to the vandalising of almost 500 Hindu family houses by the party. These forms of violence have been experienced by the communities, however, no reporting by the media or action by any governmental authority can be observed.

One such incident took place in Noakhali district of Bangladesh wherein an innocent Hindu man was beaten to death by an extremist Islam group, after a rumour was floated on social media that the Holy Quran was criticised at a Hindu temple, where the 21-year-old deceased went for Durga Puja (Annual Hindu festival). The power of the rage that was visible amongst the majority group was enough to dictate their motives and animosity against the Hindus. Many such incidents are easy to find in Bangladesh on a daily basis, which raises alarming concerns for the security and safety of multiple minority groups, whose voices stay unheard on international platforms and are ignored on national platforms.

3.3. Deprived of mediums to fully exercise Freedom of speech

The acts of violence against the minority groups mostly stay away from being circulated in national and international media and only a few catches the eye of the public. The atrocities, as many reported on social media, do not justify the declining statistics of population numbers of Hindu minority groups.

Most of the violence against Hindus remains unreported by social media and news channels. The Hindu population in Bangladesh declined from 22 percent to nine percent from 1951- 2011 (Haider, Rahman, & Kamal, 2019). The fall of the Hindu population in Bangladesh raises alarming concerns for the lives of minority groups. This depreciation is a consequence of the violence perpetrated against the Hindus, and therefore threatening them to migrate. However, there has been no international outrage for the inhumane acts, as the statistics and the voices of the minority groups have been silenced by the threats of the majority groups and their political parties.

The Bangladesh Media is dominated by the ruling party and does not function in a democratic manner. The Bangladesh Hindu Buddhist Christian Unity Council (BHBCUC), an umbrella organisation of the country's minority organisation, alleged that grassroots workers of the country's ruling party were also involved in the attacks against the Hindu community in multiple incidents. "It is unfortunate that many of the grassroots leaders of the ruling AL joined the attacks. This way a secular party like the AL will soon turn into Awami Muslim League," said Rana Dasgupta, general secretary of the council (Samir, 2019).

3.4. Blasphemy laws

The legal criminalisation of criticism or defamation of Islam, the Prophet Muhammed, and the Koran, real or perceived, has further marginalised minorities and has frequently been used as a justification to attack minorities and atheists. Sections 295A and 298 of the Penal Code, for example, criminalise hurting the religious feelings of any community and comes with the punishment of imprisonment (Government of People's Republic of Bangladesh, n.d.; Hindu American, 2020). The law prima facie is a secular law, however in a country with a heavy majority of Muslims, the law acts as a personal law for the Muslim group. Wherein, the law majorly legislates over other people of other religions who do not speak in favour of the Islam. Many incidents have been reported in Bangladesh where innocent people of religions other than Islam have been arrested and brutalised for publicly stating any sort of criticism against Islam. On the contrary, any statements against Hindu, Christian or any other religion, in a practical scenario, the law seems to have no implications or judicial procedures against the perpetrators.

Significant political events, such as elections, in Bangladesh act as a vulnerable time for the minority communities, where in the past violence against the targeted groups have been on a spike, among which Hindus being the worst affected.

3.5. Filtering of social media

Social media in today's world plays a crucial role as the most useful and efficient stage for expressing views and sharing experiences. Whatever goes on around the world, it only takes seconds to reach every nook and corner through a small Facebook or Twitter post. Social media has on multiple occasions proven to be efficient in making marginalised voices heard and has become an integrated part of democracy, specifically in guaranteeing the fundamental right to free speech. For instance, it has been the power tool in the feminist activism movement. However, the power of social media is realised as a threat by nations such as Bangladesh.

The threats received by people, specially marginalised groups, for posting or sharing opinions online which go against the majority group, has been increasing day by day as social media becomes a platform available to all. These attacks are not only committed against groups posting against the majority religion but also ruling party or Jamaat-e-islam leaders, for the reason that these parties intersect religion with politics, giving birth to a nation which is highly sensitive to religion.

These sorts of incidents are very common in Bangladesh however, filtering of social media and mob attacks threaten the population to not share anything online, but rather, just stay quiet in order to avoid any repercussions. Such an incident also took place after Hefazat-e-Islam's Amir Allama Junaid Babunagari, Joint-Secretary General Mawlana Mufti Mamunul Haque and several other central leaders, attended a conference at Derai upazila. Enraged by Haque's speech, a young Hindu man allegedly made a Facebook post criticising him. Following the social media post, the mob attacked the man's village causing him injuries and threatening the rest of the Hindus by setting an example.

3.6. Eradication of secularism from the Constitution

Post the assassination of Bangabandhu Sheikh Mujibur Rahman, the military rulers brought in multiple changes to the constitution which directly or indirectly reflected upon their motives of suppressing minority groups. To gain political legitimacy, they redefined state principles and removed "secularism" from the constitution, which is one of the basic aspects in the foundation of a democracy. The eradication of secularism from the constitution completely disintegrates the basis of a democratic nation as it violates not one but multiple rights of an individual. The military groups also initiated identification of people as "Bangladeshi" as opposed to "Bengali". This change further divided groups,

as the Bengalee identity united people as part of one group. However, the military bureaucracy motivated people to realise that their original identity lies in their religion, which was one of the primary reasons for their independence.

Suggestions

- 1) Bangladesh should take cognizance of the matter of political persecution specially in times of elections, where special forces or laws should be laid for absolute protection of minority communities. There should be the establishment of a cross-checking body, to maintain the smooth functioning of the election commission by free and fair conduct.
- 2) Formation of the ministry of religious minorities: Bangladesh has a minority ratio of 1:9, wherein the two major religious groups are known to be indifferent to each other, causing inhumane violent acts and massacre of a lot of innocent lives. In such a situation it becomes very crucial to ensure the safety of the minority group along with the security of their fundamental rights. The minority groups should have a safe space to report and share their traumatic experience of incidents and violence perpetrated on them. Bangladesh does not have any such structure, which makes it extremely tough for the groups to have their voices heard.
- 3) Reservation for the minorities - The statistics of the no. of non- majority groups (as discussed in the earlier paragraphs) and their representation in the legislation and other important government spaces varies drastically. Reserving seats for the Hindus and other minority groups becomes essential to ensure equal representation and upliftment of the marginalised groups.
- 4) Reintegrating "Secularism" – As mentioned, that secularism is a fundamental aspect of a democracy and in a nation with multiple religious groups secularism becomes inherent in the proper functioning of a democracy. However, the absence of such a right or promise hampers the smooth functioning of a nation.

Enforced Disappearances

According to the 'International Convention for the Protection of All Persons from Enforced Disappearance', adopted in December 1922 by the General Assembly of the United Nations, an “enforced disappearance” is when, with the conscience and authorisation of the State, agents or groups of people deprive an individual of its own liberty, whether through arrest, kidnapping, detention, among others. This action must necessarily be followed by the State's refusal to recognise this deprivation of liberty, therefore, denying it the protection of the law. The victims often have mysterious fates. Their families and communities are usually unaware of their whereabouts and private investigations, demonstrations and attempts to recover the lost loved ones are often met with threats, intimidation and harassment.

Enforced Disappearances are often used as a tool by the State or armed non-State actors to “control” populations; the unwanted ones that somehow threaten the power of domination of this specific group in question, be it the State or not, shall be “eliminated” from society. In other words, it is a tool of terror to spread insecurity and to limit the freedom of speech. It usually involves, not only the murder of the victim, but also their abduction, torture and interrogation. Among the most threatened ones are human rights defenders, political oppositionists, activists, the families of those who have already disappeared or any other group that displeases those in power.

Bangladesh is a country known for its high numbers of enforced disappearances and extrajudicial killings. Although, historically, the country and its security forces have been committing human rights violations, since the start of Sheikh Hasina's government in 2009, the numbers have grown significantly. According to the Human Rights Watch report, before Hasina took office, in the year of 2009, there were three cases of enforced disappearances. According to the same report, from 2009 to 2014, during the entire first government of Prime Minister Hasina, there had been approximately 130 reported cases and from this period to 2017, the year ahead of the 2018's presidential elections, there were 98 reported cases. In total, from 2014 to 2021 (publication date of the HRW report), approximately 600 people were forcibly disappeared in the country (HRW, 2021).

Despite these high numbers and the international pressure on the issue, the Bangladeshi government refuses to acknowledge the allegations of enforced disappearances. The ruling party, Awami League, is

often accused of using this practice, and always ignores the calls for action made by international human rights organisations and donor governments. According to Anisul Huj, Law Minister of the country, the numbers of enforced disappearances are an attempt to damage the image and the achievements of the government, since all the missing cases would be allegedly counted as enforced disappearances. The minister also highlighted that in many cases the victims reappear or are arrested and, according to him, this is sufficient evidence to distort the allegations (HRW, 2021).

As a tool of repression to silence unwanted voices, the enforced disappearance often brings with it other human rights violations due to the position of extreme vulnerability in which the victim finds himself. Torture, extrajudicial killing, and sexual violence are the most common ones. Although for most cases, the victim is either released or arrested due to repressive laws such as the aforementioned DSA, some of them are also found dead, while some others are never found. According to the Human Rights Watch, between the reported enforced disappearances cases of the last decade, 86 of them still remain with their whereabouts unknown (HRW, 2021). Among the State Apparatuses used as tools of repression to achieve these disappearances the role of the Rapid Action Battalion (RAB) is highlighted.

The huge number of complaints against the RAB officers led to the announcement of sanctions imposed by the United States against the group in December 2021. The sanctions were followed by a letter that gathered 12 human rights organisations who also denounced the human rights violations committed by the organisation since its creation in 2004.¹ Several UN rights experts also highlighted the involvement of RAB authorities in criminal human rights violations, such as torture and inhumane treatment, among others.

Also according to UN experts' observations at the 125th session of the Working Group on Enforced or Involuntary Disappearances (A/HRC/WGEID/125/1), the RAB, "a counterterror paramilitary unit", is responsible for the majority cases of enforced disappearances, since 2009 until the recently. They are responsible for picking up the victims, the extra-judicial killings and the disposal of their bodies. Several officers involved with these abuses were often promoted and rewarded by the government (UN, 2021).



Parents of Mahabub Hasan Sujan holding his photo. Source: Abul Hassan, 2022

RAB Involved in the Persecution of Families of Victims

The Bangladeshi couple in the picture above, lost their son, Mahabub Hasan Sujan, a victim of enforced disappearance in 2013. Sujan was an oppositionist student leader and was abducted by Bangladeshi security agents. In this year, 2022, the family had to receive RAB members asking them to sign false statements. Since the receipt of the aforementioned US sanctions and the letter of the UN experts, there has been an increasing scale of violence and hounding against the families of victims of enforced disappearances and human rights defenders. The purpose of it, is to forcibly change the allegations of abuse against the RAB made by the families of the victims of enforced disappearances. The RAB is coercing these families to issue the statements made. In a clear attempt to exonerate the culprits and to clear the image of the paramilitary group, the statements claimed that the accusations were falsely reported as enforced disappearances. According to human rights activists in the country, some of the agents are writing these statements themselves and making the families sign them, in order to get rid of the allegations of abuse against them (VOA NEWS, 2022).

It is clear that the enforced disappearances are being used by the ruling party by the Bangladesh government to control and constrain any kind of criticism and opposition. It is a tool for political persecution in the country. According to the UN's Working Group on Enforced or Involuntary Disappearances observations, everytime the elections are close, there is a noticeable increase in the enforced disappearances in the country. This was noticeable both at the 2014 and 2018 elections (UN, 2021). Therefore, it is a systemic problem that involves security actors of the legal system of the country and with that, impunity spreads and repression survive.

Conclusion

Throughout this whole report, it has been extensively highlighted how Bangladeshi institutions keep failing to guarantee the respect of the right to freedom of expression in the country. This reality numbs –if not nullifies- the possibility of exercising public scrutiny over the government's activities. Probably now more than ever, given the censorship-related concerns arising in the context of the Russian military invasion of Ukraine, it is clear how freedom of expression represents one of the main symptoms of an anti-democratic regime. Despite the two situations being sharply different, and any other comparison would be as inappropriate as misleading, the problematic issues which this work has shed light on demonstrates that there is still a long way to go in order to fulfil the principles of democracy enshrined in the Bangladesh Constitution. The coveted transformation towards the establishment of a system where everyone is actually entitled to freedom of speech strictly depends on the respect of two pivotal legal requirements: the precise formulation of norms regulating freedom of expression and the continuous presence of the judicial branch in all the stages of the procedures regarding the compression of such right.

Firstly, the broad definitions of the overriding interests justifying restrictions to freedom of expression give rise to excessive ambiguity, permitting authorities to distort provisions according to their contingent needs. The vagueness of the incriminating laws always determines a position of imbalance of force between institutions and the population, leaving space for abuses of the former and making the technical legal defence of the latter very complicated. For this reason, it is required to introduce substantial legal reforms, with the repeal of the current norms and the adoption of new ones conceived by top-quality law-makers.

Secondly, governmental authorities and law-enforcement agencies have been too often left with untied hands, free to apply provisions of criminal nature without the intervention of judges. The most recognised principles of criminal law worldwide, indeed establishes that any form of arrest and deprivation of personal liberty should be subject to the permission (specifically, the release of a justified warrant) of the judicial body.²

2. For obvious reasons of timeliness, this principle does not apply when criminals get caught in flagrante delicto.

Furthermore, once the arrest has been carried out, the individual in state detention should be granted, within a very short period of time. The right to get his/her case examined again by the judge, in order to ascertain whether the requirements for the custody continue to subsist.

The cases surveyed in the preceding sections flagged up the absolute disrespect of these basic lines of defence against the abuse of power of the Bangladeshi government, and this is highly concerning for the present and the future of the country. Social and economic development cannot proliferate in contexts where the civil society gets threatened and silenced and where political power, instead of working in favour of the people, is deployed to suffocate their voices of dissent.

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